Oregon
Tina Kotek, Governor

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

June 12, 2025

To: Land Conservation and Development Commission

From: Brenda Ortigoza Bateman, Ph.D., Director
Gordon Howard, Community Services Division Manager
Alexis Hammer, Legislative and Policy Manager
Alyssa Bonini, Legislative and Policy Analyst
Jon Jinings, Community Services Specialist
Adam Tate, Renewable Energy Planner

Subject: **Agenda Item 4, June 26-27, 2025, LCDC Meeting**

Eastern Oregon Solar Rulemaking Decision

I. Agenda Item Summary

Passed by the Oregon Legislature in 2023, House Bill 3409 directs the Department of Land Conservation and Development (DLCD or department) to collaborate with a Rulemaking Advisory Committee (RAC) to develop a process for identifying opportunities and reducing conflicts in siting solar photovoltaic energy facilities in Eastern Oregon.

Note: this pathway is an alternative to the still-existing solar permitting processes set forth in rule and the Energy Facility Siting Council rules.

As a result of the rulemaking process, DLCD staff will present proposed rule amendments to the Oregon Administrative Rule (OAR) Chapter 660 divisions 4, 6, 23, and 33. These rules pertain to the Statewide Land Use Planning Goal Exceptions Process, Forest Lands, Natural Resources, and Agricultural Lands respectively. The public comment period for this item has closed.

a. Purpose

Department staff ask that the commission review and consider adoption of the proposed rule amendments before the Legislature's July 1, 2025, deadline.

b. Objective

Commissioners will receive a presentation on the proposed rules, consider public comments, have an opportunity to ask staff questions, and adopt rules.

For further information about this report, please contact Gordon Howard, Community Services Division Manager at 503.856.6935, gordon.howard@dlcd.oregon.gov, or Jon Jinings, Community Services Specialist at 541-325-6928 or jon.jinings@dlcd.oregon.gov.

II. Background

The Oregon Legislature passed House Bill (HB) 3409, the omnibus climate bill, in 2023. Section 35 of the bill requires the commission to adopt rules before July 1, 2025, involving these elements:

- Establishing criteria through which local governments may be permitted or required to allow the siting of photovoltaic solar power generation facilities, including criteria that consider potential conflicts with other resource lands.
- Soliciting public feedback from neighboring landowners or residents.
- Identifying the characteristics of lands in Eastern Oregon best suited for counties to allow, encourage, and incentivize photovoltaic solar power generation facilities, based on consideration of:
- The land's suitability for contributing to the state's clean energy goals.
- Site characteristics, resource potential, proximity to current and future transmission access and locations for potential interconnection.
- The ability to avoid negative impacts on natural resources, forestry, habitat, agriculture, community needs, and historic, cultural, or archaeological resources, or to readily minimize or mitigate those negative impacts.

At its November 2, 2023 meeting, the commission directed department staff to initiate rulemaking to carry out these requirements. The commission's rulemaking charge includes guidance for consulting with tribal governments, establishing a rulemaking advisory committee (RAC), and an expectation that the RAC would propose revisions to OAR chapter 660, divisions 4, 6, 23, and 33 for commission review and possible amendment.

Staff held 14 meetings with the RAC between February 2024 and April 2025. Kearns and West consultants facilitated the meetings and assisted the department and RAC members in working through the contentious and complicated issues around renewable solar energy siting in Eastern Oregon. The department convened five of these meetings in various parts of Eastern Oregon and included public listening sessions and tours for RAC members of surrounding lands and areas grappling with issues around renewable solar energy development. These meetings were held in March 2024 in Christmas Valley; April 2024 in Burns; May 2024 in Boardman; June 2024 in Madras; and August 2024 in Moro. Kearns and West have provided a summary report on the work of this RAC included as Attachment A.

a. Rulemaking Objective

The goal of this rulemaking is to identify sites that support photovoltaic solar energy generation projects to help meet Oregon's clean energy goals. In HB 3409, legislators directed that this should happen without unnecessarily encroaching upon resources important to Oregonians as reflected in the statewide land use planning program. Legislators specified that the rules should preserve or mitigate impacts on culturally significant areas, wildlife habitats, and areas vital for farming, ranching, and forestry.

Accordingly, DLCD staff have focused their efforts on identifying three categories of land for this rulemaking process:

1) Lands ideal for photovoltaic solar energy development. These are areas with lower quality agricultural soils, marginal wildlife habitat, and little potential or documented historic, cultural, and archaeological sites.

2) Lands reasonably suited for photovoltaic solar energy development. These areas may have mid-grade wildlife habitats, agricultural land of intermediate productivity, or lands that may have some historic, cultural, or archaeological sites. However, on these lands, it may be possible to offset losses to these categories with compensatory mitigation and community benefits measures.

3) Lands not eligible for special photovoltaic solar siting considerations. These areas are home to the highest quality wildlife habitat and agricultural lands, and/or feature identified and important historic, cultural, and archaeological sites that are not possible to mitigate.

As a result of this extensive public process, staff have prepared rule amendments to change six administrative rules. Four of these rules have significant changes: OAR 660-023 (included as Attachment B), OAR 660-033 (included as Attachment C), OAR 660-006 (included as Attachment D), and OAR 660-004 (included as Attachment E). Staff also propose minor amendments to two additional rules, a use table in OAR 660-033-0120 (Attachment F) and conforming revisions to OAR 660-023-0190 (Attachment G). Department staff prepared these draft rules to reflect views expressed at the final RAC meeting on April 22, 2025, as well as public comments received and government-to-government consultation held with the Confederated Tribes of Warm Springs Reservation of Oregon.

The department also received numerous and substantive public comments on the content of these rule amendments. Staff have included these comments in Attachment H. The electronic table of contents in this attachment contains links to the corresponding written comments. Staff prepared a summary of these comments along with the department's response included as Attachment I.

All adopted rules require a fiscal impact statement and a housing impact statement. Attachment J, which the department filed with the Secretary of State for draft rules in the Fall of 2024, contains these statements. Staff recommend that the commission consider replacing and adopting the rules drafts in this earlier filing statement with the rules proposed in Attachments B-G.

1. Issues

In this section, staff describes the main issues raised in public comments. Some of these topics warrant additional context, which staff plan to include in the report for the legislature.

i. Rules Implementation: Opt in vs Opt out

The draft rules provide counties several pathways for reviewing photovoltaic solar power generation facilities on agricultural lands in Eastern Oregon. One of these pathways existed under previous statute, and two of these pathways are new.

a. **OAR 660-033-0130(44)**: The new rules for Division 33 (Agricultural Land) proposed in Attachment C allow counties to review individual applications for photovoltaic solar power

generation facilities/sites. Under these rules, a county would not need to adopt comprehensive plan and land use code amendments for rule implementation. Counties will be allowed to approve individual facilities/sites of set sizes: up to 160 acres on high value farmland, 1,280 acres on arable farmland, and 1,920 acres on non-arable, lower quality farmland.

However, counties do not have to implement the new Division 33 rules found in OAR 660-033-0130(44). In such an instance, they are allowed to continue using the current Division 33 standards in OAR 660-033-0130(38). If counties chose this option, they would need to take formal action to opt out of the new Division 33 rules. The department recommends a delayed effective date of six months after rule adoption to allow counties the opportunity to opt out in advance of the effective date. However, after that date, a county would still be able to opt out at any time.

b. **OAR 660-023-0195**: The new Division 23 (Natural Resources) rules proposed in Attachment B give the counties direction on how to adopt their own program, under the provision of Statewide Planning Goal 5. This would occur as part of a comprehensive plan update to designate photovoltaic solar power generation areas in the county.[1] This involves a more robust public process and allows for larger acreage sizes for individual application sites: up to 240 acres on high value farmland, 2,560 acres on arable farmland, and 3,840 acres on non-arable, lower quality farmland.

c. **OAR 660-033-0130(38)**: These are the existing rules in Division 33 (Agricultural Land) that counties currently use for evaluating photovoltaic solar power generation facilities. This pathway is currently available to counties and will remain an option if they do not want to utilize the new rules in Division 23 or Division 33. These existing rules allow limited solar development on farmland and require approval of an exception to Statewide Planning Goal 3 for any significantly sized renewable solar project (more than 12 acres on high-value farmland, more than 20 acres on arable lands, and more than 320 acres on non-arable lands).

Comments received from the Association of County Planning Directors (AOCPD), as well as several counties themselves have indicated a preference for counties deciding whether to "opt in" to rules in Division 33, rather than requiring a specific county action to "opt out" as the rules are currently structured..

ii. Rules Implementation: Areas vs Sites

Some comments received also were critical of the lower acreage thresholds in the new Division 33 rules. These individuals called for the acreages to be raised to the acreage thresholds of the new Division 23 rules.

Individual applications/sites. Currently, the acreages in Division 33 are 160 acres on high value farmland, 1,280 acres on arable farmland, and 1,920 acres on non-arable, lower quality farmland. The acreages in Division 23 are 240 acres on high value farmland, 2,560 acres on arable farmland, and 3,840 acres on non-arable, lower quality farmland.

[1] Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces requires protection of various types of significant resources by local governments.

These comments come primarily from representative of the solar industry. These representatives generally assert that because the Division 23 and Division 33 rules are similar in the requirements they place on solar developers, the department cannot justify a difference in acreage thresholds between the two methods. These comments also assert that the new Division 23 rules are too cumbersome and complicated for counties to implement and predict counties will not use them.

Staff respectfully disagree with these comments and recommend retaining the lower acreage limits presented in the new Division 33 rules -- OAR 660-033-0130(44) --in Attachment C. This is due to the significant difference between these rules, primarily the more in-depth requirements of the new Division 23 rules which require counties, solar developers, and interested other parties to engage in a comprehensive program tailored to a county's individual conditions and circumstances through a robust community engagement process.

Designation of Areas in Comprehensive Plan. A county could update its comprehensive plan with a program to designate specific areas for photovoltaic solar power generation development, using existing rules in OAR 660-023-0195. These rules implement Statewide Planning Goal 5, which includes “energy sources” as an important resource. The county would have greater flexibility to adopt rules providing opportunities for photovoltaic solar power generation to the county's specific conditions. Under such a program, counties could approve such facilities on up to 240 acres of high value farmland, 2,560 acres of arable farmland, and 3,840 acres of non-arable, lower quality farmland. These are the largest sites that counties could approve under existing state law regarding solar facility siting under ORS 215.446. Larger sites require a solar developer to apply to the state's Energy Facilities Siting Council (EFSC) for approval. Counties may implement these new Division 23 rules at any time.

Some members of the RAC maintain that Division 23 is too complex and that counties will not choose to use it. However, the draft rules greatly simplify the standard process set forth in OAR 660-023-0195 administrative rules for implementing Statewide Planning Goal 5 for solar energy facilities. As proposed, the new Division 23 rules in Attachment B do not require a county to follow the standard requirements of Goal 5 which include determination of significance, identification of conflicting uses, and analysis of the Economic, Social, Environmental, Consequences (ESEE) consequences of fully allowing, partially allowing, or fully prohibiting conflicting uses. The rules also set forth, with some allowances for county flexibility, the program to protect the resource. Most importantly, what remains is the robust public process intended to inform the counties' policy decisions. The department sees these obligations as an asset for local planning efforts rather than a liability.

Use Existing Method for Site Review: OAR 660-033-0130(38) rules, which currently apply to the entire state, would continue to be available for use by Eastern Oregon counties. These existing rules generally pertain to projects meeting current acreage thresholds (12-acres on High-Value Farmland, 20-acres on Arable Land, and 320-acres on Non-Arable Land) that counties consider through the conditional use process on lands designated for exclusive farm use. A solar development can also request a goal exception to Goal 3-Agricultural Lands, a difficult standard to meet. This existing method is unchanged and does not incorporate any of the requirements for mitigation or community benefits as expressed in the proposed Division 23 (Natural Resources) and Division 33 (Agricultural) rules.

iii. Agricultural Mitigation

The proposed rules for Division 23, also cited by cross-reference in Division 33, propose mitigation for the loss of productive agricultural land for renewable energy development. The rules organize Eastern Oregon agricultural lands into three categories:

Lowest value agricultural lands -- generally soils having an agricultural capability class of V-VIII as identified by the National Resource Conservation Service (NRCS). These soils are mostly used by ranchers for livestock grazing in arid locations.

Intermediate value agricultural lands -- generally non-irrigated soils having an agricultural capability class of III and IV that are not considered either prime or unique as identified by the NRCS. These soils are most typically used by farmers for cereal grain production and represent areas where counties may allow photovoltaic solar development with appropriate mitigation.

Highest value agricultural lands -- generally soils having an agricultural capability class I or II, or that are considered either prime or unique as identified by the NRCS. This category also includes areas considered high-value farmland due to inclusion in an irrigation district or an American Viticulture Area and include other irrigated farmland. Farmers typically use these areas for crop production and these lands generally include soils that are in limited supply and are irreplaceable. The highest value agricultural lands would not be eligible for consideration of photovoltaic solar development under these rules.

RAC members discussed the nature of any agricultural mitigation measures counties may apply for photovoltaic solar development on the second of the three categories, intermediate value agricultural lands. The rules include two options: 1) a cash payment to the county or other entity such as a soil and water conservation district for use in enhancing agricultural activities in the county; or 2) if a county adopts its own program as part of its comprehensive plan under OAR 660-023, the option of accepting a cash payment as allowed in option 1 or adopting other agricultural mitigation measures determined by the county. RAC members generally agree on these approaches.

The department received several comments related to agricultural mitigation. These comments generally called for more mitigation measures, including a provision to limit the amount of land a county can include and exclude when determining significant photovoltaic solar resource areas when adopting the Division 23 rules. In contrast, there were other comments that argued that the proposed agricultural mitigation rules were too burdensome and that the rules should not apply to class VI soils and should only apply to class III-V soils if the ground was not productive enough as rangeland. Other public comments suggested that the rules should not include American Viticulture Area soil designations as a classification factor, at least within the Columbia Plateau. Staff believe that the rules as written strike a balance and suggest that the department and commission review the effectiveness and scope reflected by these concerns when reviewing the rules in two years.

iv. Cumulative Impact Analysis in Agricultural Areas

Currently the rules governing photovoltaic solar power development in the entire state require counties to consider the possible cumulative impacts of multiple such facilities near each other within a specified area. The concept is that at some point, a concentration of photovoltaic solar power development in a specific area has the potential to disrupt agriculture on lands interspersed with or near the concentration of solar facilities. The rules in OAR 660-033-0130(38) require the county, once a specific area has reached a threshold concentration of photovoltaic solar power development, to:

“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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.”

If a county cannot make this finding, the county may not approve the project.

Based upon discussion at RAC meetings, the draft rules propose modifications to the cumulative impact analysis threshold in Eastern Oregon to reflect larger solar developments and parcel sizes than predominate in Western Oregon.

Some public comments have called for an increase in the areas subject to cumulative impact assessments. Others have recommended that the cumulative impact assessments include projects already in operation as well as projects that have received land use approvals but are not yet constructed. However, sometimes solar developers do not construct some projects that counties have approved for various reasons unrelated to the content of these rules. Staff believe the proposed cumulative impact analysis is sufficient. Staff recommend the department and commission review the effectiveness of cumulative impact provisions at the scheduled two-year review of the rules in two years.

v. Wildfire Concerns

Several comments received showed concern for wildfire protection and impacts of fire on photovoltaic solar power generation facilities as well as battery energy storage systems (BESS). Commentors are concerned about how the mostly volunteer fire departments could respond to solar panels and lithium-ion batteries that are in high-risk fire areas. They assert that there should be buffers between the solar developments and nearby residential areas. Some commentors asked for a "hold harmless" clause against fire for normal farming practices as a means of protecting farmers and ranchers. Another commentor wrote that if a solar facility were destroyed by fire, then solar developers should be liable for decontamination and remediation of the site. The draft rules specifically allow counties to include conditions of approval addressing these concerns when reviewing individual projects including but not limited to bonding for removal of the infrastructure. Staff believe that counties are best able to determine whether conditions of approval to address these issues will be needed.

vi. Agrivoltaics and Other Uses of Photovoltaic Solar

Several public comments called for the continued study of topics the RAC considered but decided against including. These include agrivoltaics, microgrids, and community solar. Some comments also mentioned the need for further study and legislation for adding photovoltaic solar power generation to rooftops, along highway rights-of-way, and over parking lots as measures that could lessen the need for large solar developments in rural and agricultural areas. The department could further consider these issues as capacity allows.

vii. Complication of Division 23 Rules & Simplification of Division 33 Rules

Some public comments, largely from solar industry representatives, suggest that the Division 23 rules are overly complicated. These representatives assert that this will drive most developers to utilize the Division 33 rules which apply directly. These representatives recommend a simplification of the Division 33 rules, and that the rules should consider only issues related to agricultural mitigation, community benefits and the provisions of Oregon Revised Statutes (ORS) 215.446 pertaining to renewable energy facilities. However, the department believes that doing so would not meet the intention of HB 3409 and the commission's charge, which is to develop an appropriate balance between encouraging development of renewable solar energy in Eastern Oregon while protecting important competing resources also protected by the Statewide Land Use Planning Program. While the rules accomplish this with more detailed requirements in the Division 33 rules than the representatives of the solar industry propose, the department believes these requirements are reasonably clear and objective and will not unduly limit renewable solar development in Eastern Oregon.

viii. Provisions for Soil Health

Several public comments called for increased emphasis on soil health related to issues of soil compaction, runoff, and weed management, including concerns that prolonged chemical spraying for weeds could render a site unfit to return to agricultural use after the decommissioning of a solar site. While these concerns are important, the department believes that counties are best able to address these concerns on an individual site basis. The draft rules specifically authorize counties to apply such conditions of approval to renewable solar development applications.

ix. Exclusion of the Metolius Area of Critical State Concern (ACSC)

The department received several public comments requesting that rules exclude the Metolius Area of Critical State Concern (ACSC) from consideration for solar energy development for these rules.

As background, the Legislature enacted ORS 197.416 in 2009.[2] This statute enacted a management plan prepared by DLCD protecting the Metolius Basin and nearby areas from

[2] ORS 197.416 provides, in part:

(1) As used in this section, “Metolius Area of Critical State Concern” means the areas identified as Area 1 and Area 2 in the management plan recommended by the Land Conservation and Development Commission.

impacts associated with proposed destination resorts. This law also required Jefferson and Deschutes Counties to not allow development that negatively impacted fish and wildlife resources in the area. The management plan designated the area of critical state concern, shown on the map in Attachment K. The department agrees with the commentors that this entire area has a high resource value related to wildlife habitat and also has cultural and archaeological importance for the Confederated Tribes of Warm Springs and thus should be excluded from consideration for solar development in these rule amendments. Accordingly, the department also has amended the revised rules in OAR 660-006 (Uses Authorized in Forest Zones) governing forest lands. These rule changes allow expansion of renewable solar energy projects from 10 acres to 240 acres without requiring an exception to Statewide Planning Goal 4 (Forest Lands) but exclude solar development under these rules in the Metolius Area of Critical State Concern.

x. Proximity to Urban Growth Boundaries

One important provision that the RAC has discussed is whether to prohibit new photovoltaic solar development within one mile of an urban growth boundary (UGB). RAC members debated if such a restriction should apply to cities of certain sizes, considering populations of 2,500, 5,000, 10,000, or more. Ultimately, RAC members recommended rules with no restrictions on solar development near urban growth boundaries.

This was an area of concern for staff until the department created detailed maps showing Urban Growth Boundaries (UGBs) for each of the eastern Oregon cities with populations of more than 2,500. Staff have included these maps as Attachment L. These maps show little opportunity in the proposed rules \ for new photovoltaic solar development within one mile of an urban growth boundary.

---

(2) Pursuant to ORS 197.405 (4), the Legislative Assembly hereby approves the recommendation of the commission, submitted to the Legislative Assembly on April 2, 2009, that the Metolius Area of Critical State Concern be designated an area of critical state concern.

(3) The Legislative Assembly approves the management plan included in the commission's recommendation pursuant to ORS 197.405 (1)(c) and directs the commission to adopt the management plan, by rule, without change except that:

…

(5) In addition to limitations on development that are contained in the management plan, new development allowed by amendment of the management plan, except development allowed by the administrative amendments required by subsection (3) of this section, may not result in:

(a) Negative impact on the Metolius River, its springs or its tributaries;

(b) Negative impact on fish resources in the Metolius Area of Critical State Concern; or

(c) Negative impact on the wildlife resources in the Metolius Area of Critical State Concern.

(6) A county may not approve siting a destination resort in the Metolius Area of Critical State Concern.

If a county is going to go through a comprehensive planning process for locating renewable solar facilities as a Goal 5 resource (Division 23), the rules require the county to notify cities and consider their comments about the impacts from siting solar facilities near existing UGBs when designating areas for new renewable solar facilities.

xi. Community Benefits and Mitigation Payments

RAC members also discussed community benefits and community benefit agreements. The draft rules include provisions for community benefits to counties that approve renewable solar energy development under these provisions. RAC members discussed whether to include these provisions in the rules and whether to recommend they be mandatory or voluntary. While community benefits are one of the key provisions in the commission's charge, they are a new concept for Oregon's statewide planning program. The justification for requiring community benefits is that Eastern Oregon communities are being asked to site renewable solar energy facilities that benefit the whole state in terms of building a renewable energy future. The thinking is that these communities should thus be adequately compensated for any burdens the facilities might place on the communities where they are located.

Counties and developers can implement the concept of community benefits in two different ways. Under the first option, counties can craft unique agreements ranging from specific funding agreements such as strategic investment partnerships and payments in lieu of taxes to more individualized projects like mitigation banking. They can also include construction projects that benefit the county, city, or surrounding agricultural community. Under the second option, a county could use one of several identified clear and objective community benefit measures included in the draft agricultural rules.[3] The RAC is in general agreement regarding the nature of community benefits provided in the rule. As written, the rules allow counties to use only the second, clear and objective, option for community benefit measures if reviewing renewable solar energy facilities under the “direct application” allowed by OAR 660-033-0130(44).

The department received several comments regarding community benefits. They asked for measures such as coordinated outreach from the department to eastern Oregon counties to better assist them in implementing these new concepts. Commentors also asked that the department compile examples of best practices for community benefits and community engagement and provide local planners with online tools and support. The Confederated Tribes of the Warm Springs also noted that federally recognized tribes should be included in the development of community benefit agreements. This is reflected in the proposed rules.

Some comments received emphasized a concern over costs that could arise for solar developers due to agricultural mitigation, wildlife mitigation, community benefits and any needed cultural, historical, or archaeological mitigation. This reality, however, is no different than the risks developers take under the current systems of review, or what they face when opting for Energy Facility Siting Council (EFSC) review.

---

[3] Three alternatives for clear and objective community benefit measures:
1) The applicant pays $1,000 per nameplate MW to the county or an organization designated by the county to provide uplift opportunities for the community;
2) The applicant guarantees emergency service providers a source of electricity during a power outage; or
3) The applicant creates a microgrid addressing identified community needs.

xii. How to Measure Rulemaking Effectiveness Over Time

A key part of the rulemaking process is establishing a review system to assess rule effectiveness and make necessary updates over time. Staff have recommended a rule in OAR 660-023-0195(12) to help ensure that review.

RAC members are in general agreement with this provision. Public comments received also were in agreement with this provision.

xiii. Revision to OAR 660-004-022 Governing Goal Exceptions

The draft rules include a provision that requires counties to maintain the existing Exclusive Farm Use zoning or forest zoning on a site where the county approves such a goal exception for a photovoltaic solar energy facility under the existing standards set forth in OAR 660-033-0130(38). The draft language improves clarity regarding planning and zoning of such lands. The language proposed by the department reflects the common, but not exclusive, practice of retaining a property's resource zoning upon approving an exception rather than placing the property in a limited development zoning category. The department believes that this approach represents best practice for at least two reasons. First, regarding agricultural land, it ensures that counties will apply considerations for agricultural land compatibility included in Division 33 as part of their decisions. Second, it will provide a more seamless transition back to agricultural use or forest use when the facility is eventually retired. The department believes that the draft language provides helpful clarity on this point, which will have the effect of reducing risk.

RAC members were somewhat split on this issue. Some members have asserted that counties should have flexibility to respond to existing situations by changing the plan and zoning designation. Others agree with the department's approach of retaining the existing resource zoning because photovoltaic solar development is a temporary fixture on the landscape. While solar development on site will occur over a long period of time, renewable solar energy facilities eventually age out, at which point the solar developer may remove them from the site. At that point, the underlying farm or forest zoning will determine allowable uses.

xiii. Protection of Cultural Resources

Historic, cultural, and archaeological resources are important potentially "competing" resources to protect while facilitating more renewable solar energy development in Eastern Oregon. Of particular importance in this category are cultural and archaeological resources important to the history and ongoing cultural practices of federally recognized tribal governments (tribes) in Oregon.

Unlike with agricultural and wildlife habitat, cultural and archaeological resources cannot be mapped, because 1) state law requires protection of archaeological site information; and 2) the location of many important cultural and archaeological sites were not inventoried at the time of comprehensive plan development. Therefore, these rules require, for both the Division 23 and Division 33 solar siting methods, individual review of each application to determine whether 1) a proposed solar site has no known historic, cultural, or archaeological impacts; 2) a proposed site has impacts that can be mitigated to allowed county to approve a project; or 3) a proposed site has significant unmitigable impacts that do not allow a county to approve the project. To assist the county in making this determination, the rules require the applicant to conduct a survey of the proposed project site prior to submitting an application to a county. The applicant

also will be required to give notice to affected tribes and the State Historic Preservation Office prior to submitting the application. The applicant must also notice DLCD, so that the department can ensure that applicants and counties are working with affected tribes to resolve any issues and protect confidentiality. Staff of the Legislative Commission on Indian Services have agreed to work with department staff to consult with tribes on the creation and maintenance of a list of tribes with known interest in any city of county geographic area.

At the request of the Confederated Tribes of Warm Springs, the department engaged in government-to-government consultation regarding their concerns about protection of cultural resources in these rules. Specifically, Confederated Tribes of Warms Springs representatives expressed concern about: 1) delegation of decision-making on solar development from the state to local governments, 2) the location of important cultural resource sites on lands that are also high priority for solar development because they do not have higher value agricultural soils, 3) the lack of qualifications local governments have to consider the importance of cultural resources, 4) the confidentiality of information about important cultural sites as part of a local government's land use decision-making process, and 5) the increased burden on Tribes for review of renewable solar development projects.

Department staff met with the Warm Springs Tribal Council on April 9, 2025, to discuss these issues. The department has included summary responses to the Tribes' concerns in the response to consultation and public comment document in Attachment H. The proposed rules require an applicant to provide notice to Tribes and the State Historic Preservation Office at least 60 days before submitting an application to a county and provide an analysis of potential cultural resource impacts from a proposed development prepared by an appropriately certified professional archaeologist.

xiv. Report to the Legislature

HB 3409 (2023) directed that the department, with RAC input, provide the Legislature with a report that includes:

- A summary of the rules adopted
- A review of renewable energy siting assessment tools used by the Oregon Department of Energy
- A review of existing practices relating to mitigation of impacts from photovoltaic solar power generation facilities and transmission development
- Mitigation recommendations for the following:
- Mitigating impacts on farming practices on agricultural lands through best practices and land use regulations
- Mitigating impacts on fish and wildlife habitat
- Supporting certainty for developers regarding mitigation requirements within the siting process
- Identifying characteristics and considerations of fish and wildlife habitats that may require specific mitigation practices

- Recommendations for technical assistance resources to support county siting processes and the engagement of public bodies, tribal governments and communities in the siting process for renewable energy and transmission development.

The department must provide an interim copy of the report to the Legislature by September 15, 2025, and a final report by December 31, 2025. Among other items, this report will discuss the need to further study the issues of agrivoltaics and renewable solar energy siting on forest lands. The report also will discuss other issues that arose during the RAC's deliberations related to specific concerns around solar development related to wildfire mitigation, soil health, and other potential mitigation of solar development impacts at the project level.

III. Recommended Action

The attachments include the draft rules the department recommends the commission adopt by July 1, 2025.

Suggested motion:

Recommended motion: I move the commission adopt rule amendments as recommended by the department and shown in Attachments B-G, with an effective date of January 1, 2027.[4]

Optional approval motion: I move the commission adopt rule amendments as recommended by the department in Attachments B-G with the following changes: [identify changes].

IV. Attachments

a. Kearns and West Summary Report

b. Amendments to OAR 660-023-0195

c. Amendments to OAR 660-033-0130

d. Amendments to OAR 660-006-0025

e. Amendments to OAR 660-004-0022

f. Amendments to OAR 660-033-0120

g. Amendments to OAR 660-023-0190

h. Compilation of Comments Received

i. Response to Comments Document

j. Secretary of State Filing Including Fiscal and Housing Impact Statements

k. Metolius River Area of Critical Concern Map

l. Urban Growth Boundary Maps

m. UGB 1 mile Buffer Map

KEARNS & WEST

AGENDA ITEM 4
June 26-27. 2025 LCDC MEETING
ATTACHMENT A

Eastern Oregon Solar Siting Rulemaking Advisory Committee (RAC) Report

Developed by Kearns & West

May 06, 2025






Eastern Oregon Solar Siting Rulemaking Advisory Committee (RAC) Report

Executive Summary

In March 2024, the Oregon Department of Land Conservation and Development (DLCD), convened a Rules Advisory Committee (RAC) to develop guidance to the Land Conservation and Development Commission (LCDC or "the Commission") on how and where to site photovoltaic solar power generation facilities to minimize conflict and maximize opportunities on land in Eastern Oregon. RAC membership included 31 voting members (and 11 alternates) from tribes, federal and local government, as well as representatives of conservation, wildlife, agriculture, and development interests. State agency staff, legislators, LCDC commissioners, and additional tribal representatives were included as ex officio members. DLCD hired Kearns & West, a third-party neutral facilitation team, to support the process. The RAC met 13 times between March 2024 and April 2025; five of these meetings occurred in-person in locations throughout Eastern Oregon. The RAC reached general agreement on the draft rules. Kearns & West developed this report to provide a summary of the process, discussions, and outcomes from the RAC.

Background, Purpose, and Desired Outcomes

LCDC originally adopted specific rules for siting photovoltaic solar power generation facilities on farm and ranch lands protected under Goal 3 in 2011 (OAR 660-033-0130(38)). Since that time, there have been conversations about how to identify the best possible locations for solar energy development to reduce conflicts.

In 2023, House Bill 3409 - the Climate Omnibus Package - was passed by the Legislative Assembly and signed into law by Governor Kotek. Sections 35 through 37 of HB 3409 directed LCDC to adopt rules relating to siting photovoltaic solar power generation facilities. Section 35(2) requires the commission to adopt rules that consider a variety of development aspects, natural and cultural resource values, and community needs.

At their November 2, 2023, meeting, the LCDC directed DLCD staff to begin rulemaking to carry out the requirements of Section 35(2), House Bill 3409. The Commission's charge included guidance for consulting with Tribal Governments, establishing the RAC, and an expectation that revisions to OAR Chapter 660, Divisions 6, 23, and 33 will be identified for review and amendment. The provisions of OAR Chapter 660, Division 4, may also be considered.

State and Commission policy requires that community members, or the public, be involved in the drafting of rules. HB 3409 outlines the duties of the RAC, which, in addition to advising LCDC (Section 37), states:

> *"The rules advisory committee shall prepare a report that includes: (a) A summary of the rules adopted under section 35 of this 2023 Act; (b) Review of renewable energy siting assessment tools used by the State Department of Energy and recommendations regarding missing or outdated data sets; (c) Review of existing practices relating to mitigation of impacts of photovoltaic solar power generation facilities and transmission development and recommendations for: (A) Mitigating impacts on farming practices on agricultural lands through best practices and land use regulations; (B) Mitigating impacts on fish and wildlife habitat in accordance with the policies described under ORS 496.012 and 506.109; (C) Supporting certainty for developers regarding mitigation requirements within the siting process; and (D) Identifying characteristics and considerations of regional and local habitats that may require specific mitigation practices; and (d) Recommendations for technical assistance resources to support county siting processes and the engagement of public bodies, tribal governments and communities in the siting process for renewable energy and transmission development."*

DLCD indicated that the best possible outcome of this rulemaking effort would include identifying sites that support the development of photovoltaic solar projects that will help meet Oregon's clean energy goals and minimizes conflicts with other resources important to Oregonians, including areas of cultural significance, wildlife habitat, and commercial farming and ranching. As outlined in the Eastern Oregon Solar Siting RAC Charter, the overall charge of the RAC was to "develop guidance to the Land Conservation and Development Commission on how and where to site photovoltaic solar power generation facilities to minimize conflict and maximize opportunities."

DLCD's goal in convening the RAC is to receive individual and group guidance on developing Oregon Administrative Rules to LCDC for consideration at their June 2025 meeting. It is the agency's intent for the RAC to strive for broad agreement on their guidance presented to LCDC. This report is a summary of the work of the RAC, including areas of agreement and outstanding issues.

Process Summary

DLCD contracted Kearns & West, a third-party neutral facilitation team, to support the process by providing RAC meeting facilitation and documentation. DLCD staff conducted the review of applications and selection of RAC members that align with HB 3409. A list of RAC members, affiliations, and participation is captured in the appendices below (page 11).

The RAC met 13 times between March 2024 and April 2025; with in-person meetings occurring in the eastern Oregon communities of Christmas Valley, Hermiston, Burns, Madras, and Moro. Each in-person meeting included site visits and a public meeting opportunity with RAC members and DLCD staff.

At the first RAC meeting, members adopted discussion ground rules, shared collaboration values, and agreed to seek consensus to adopt the final rule package. The first few RAC meetings focused on information sharing, including presentations on the current solar siting process, developer

considerations, wildlife considerations, military considerations, and state energy strategies. The later RAC meetings focused on reviewing, discussing, and refining draft rule language.

Early in the process, five Technical Advisory Committees (TACs) were formed: Wildlife Mitigation; Agricultural and Forestry Mitigation; Archaeological, Cultural, and Historical Resources; Implementation; and Community Benefits. DLCD staff facilitated the TAC meetings, which met more than 20 times over a four-month period from June to October 2024. Outcomes from TACs were reported to the RAC and included proposed rule language concepts for consideration. DLCD staff also held "office hours" several times a month from December 9, 2024, to April 28, 2025, for RAC members to drop in and discuss questions, thoughts, and ideas on the rule language. Finally, DLCD staff developed informative videos to share more detailed information about technical and policy concepts for RAC members to view outside of meetings.

At the November 5th, 2024, RAC meeting, the RAC agreed that a small group of members, comprised of developer, county, and land use representatives, would meet to provide technical language expertise and edits to the draft revised rules. Kearns & West facilitated this small group, which met three times to develop proposals for the full RAC to consider.

The RAC was originally set to provide their final recommendations to LCDC in December 2024. As the RAC worked through their recommendations, it became clear that more discussion time was needed. The RAC requested DLCD staff to seek LCDC approval for a timeline extension to continue working to improve and clarify the draft rules. DLCD requested an extension of RAC meetings through April 2024 with a final report delivered to LCDD in June 2025, which was approved.

The RAC used a "Fist to Five" voting scale to register their level of agreement with the rules as they were developed. A "fist", 1 or 2 indicates no support with serious objections and modifications needed. A 3 or higher indicates increasing levels of support and acceptance of proposals and modifications. In their last three meetings, each RAC member had the opportunity to share their level of support/or no support and accompanying considerations. RAC members and staff worked diligently with each other to address outstanding concerns and incorporate ideas. In the end, all RAC members are generally supportive of the current rule language draft, voting either a 3 or a 4 (note that no RAC member offered full support with a 5).

RAC Conversation Key Themes

A key outcome of the RAC's work was to bifurcate the rule into two permitting pathways. Division 23 is a Goal 5 inventory process that would be utilized by counties to first identify and designate siting areas, and then an application process that is limited to those designated areas. The Division 23 process is expected to take a year or more, and to date, no counties have indicated intent to use this pathway. Division 33 is a more direct pathway that allows counties to review applications without a Goal 5 inventory process and approve certain facilities without a goal exception if the applicant satisfies requirements, including agricultural mitigation and community benefits agreements, among other criteria. Division 33 reflects the pathway for direct application by the

counties, and Division 23 reflects the Goal 5 pathway. Below is a summary of issue areas where the RAC reached alignment and areas that need further discussion.

Areas of Alignment

Balancing Development Opportunity While Minimizing Impacts: There was a consistent emphasis across the RAC to find a balance between providing opportunities to develop solar resources while minimizing impacts to sensitive lands. RAC members shared the values of both conservation and responsible development. Members discussed the importance of finding suitable land for solar projects while minimizing impacts to agricultural lands, forest lands, important habitat, cultural resources, military training areas, and other sensitive lands. Members discussed what lands should be avoided for solar projects and under what circumstances certain lands may be considered if mitigation measures are implemented. Multiple members encouraged development in less-impacted areas to minimize mitigation burdens and align rule language with wind siting guidelines to support projects with minimal environmental impact.

Recognition of Competing Goals: A recurring theme throughout the discussions was the inherent tension between the state's renewable energy goals and its commitment to protect agricultural and forestry lands. RAC members acknowledged and agreed that achieving both objectives will require difficult trade-offs and compromises.

Areas of Significance (Quality, Quantity, Location): This was a key discussion topic, and the RAC came to a consensus on a list of factors to guide where solar development may be most likely feasible. These factors include:

- Topography with a slope that is predominantly 15% or less
- An estimated Annual Solar Utility-Scale Capacity Factor of 19 percent or greater
- Location predominantly within 10 miles of a transmission line with a rating of 69 KV or above

The RAC discussed whether these constraints are needed at all, but decided to include these factors based on the considerations presented by the legislature in HB 3409.

Mapping: RAC members expressed appreciation for DLCD staff's effort to map the solar opportunities, as DLCD noted that not all resources can be accurately mapped, such as wildlife, cultural resources, and substrate constraints. Some RAC members shared their opinion that areas identified for possible solar development are unlikely to be completely developable, as when additional considerations are applied to the maps, the acreage would be further reduced. For example, the narrower areas shown on the maps, such as ridgelines, would likely not be developed, as building projects on larger connected tracts of land is more economical. While the total acreage identified on the maps is enough to support the state's clean energy goals, the application of additional considerations could result in further reductions that do not allow enough developable land to support the state's clean energy goals. RAC members suggested mapping substrate, sage grouse habitat, wildlife corridors, category one habitat, national historic registered cultural resources, and altitude as additional layers.

The Areas of Significance factors will allow county planners to use the map to understand where solar resource development may be sought. County planners shared that they can put together more specific maps with site-specific data. RAC members agreed that "non-mappable" items, such as cultural resources, should be addressed on a project-by-project basis. RAC members highlighted the importance of discussing the schedule and process for presenting these rules to the counties.

Overall, there is uncertainty around exactly how much land will be available for development with some RAC members questioning whether this rule provides enough flexibility to lead to more efficient solar permitting due to process questions, unmappable constraints, and how other DLCD Rulemakings, including the Cultural Areas Rulemaking and Farm and Forest Rulemaking, will impact solar development.

Photovoltaic Solar Resource Areas versus Facilities (Sites): The RAC had significant discussion about the counties' capacity and interest in implementing the rules. RAC members discussed trade-offs of having an opt-in or opt-out approach for counties to apply the rules and engaged with counties outside of RAC meetings through surveys and presentations to discuss concerns and ideas. RAC members suggested having a different process for "areas" and "sites." The RAC reached consensus on recommending a pathway for counties to choose to designate "areas" (Division 23) and consider sites within areas, or consider "sites" individually unless they formally "opt out" of considering facilities/sites (Division 33). The RAC agreed that it is helpful for counties to have options to pursue Division 23 or Division 33 and helpful for developers to have an actionable pathway in the near term.

Wildlife: Members agreed that certain areas, such as sage-grouse habitat and key migration corridors, should be avoided. Members indicated that proposed development should comply with ORS 215.446 and the Oregon Department of Fish and Wildlife's Habitat Mitigation Policy, and that mitigation should be required for habitat categories 2, 3, and 4. Members noted that proposed projects also go through the Conditional Use Permit (CUP) process, which may include mitigation requirements. RAC members shared concerns about wildlife impacts and displacement and noted that the rule language is a compromise for conservation, as there is overlap between wildlife corridors and transmission lines, as well as the land pattern of Eastern Oregon being protective of both agricultural and wildlife.

Voluntary Implementation: The RAC agreed to add language clarifying voluntary implementation and Post Acknowledgement Plan Amendment (PAPA) processes. Some RAC members suggested that this rule require implementation concurrent with PAPA procedures, with an additional requirement for more public meetings and community conversations when adopting a local program to establish resource areas. Other RAC members disagreed with the requirement for additional public meetings. The RAC discussed public meeting notice requirements and the importance of timely notification and engagement of community members. RAC members agreed to omit the additional meeting requirement and defer to the embedded PAPA process while leaving the choice for additional public meetings and notification to the discretion of the counties.

Historic, Cultural, and Archeological Resources: DLCD staff coordinated with Tribal leadership and staff and the Oregon State Historic Preservation Office (SHPO) to provide input to the RAC on the language. DLCD staff shared that on December 5th, 2024, LCDC passed the Goal 5 Cultural Areas Rule to require Tribal consultation and developer and/or applicant engagement with the Nine Federally Recognized Tribes in Oregon. An updated Cultural Areas rulemaking is expected to be adopted in late 2025. There remains uncertainty around what that rule will require and how it will interact with solar facility siting. Therefore, at the last RAC meeting, the RAC agreed that the solar rule should align with the final Cultural Areas Rulemaking. In the interim, the RAC agreed that Inadvertent Discovery Plans (IDPs) should be required for all solar development, and that language presented at the April 22, 2025 meeting needs to be cleaned up to accurately reflect intent on who is a qualified archeologist and what needs to be consistent with SHPO's archeological guidelines.

Community Benefits: RAC members continuously recognized that solar projects could have significant impacts on local communities and agricultural landscapes. The RAC expressed a desire to ensure that these projects provide tangible benefits to the communities where they are located and that they minimize negative impacts on community resources. RAC members offered examples of solar-project-based community engagement and community benefit agreements. The RAC discussed offering a set of examples conveying the variety of mitigation and community benefits costs, as a starting place for negotiations between counties and developers. RAC members suggested benefits such as performance commitment from developers, energy resilience guarantees, and payments. RAC members also shared that some benefits could come from the state and others from the developer. RAC members suggested having benefits that provide a variety of options for each county and community to decide what is best for them. Members shared a need to connect community benefits to a clear metric, such as community infrastructure, services, or resiliency. Members noted that community benefits are important to showcase incentives to counties. Overall, the RAC agreed to include community benefits, which are required under both Division 23 and 33.

Agricultural Mitigation: The RAC had significant discussion regarding the metrics for allowing solar development on agricultural land with and without mitigation and agreed to use the accepted soil classification and forage metrics established by the U.S. Natural Resources Conservation Service (NRCS). The RAC discussed how to determine mitigation payments and the use of a mitigation calculator. RAC members thought having a calculator would be helpful. Some RAC members suggested describing what the calculator does in the rule and providing the calculator as a tool on the DLCD website.

Zone Changes: The RAC disagreed on whether the underlying zone designation should be retained, and after discussion, agreed to include language that the underlying zone would not change unless there was a concurrent zone change request. It was noted that not all RAC members agreed with this.

Predominance Use Test: The RAC agreed that predominance use tests should be utilized to determine land use.

Areas for Further Discussion

Local vs. State Control: RAC members reflected varying views regarding local and state decision-making control, with some RAC members advocating for greater local decision-making and others emphasizing the importance of statewide consistency. Some RAC members reflected a belief that local governments are best positioned to understand and address the specific needs and concerns of their communities. Conversely, some RAC members called for statewide consistency to address the need for a uniform regulatory framework to guide solar development across the state. Many RAC members recognized that land use planning is inherently complex, involving competing interests and difficult trade-offs. RAC members were interested in understanding how these rules would be coordinated with the Energy Facility Siting Council (EFSC) process. That question remains outstanding, but it appears that the rule may apply at EFSC in certain instances.

Forest Lands: RAC members highlighted the need for further discussion and broader stakeholder engagement regarding forestry issues, with some members expressing concerns that the forestry sector was not adequately represented on the RAC. Overall, the RAC recognized that there were gaps in their knowledge and shared a desire for future conversation about forest land use and agreed to remove forest lands from consideration in this phase of the rulemaking.

Appurtenant Water Rights and Irrigation Districts: RAC members recognized the complexity of water rights and irrigated lands when considering siting solar developments. Some RAC members advocated for a balance between protecting irrigated land and allowing landowners flexibility to diversify their land with solar. The RAC agreed to rule language allowing for the protection of land with appurtenant water rights and allowing flexibility if the water is unavailable due to circumstances beyond the control of the water rights holder. The RAC identified that more discussion with irrigation districts and technical experts is needed to develop additional recommendations.

High-Value Farmland, Soil Health, and Return to Agriculture: RAC members emphasized the importance of including language that ensures soil health will be maintained, and land can be returned to farm use after solar is terminated. There was concern about retaining foundational lands and avoiding checkerboard development. The group indicated some support for rules that recognize the accessory use of solar for agricultural purposes, while others were concerned that high-value farmland would not be used to its fullest capacity. Some members advocated against a definition of high-value farmland whose definition is based on yield, others advocated for classifying farmland based on soil type, and a few others had concerns about soil mapping and comparing high-value soils with irrigated soils. RAC members shared that additional data and mapping would be needed to know if the soil categories are correct and asked for a guidance document to be created. RAC members shared that the Natural Resources Conservation Service (NRCS) has reliable and refined data to consider and is currently referenced in the rules. However, some RAC members are still concerned that soil and other agricultural thresholds are too restrictive when combined with the other restrictions in the rule, unmappable constraints, and the uncertainty created by other DLCD rulemaking efforts.

Agrivoltaics: RAC members discussed concerns and opportunities relating to agrivoltaics. The RAC did not have enough time or information to adequately include agrivoltaics in this phase. The RAC requested DLCD staff to look further into opportunities for agrivoltaics in allowing for and incentivizing agricultural land and renewable energy production.

Temporary Workforce Housing: A few RAC members wanted to clarify what situations would necessitate workforce housing requirements. One RAC member wanted to know what type of person would be qualified to provide a workforce housing report, and another member suggested having workforce housing be satisfied by an agreement between an applicant and a county. RAC members asked for these rules to align with how workforce housing is addressed in the wind rules as an accessory use and agreed to add that clarification to the Solar Rule.

Rate per Megawatt Nameplate: RAC members discussed a range of ways to quantify community benefits. Some RAC members expressed concern about the cumulative cost of community benefits in addition to agricultural and habitat mitigation costs. Some RAC members suggested having a pricing scale for the nameplates, where larger projects would have a smaller per-nameplate cost, and smaller projects would have a larger per-nameplate cost to ensure that smaller projects have a minimum threshold to provide some benefit. Other members expressed concern about this proposed price scale and asked for the price scale to be relative to community impacts, as determined by the county, regardless of the size of the facility. Some RAC members suggested $1000 per nameplate megawatt, and others suggested $250-300 per nameplate megawatt.

Microgrids: RAC members noted that microgrids are a good way to provide community benefits, improve timelines for implementation, and increase buy-in from communities due to the possibility of lowered utility rates. RAC members suggested adding microgrids as a community benefit. Many members expressed concern about the microgrid definition and how rules would impact smaller, community projects. Some RAC members shared that other solar rules and local regulations already address this topic. The RAC did not have enough time to adequately consider the inclusion of microgrids.

Cumulative Impacts: Some RAC members expressed concern about the cumulative impacts of multiple solar projects in an area, and that a cumulative impact analysis is important. The RAC did not reach agreement on how best to address cumulative impacts.

Review of Rule Effectiveness: Some RAC members questioned if two years was enough time to learn about its effectiveness and suggested increasing the timeline. A RAC member noted that two years may not solicit enough information, but could indicate how many counties have adopted a Goal 5 Area. The RAC agreed that the rules should be revisited in two years to review their implementation and effectiveness.

Process: Some RAC members expressed concerns about scope creep and divergence from the legislative directive. Some RAC members felt that Goal 5 was not the correct method to implement

these rules. Some RAC members had asked to split out the Eastern Oregon and Western Oregon rule language, others found this too complicated.

Urban Growth Boundaries: The RAC and DLCD staff disagreed on whether the Solar Rule should include a setback from Urban Growth Boundaries ("UGB"). The RAC agreed to exclude a UGB setback, unless the area is already designated as an Urban Reserve, since electrical infrastructure such as substations are often close to UGBs. DLCD staff have continued to analyze whether to propose a staff recommendation to include a UGB setback, even though it conflicts with the RAC recommendation.

Acreage Thresholds: The RAC had significant discussions around what acreage threshold should be provided for Division 23 and Division 33 and how those thresholds interact with EFSC permitting. There remains uncertainty around whether the acreage thresholds should match EFSC jurisdictional thresholds or whether a lower acreage threshold is appropriate for Division 33.

Technical Assistance: DLCD staff shared that outreach to counties is ongoing to understand what they need for technical assistance. RAC members expressed concern regarding the lack of responses from counties to date and asked for individual follow-up with counties. Some RAC members asked that a flow chart be developed of how to apply the rules, and that a matrix cross-walking the divisions, EFSC standards, and the Cultural Areas rulemaking would be helpful. RAC members that represented county perspectives suggested providing financial aid and DLCD staffing to present rule information to their commissioners.

Conclusion & Next Steps

Kearns & West developed this report as a summary of the RAC discussions. It identifies areas of agreement around Eastern Oregon solar siting as well as areas for further deliberation, serving as a bridge between the RAC's collective contributions and the forthcoming draft revised rules shared by DLCD. By documenting areas of agreement and highlighting the remaining areas of consideration, this report aims to provide the Commission with a clear reflection of the RAC discussions. This report documents the collaborative efforts of the RAC, DLCD staff, and other parties towards efficient and effective solar siting rules development for Eastern Oregon.

RAC Participants

Voting Members

Name	Affiliation	03/12/24	04/18/24	05/30/24	07/17/24	08/28/24	10/01/24	11/05/24	11/13/24	12/05/24	12/18/24	01/09/25	02/20/25	04/02/25	04/22/25	TOTAL
Andrew Mulkey, Jim Johnson	1000 Friends of Oregon	✓		✓	✓	✓	✓	✓	✓				✓		✓	**9**
Mike W. McArthur, James Williams	Community Renewable Energy Association	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	**13**
Will Van Vactor, John Eisler	Crook County Community Development Director		✓										✓	✓	✓	**4**
Elaine Albrich	Davis Wright Tremain	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	**12**
Kimberly Peacher	Department of the Navy	✓	✓	✓			✓	✓	✓	✓	✓					**8**
Greg Corbin, Jason Callahan	Green Diamond Resource Company	✓		✓	✓	✓	✓	✓	✓		✓	✓		✓		**10**
Brandon McMullen	Harney County Planning Director	✓	✓		✓			✓	✓	✓	✓	✓	✓	✓	✓	**11**
Councilor Les Anderson	Klamath Tribes	✓						✓					✓			**3**
Commissioner James Williams	Lake County	✓	✓	✓	✓	✓			✓			✓	✓	✓		**9**
Michael Eng	Lostine Fire Wise	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	**13**
Max Yoklic	New Sun Energy	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	**12**
Marc Hudson	Oregon Agricultural Trust	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓				**10**
Andrea Kreiner	Oregon Association of Conservation Districts	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		**13**
Jack Southworth	Oregon Cattlemen's Association	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓		**11**
Dan Orzech	Oregon Clean Power			✓	✓		✓	✓	✓	✓	✓	✓	✓			**9**
Lauren Poor, Ryan Krabill	Oregon Farm Bureau	✓	✓	✓			✓			✓						**5**
Mike Totey	Oregon Hunters Association	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓	**12**
Damien Hall, Jack Watson, Alyssa Forest	Oregon Solar+Storage Industries Association	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		**13**
April Snell, Ken Yates	Oregon Water Resources Congress	✓		✓	✓	✓	✓		✓		✓	✓	✓		✓	**10**

Name	Affiliation	03/12/24	04/18/24	05/30/24	07/17/24	08/28/24	10/01/24	11/05/24	11/13/24	12/05/24	12/18/24	01/09/25	02/20/25	04/02/25	04/22/25	TOTAL
Thad Eakin, Nicole Mann	Oregon Wheat Growers League	✓			✓	✓	✓				✓	✓				**6**
Travis Sellers	Pendleton Building and Construction Trades Council	✓		✓		✓	✓				✓					**5**
Dugan Marieb	Pine Gate Renewables	✓	✓	✓	✓			✓	✓	✓	✓	✓			✓	**10**
Mark Lindley	Portland General Electric	✓	✓													**2**
Emily Griffith, Max Greene, Diane Brandt	Renewable Northwest	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	**13**
Steve Knudsen	Retired BPA	✓			✓	✓										**3**
Bill Richardson	Rocky Mountain Elk Foundation	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	**12**
Denise Stillwell	South Central Oregon Economic Development District	✓	✓	✓												**3**
Laura Tabor, Garth Fuller, Lauren Link	The Nature Conservancy	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	**14**
Anahi Segovia Rodriguez	Verde	✓	✓	✓		✓		✓		✓				✓	✓	**8**

Ex-Officio Attendees

Name	Affiliation	03/12/24	04/18/24	05/30/24	07/17/24	08/28/24	10/01/24	11/05/24	11/13/24	12/05/24	12/18/24	01/09/25	02/20/25	04/02/25	04/22/25	TOTAL
Jim Johnson	Oregon Department of Agriculture	✓	✓	✓	✓	✓		✓								**6**
Jeremy Thompson, Greg Jackle	Oregon Department of Fish & Wildlife	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	**13**
Dan Hubner	Oregon Department of Forestry	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	**13**
Michael Darin	Oregon Department of Geology and Mineral Industries	✓			✓			✓	✓							**4**
Tom Jackman, Michael Freels, Rob Del Mar, Jillian DiMedio	Oregon Department of Energy		✓	✓				✓	✓	✓	✓	✓	✓	✓	✓	**10**

Name	Affiliation	03/12/24	04/18/24	05/30/24	07/17/24	08/28/24	10/01/24	11/05/24	11/13/24	12/05/24	12/18/24	01/09/25	02/20/25	04/02/25	04/22/25	TOTAL
Brian Cochran, Amber McKernan, Shawn Zumwalt, Vernon Wolf	Oregon Department of State Lands	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		**12**
Todd Farmer, Randy Bentz	Oregon Military Department	✓	✓	✓	✓	✓	✓					✓	✓			**8**
Chad Higgins	Oregon State University	✓	✓	✓	✓	✓				✓	✓		✓		✓	**9**
Ryan Andrews	Oregon Water Resources Department											✓				**1**
Vice Chair Nick Lelack, Commissioner Mark Bennett	Oregon Land Conservation and Development Commission	✓	✓		✓						✓	✓		✓		**6**
Diane Teeman	Burns Paiute Tribe		✓										✓		✓	**3**
Commissioner Dan Dorran	Umatilla County			✓												**1**
Commissioner David Sykes	Morrow County			✓												**1**
Representative Ken Helm	Oregon State Legislature			✓												**1**
Carey Miller	Confederated Tribes of the Umatilla Indian Reservation						✓									**1**
Elissa Bullion	Legislative Commission on Indian Services						✓						✓	✓		**3**
John Pouley	Oregon State Historic Preservation Office												✓	✓	✓	**3**

Department of Land Conservation and Development Staff

Name	Affiliation	03/12/24	04/18/24	05/30/24	07/17/24	08/28/24	10/01/24	11/05/24	11/13/24	12/05/24	12/18/24	01/09/25	02/20/25	04/02/25	04/22/25	TOTAL
Adam Tate	Oregon Department of Land Conservation and Development	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	**13**
Alexis Hammer	Oregon Department of Land Conservation and Development	✓	✓	✓				✓	✓					✓	✓	**7**
Alyssa Bonini	Oregon Department of Land Conservation and Development											✓	✓	✓	✓	**4**
Amanda Punton	Oregon Department of Land Conservation and Development											✓	✓	✓	✓	**4**
Angie Brewer	Oregon Department of Land Conservation and Development	✓	✓	✓	✓	✓	✓	✓					✓	✓	✓	**10**
Brenda Ortigoza Bateman	Oregon Department of Land Conservation and Development	✓														**1**
Casaria Taylor	Oregon Department of Land Conservation and Development	✓	✓		✓	✓	✓	✓	✓			✓	✓	✓	✓	**11**
Dawn Marie Hert	Oregon Department of Land Conservation and Development	✓	✓	✓	✓		✓		✓	✓		✓	✓	✓	✓	**11**
Gordon Howard	Oregon Department of Land Conservation and Development	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	**13**
Jon Jinings	Oregon Department of Land Conservation and Development	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	**14**
Kirstin Greene	Oregon Department of Land Conservation and Development											✓	✓	✓	✓	**4**
Sadie Carney	Oregon Department of Land Conservation and Development	✓	✓	✓												**3**

Links to Meetings and Materials

All meeting recordings can be found on the DLCD Eastern Oregon Solar Siting YouTube Playlist. All meeting documents can be found on DLCD's webpage.

Date and Location	Documents
March 12, 2024 Christmas Valley, Oregon	• Agenda • Meeting Packet • Presentation • Maps 1 • Maps 2 • Tour Materials • Travel Information
April 18, 2024 Burns, Oregon 97720	• Meeting Packet • Comment - OSSIA • Presentation - ODFW • Presentation - DLCD • Tour Map • Tour Materials
May 30, 2024 Hermiston, Oregon	• Agenda • Meeting Packet • Outline of Possible Revisions to Other OARs • Draft Rule Text with Note Boxes • Tour Materials • Presentation - Overview Oregon Energy Strategy • Presentation - Encroachment Brief • Presentation - OR Military Department Brief • Comment - OSSIA Rulemaking Proposal • Map
July 17, 2024 Madras, Oregon	• Agenda • Meeting Packet
August 28, 2024 Moro County, Oregon	• Meeting Agenda • Meeting Packet • Comment - McCullough • Comment - COLW • Comment - Dept of Navy
October 1, 2024	• Agenda • Meeting Packet
November 5, 2024 and November 13, 2024	• Agenda • Meeting Packet
December 5, 2024	• Meeting Packet
December 18, 2024	• Meeting Packet
January 9, 2025	• Meeting Packet
February 20, 2025	• Meeting Packet
April 2, 2025	• Meeting Packet
April 22, 2025	• Meeting Packet

660-023-0195 NEW SECTION - ALL NEW LANGUAGE

Photovoltaic Solar Resources in eastern Oregon

(1) Introduction and Intent. This rule is designed to assist counties in eastern Oregon to identify opportunities and reduce conflicts for the development of photovoltaic solar power energy generation facilities. Projects proposed to be sited in significant photovoltaic solar resource areas are eligible for responsible levels of regulatory relief, subject to the standards and requirements herein. Local programs designating photovoltaic solar resource areas are presumed to comply with Goal 3 when in compliance with this rule. Finally, this rule is intended to help achieve the successful development of photovoltaic solar energy generation in eastern Oregon that:

(a) Makes meaningful contributions to the state's clean energy goals;

(b) Is supported by coordination across all levels of interested parties, including but not limited to, local, state, federal, and tribal government;

(c) Increases potential for local governments, Tribes, and local residents to share the benefits of solar development; and

(d) Suitably accounts for potential conflicts with the values and resources identified under Oregon Laws 2023, chapter 442, section 35(2) *compiled as a note after* ORS197.732 and this rule.

(2) **Definitions.** For purposes of this rule, the definitions in ORS 197.015, OAR 660-006-0005, OAR 660-023-0010, OAR 660-033-0020, and OAR 660-033-0130(38) apply, unless the context requires otherwise. In addition, the following definitions apply:

(a) "Annual solar utility scale capacity factor" means the amount of energy produced in a typical year, as a fraction of maximum possible energy for 100 percent of the hours of the year.

(b) "Archaeological Resources" is a term that has the meaning as "archaeological site," as defined in ORS 358.905(1)(a), which means a geographic locality in eastern Oregon, including but not limited to submerged and submersible lands, that contains archaeological objects and the contextual associations of the objects with:

(A) Each other; or

(B) Biotic or geological remains or deposits. Examples of archaeological sites include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites.

(c) "Cultural Resources" means archaeological sites, culturally significant landscape features, and sites where both are present. Also referred to as "cultural resource site."

(d) "Eastern Oregon" means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of the state and the western boundary of Wasco County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the state.

(e) "Historic Resources" are those buildings, structures, objects, sites, or districts that potentially have a significant relationship to events or conditions of the human past.

(f) "Microgrid" means a local electric grid with discrete electrical boundaries, acting as a single and controllable entity and able to operate in grid-connected or island mode.

(g) “Military Special Use Airspace” is airspace of defined dimensions identified by an area on the surface of the earth wherein activities must be confined because of their nature, or wherein limitations may be imposed upon aircraft operations that are not a part of those activities. Military special use airspace includes any associated underlying surface and subsurface training areas.

(h) “Military Training Route” means airspace of defined vertical and lateral dimensions established by the Department of Defense for the conduct of military flight training at indicated airspeeds in excess of 250 knots.

(i) “Oregon Renewable Energy Siting Assessment (ORESA)” is a renewable energy mapping tool housed on Oregon Explorer.

(j) “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 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. 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 1320 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 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(k) “Significant photovoltaic solar resource area” means an area consisting of lands that are particularly well suited for the siting of photovoltaic solar power generation facilities because a county determined the area to be significant pursuant to section (4). Multiple photovoltaic solar power generation facilities may be located within a photovoltaic solar resource area.

(l) “Transmission Line” means a linear utility facility by which a utility provider transmits or transfers electricity from a point of origin or generation or between transfer stations.

(m) "Tribe" as defined in ORS 182.162(2), means a federally recognized Indian tribe in Oregon, except where the definition in ORS 97.740 applies by statute.

(3) Standard Process. Counties may amend their acknowledged comprehensive plans to establish significant photovoltaic solar resource areas using the standards and procedures in OAR 660-023-0030 through 660-023-0050.

(4) Significant Photovoltaic Solar Resource Areas. Rather than using the standard process provided in section (3), counties in eastern Oregon may choose the following process to establish significant photovoltaic solar resource areas.

(a) Counties may establish significant photovoltaic solar resource areas through the adoption of a local program that includes a map, comprehensive plan policies and inventory, and implementing land use regulations found to be consistent with the provisions of this rule.

(b) To implement this rule for the purpose of establishing significant photovoltaic solar resource areas a county shall follow the post-acknowledgment plan amendment process pursuant to OAR chapter 660, division 18.

(c) Prior to conducting a hearing to consider establishing a significant photovoltaic solar resource area or areas a county will hold one or more public meetings to solicit input.

(A) The public meeting(s) must occur in areas of the county that include lands likely to be determined significant photovoltaic solar resources.

(B) The county must provide mailed notice of the meeting(s) to Tribes, all incorporated cities within the county, and property owners of lands likely to be determined significant photovoltaic solar resources and within a two-mile radius of such areas. The county must also provide mailed notice to any physical address assigned to property located within the lands requiring notice as shown in county assessor records that are not the same as the property owner's address.

(C) Public meetings conducted pursuant to this section should use best practices for community engagement identified in documents such as "Putting the People in Planning A guide for local governmental agencies in Oregon June 30, 2019."

(D) The county should carefully take note of possible local benefits and local concerns regarding photovoltaic solar power generation facility development raised in the public meeting(s), as well as consideration of areas the county may particularly wish to include or exclude, if any.

(E) The county should draft program elements prepared for an eventual public hearing in accordance with input received at the public meeting(s) and consistent with the provisions of this rule.

(F) A county that provides notice under this subsection has complied with OAR 660-023-0060.

(d) In addition to submitting the notice of the proposed amendment to the Director required by ORS 197.610(1), the county shall provide notice of the Post-Acknowledgement Plan Amendment to:

(A) The Oregon Department of Fish and Wildlife (ODFW);

(B) The Oregon Department of Energy;

(C) The State Historic Preservation Officer;

(D) The Oregon Department of Agriculture.

(E) The Oregon Department of Aviation;

(F) The United States Department of Defense;

(G) The Oregon Legislative Commission on Indian Services (LCIS); and

(H) Federally recognized Indian tribes that may be affected by the application. Each county shall obtain a list of tribes with an ancestral connection to land within their jurisdiction from LCIS and shall send notice to all tribes in the commission's response.

(e) When designating a significant photovoltaic solar resource area, a county may choose not to identify conflicting uses as would otherwise be required by OAR 660-023-0030 through 660-023-0050. In the alternative, a county may choose to conduct a more detailed analysis that may lead to the identification of conflicting uses.

(f) If a county chooses to identify conflicting uses under subsection (e), a county may choose not to limit or prohibit conflicting uses on nearby or surrounding lands. In the alternative, a county may choose to conduct a more detailed analysis of economic, social, environmental and energy (ESEE) consequences that could lead to a decision to limit or prohibit conflicting uses within a significant photovoltaic solar resource area.

(g) If a county chooses to conduct an additional analysis of economic, social, environmental and energy (ESEE) consequences as described in subsection (f), it must follow the provisions of OAR 660-023-0040.

(h)(A) Unless otherwise indicated, to qualify as a significant photovoltaic solar resource area, an area must be comprised of lands which have the following characteristics:

(i) Topography with a slope that is predominantly 15 percent or less;

(ii) An estimated Annual Solar Utility-Scale Capacity Factor of 19 percent or greater; and

(iii) Location within 10 miles of a transmission line with a rating of 69 KV or above.

(B) A county may determine, based on facts and evidence in the record, that additional lands lacking one or more of the characteristics identified by paragraph (A), are suitable for designation as significant photovoltaic solar resource areas;

(C) A county may determine that lands including the characteristics identified by paragraph (A) are not necessary or appropriate to designate as significant photovoltaic solar resource areas.

(D) It is not necessary for a county to consider resources or features beyond those described in paragraph (A) when adopting significant photovoltaic solar resource areas. Instead, the county shall base final project eligibility, including the determination of any necessary mitigation requirements, on information provided by an applicant pursuing approval of a photovoltaic solar energy generation facility and considered in conjunction with subsections (I), (j) and (k) below.

(I)No mitigation is required for a photovoltaic solar power generation facility within an acknowledged significant photovoltaic solar resource area when located on:

(A) Agricultural lands protected under Goal 3 that are:

(i) comprised of soils as classified by the U.S. Natural Resources Conservation Service (NRCS) with an agricultural capability class VII and VIII; or

(ii) comprised of soils as classified by NRCS with an agricultural capability class VI and do not have the ability to produce 300 pounds of herbaceous biomass per acre per year. The ability to produce herbaceous biomass is determined from data available on the Rangeland Analysis Platform and is calculated by averaging the amounts of herbaceous biomass per acre attributed to each year for all of the years for which data is provided.

(B) Lands characterized by ODFW as Category 5 or 6, or other areas of poor to no value as wildlife habitat or with little or no restoration potential based on field data provided by the applicant and developed in

consultation with ODFW. The county may refine the exact location or categorization of wildlife habitat during consideration of a photovoltaic solar power generation facility but must consult ODFW.

(C) Lands where the construction and operation of the photovoltaic solar power generation facility will not result in significant adverse impacts to historic, cultural or archaeological resources because no such resources are present, or if resources are present, they will be avoided through project design to the extent that no additional mitigation is necessary, as provided in section (6).

(D) Notwithstanding paragraphs (A) through (C), a county may find that lands within solar photovoltaic resource areas described in paragraphs (A) through (C) require additional mitigation measures as specified by the county.

(j) Mitigation is required for a photovoltaic solar power generation facility within an acknowledged significant photovoltaic solar resource area when located on lands that include one or more of the following features:

(A) Agricultural lands protected under Goal 3 that are:

(i) Comprised of soils with an agricultural capability class VI as classified by NRCS and have the ability to produce greater than 300 pounds of herbaceous biomass per acre per year if the subject property consists of at least 640 acres. The ability to produce herbaceous biomass is determined from data available on the Rangeland Analysis Platform and is calculated by averaging the amounts of herbaceous biomass per acre attributed to each year for all of the years for which data is provided; or

(ii) Comprised of soils with an agricultural capability class III, IV, or V as classified by NRCS, without an appurtenant water right on January 1, 2024.

(iii) Mitigation for agricultural lands described in this subsection must be consistent with the requirements of section (5).

(B) Wildlife habitat characterized by ODFW as Category 2 that is not otherwise limited by subsection (k) and wildlife habitat characterized by ODFW as Category 3 or 4 based on field data provided by the applicant and developed in consultation with ODFW. The county may refine the exact location or categorization of Category 2, 3, or 4 wildlife habitat during consideration of a photovoltaic solar power generation facility but must consult with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a).

(C) Wildlife Habitat: Eastern Oregon Deer Winter Range, Eastern Oregon Elk Winter Range, Big Horn Sheep Habitat, and Pronghorn Essential and Limited Habitat as identified by Oregon Renewable Energy Siting Assessment (ORESA). The county may refine the exact location of wildlife habitat identified by this paragraph during consideration of a photovoltaic solar power generation facility but must consult with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a).

(D) Priority Wildlife Connectivity Areas where the ODFW makes a finding, based on site specific conditions, that mitigation for wildlife habitat consistent with the requirements of ORS 215.446(3)(a) reduces impacts from the photovoltaic solar power generation facility to a level acceptable to ODFW.

(E) Lands where the construction and operation of the photovoltaic solar power generation facility may result in significant adverse impacts to historic, cultural or archaeological resources as defined in section (6), but the project incorporates necessary mitigation measures pursuant to subsection (6).

(F) Notwithstanding paragraphs (A) through (E), a county may find that individual locations within solar photovoltaic resource areas described in paragraphs (A) through (E) have impacts that are too significant to be mitigated and thus are not eligible for approval under the provisions of this rule.

(k) Lands with any of the following features are not eligible for photovoltaic solar power generation facility development under the provisions of this rule:

(A) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6)(a) and (b). The county may refine the exact location of Significant Sage-Grouse Habitat during consideration of a specific project but must consult with ODFW.

(B) Priority Wildlife Connectivity Areas as designated by the ODFW that do not qualify under paragraph (j)(D).

(C) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. The county may refine the exact location of high use and very high use wildlife mitigation corridors during consideration of a photovoltaic solar energy facility but must consult with ODFW.

(D) Wildlife habitat characterized by ODFW as Category 1 based on field data provided by the applicant and developed in consultation with ODFW. The county may refine the exact location and characterization of Category 1 wildlife habitat during consideration of a photovoltaic solar energy facility but must be consult with ODFW.

(E) On lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21.

(F) Soils that are irrigated or not irrigated and classified prime, unique, Class I or Class II as classified by NRCS, unless such soils make up no more than five percent of a proposed Photovoltaic Solar Site and are present in an irregular configuration or configurations that prevent them from being independently managed for farm use. If this paragraph does not apply, then no agricultural mitigation is required.

(G) High-Value Farmland as defined at ORS 195.300(10)(c) through (f) except otherwise described in paragraphs (F) and (H).

(H) Agricultural lands protected under Goal 3 with an appurtenant water right on January 1, 2024. This subsection does not apply if the ability to use the appurtenant water right to irrigate subject property becomes limited or prohibited due to a situation that is beyond the control of the water right holder including but not limited to: prolonged drought, critical groundwater designations or other state regulatory action, reduced federal contract allocations, and other similar regulatory circumstances. If retained, the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes. Where this paragraph does not apply then no agricultural mitigation is required.

(I) Lands where the construction and operation of the photovoltaic solar power generation facility will result in significant adverse impacts to historic, cultural or archaeological resources that cannot be mitigated pursuant to the provisions of section 6.

(J) The Metolius Area of Critical State Concern identified as Area 1 and Area 2 in the management plan adopted by the commission, as referenced in ORS 197.416.

(5) Agricultural Mitigation:

(a) For the purposes of this section, “compensatory mitigation” means the replacement or enhancement of the impacted resource in equal or greater amounts than predicted to be impacted by a development.

(b) Compensatory mitigation for agricultural land may be accomplished in one of the following ways:

(A) A county may approve a method, or methods proposed by the applicant when substantial evidence in the record demonstrates that the proposed compensatory mitigation will:

(i) Be suitably durable to last until the impact has been removed or no longer exists;

(ii) Be proximate by being located in the same county or an adjacent county or counties as the proposed impact; and either

(iii) Result in no net loss of the agricultural productivity of the local agricultural community; or

(iv) Provide an uplift to the relevant agricultural economy.

(B) As an alternative to mitigation provided under paragraph (A) necessary compensatory mitigation for agricultural lands protected under Goal 3 may be accomplished by use of a one-time compensatory mitigation payment made for the purpose of replacing economic value that is lost by the local community when agricultural land is used for photovoltaic solar development. The compensatory mitigation payment is to be established pursuant to the methodology included as Attachment A. An applicant providing the established compensatory mitigation payment will be considered in all instances to comply with the requirements of this section.

(C) The compensatory mitigation payment established under paragraph (B) may be received by the county, a unit of county government, a 501-c-3 not for profit organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to provide uplift opportunities for the applicable agricultural sector.

(6) Historic, Cultural, and Archaeological Resources: The proposed photovoltaic solar power generation facility shall avoid, minimize, or mitigate significant adverse impacts to historic, cultural, and archeological resources pursuant to the requirements of ORS 215.446(3)(b), relevant provisions of OAR chapter 660, division 23, and this section.

(a) Prior to the submittal of an application for development of a photovoltaic solar power generation facility within a significant photovoltaic solar energy area, an applicant shall compile information on the subject location that includes, among other things a records review, field survey, site inventory and cultural resources survey completed by an Oregon qualified archaeologist who is eligible to receive an archaeological permit based on ORS 390.235.

(b) The applicant shall transmit the information compiled pursuant to subsection (a) to the State Historic Preservation Office (SHPO) and any Tribe that may be affected by the application at least 60 days prior to submitting the application to the county.

(c) The applicant shall provide written notice that does not transmit the information compiled pursuant to subsection (a) to DLCD and ODFW at least 60 days prior to submitting the application to the county.

(d) When provided information on known or potential archaeological sites, local government will use the information to inform land use decisions, recommendations to applicants, and permit conditions in a manner that preserves confidentiality and is consistent with state law. ORS 192.345(11) exempts most

information concerning the location of archaeological sites and objects from public records disclosure, except when information on an Indian tribe's cultural or religious activities is requested by the governing body of a tribe. Requirements in this rule are intended to be consistent with ORS 192.345(11).

(A) A professional archaeologist representing either a local government or an applicant may access data relevant to a proposed land use action or permit application, consistent with privileges assigned by state statute and administrative rule.

(B) In the acquisition and publishing of data exempt from disclosure as a public record or which may not be publicly disclosed, local governments may:

(i) Acquire and publish aggregated data in a spatial format to indicate relative likelihood of inadvertent discovery within all or a portion of a local jurisdiction.

(ii) Acquire and publish data on a known archaeological site if the location of the site is approximated so that the precise location of the site is obscured.

(iii) Acquire and keep confidential information on a specific site received from an applicant that is used to inform permit conditions or other strategies for avoiding impacts to a significant site or support compliance with state statutes and rules governing excavation of a significant archaeological site.

(e) Based upon, any historic, cultural, and archaeological resources inventories in the local comprehensive plan, comments received including a letter of concurrence if any from SHPO, and comments received from any Tribe that may be affected by the application regarding the information compiled and submitted pursuant to subsection (a), a county shall make one of the following determinations in its decision regarding the application:

(A) No historical, archaeological, or cultural resources are known to be present;

(B) Historical, archaeological, or cultural resources are known to be present, and will be avoided through project design to the extent that no additional mitigation is necessary;

(C) Historical, archaeological, or cultural resources are known to be present, and mitigation measures will reduce impacts so that there are no significant adverse impacts to historical, archaeological, or cultural resources; or

(D) Historical, archaeological, or cultural resources are known to be present, and development will result in significant adverse impacts which cannot be mitigated and an archaeological permit from SHPO cannot be obtained.

(f) The county shall include mitigation measures including but not limited to those required by any SHPO archeological permit needed, as conditions of approval in the final decision.

(g) The county shall require an Archaeological and Human Remains Inadvertent Discovery Plan (IDP) in all instances.

(7) Community Benefits: All applications for a photovoltaic solar power generation facility within a significant photovoltaic solar resource area shall identify how the project will contribute to addressing community needs and benefits. Identified contributions, financial or otherwise, will be in addition to property tax revenues or payments in lieu of taxes.

(a) A county may approve a community benefit proposal submitted by the applicant when substantial evidence in the record demonstrates that the proposed contribution or contributions are:

(A) Meaningful and reasonable;

(B) Will serve to help improve a community's social health, well-being, and functioning;

(C) Informed through one or more public meetings conducted for the purpose of encouraging community members and any Tribe that may be affected by the application to express needs and interests. Public meetings conducted pursuant to this subsection should use best practices for community engagement identified in documents such as "Putting the People in Planning A guide for local governmental agencies in Oregon June 30, 2019".

(D) If a monetary payment, the contribution(s) is received by an organization identified by the county decision that may include the county or a unit of county government, Tribal government, a 501-c-3 not for profit organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to provide uplift opportunities for the community or communities that stand to have the most direct relationship with the subject project.

(b) (A) Rather than the standards provided in subsection (a), a county may require one of the following options to address community needs and benefits, which demonstrate compliance with the requirements of this section:

(i) The applicant commits to contributing a one-time payment in an amount representing $1,000 per nameplate MW prior to construction to be received by an organization identified by the county decision that may include the county or a unit of county government, tribal government, a 501-c-3 not for profit organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to provide uplift opportunities for the community or communities that stand to have the most direct relationship with the subject project;

(ii) The applicant commits to ensuring that emergency service providers are guaranteed a source of electricity during a power outage event through providing battery storage or some other method; or

(iii) The applicant creates a Microgrid addressing identified community needs.

(B) Prior to submittal of an application with a proposed community benefit under paragraph (A), the applicant shall conduct detailed public outreach activities that include providing written notice to any Tribe that may be affected by the application, property owners within 750 feet of the exterior boundaries of the subject property, as well as any physical address assigned to lands within 750 feet of the exterior boundaries of the subject property as shown in county assessor records that are not the same as the property owner's address. Detailed public outreach activities shall also include at least one public open-house meeting conducted in person, or at least two public open-house meetings conducted from a virtual platform.

(8) Maximum Size of Photovoltaic Solar Power Generation Facilities

(a) On high-value farmland that qualifies for an exemption pursuant to the provisions of paragraph (4)(k)(G) and that is not otherwise limited by the provisions of paragraph (4)(k)(E), the facility may not use, occupy, or cover more than 240 acres, not including lands devoted to temporary workforce housing.

(b) On arable land, the facility may not use, occupy or cover more than 2,560 acres, not including lands devoted to temporary workforce housing.

(c) On non-arable land, the size of the facility is not limited by this rule. Instead, the maximum size of a photovoltaic solar power generation facility is governed by the provisions of ORS 215.446.

(9) Additional Review Standards and Criteria. A county may approve a photovoltaic solar power generation facility within a significant photovoltaic solar resource area by determining that the following items have been satisfied:

(a) An application shall identify whether the proposed photovoltaic solar power generation facility is within a Military Special Use Airspace or a Military Training Route, as may be shown by the ORESA mapping tool or equivalent map. Any application located beneath or within a Military Special Use Airspace or a Military Training Route with a proposed floor elevation of 500 feet above ground level or less shall include a glint and glare analysis for the applicable utilized military airspace. Any measures necessary to avoid possible conflicts with low flying aircraft as identified in the glint and glare analysis will be developed in coordination with the United States Department of Defense or Oregon Military Department as applicable, described in the application materials, and attached as conditions of approval to the county decision.

(b) The applicant has satisfied the information transmittal and notice requirements identified in subsections (6)(b) and (c).

(c) The applicant has contacted and sought comments from the United States Department of Defense at least 30 days prior to submitting a land use application. The requirements of this subsection do not apply when the county code requires a pre-application conference prior to submitting an application that includes at a minimum, the United States Department of Defense.

(d) For a proposed photovoltaic solar power generation facility on high-value farmland or arable land, a study area consisting of lands zoned for exclusive farm use located within two miles measured from the exterior boundary of the subject property shall be established and:

(A) If fewer than 320 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits wholly or partially within the study area, no further action is necessary.

(B) If at least 320 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 as multiple facilities wholly of partially within the study area, the county 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area

(e)(A) The application will demonstrate that considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an individual with qualifications determined to be acceptable by the county demonstrating that such temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved workforce housing plan shall be attached to the decision as a condition of approval.

(B) On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility 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.

(C) The county may consider temporary workforce housing facilities not included in the initial approval through a minor amendment request filed after a decision to approve a photovoltaic solar power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall not have no effect on the original approval of the project.

(e) The requirements of OAR 660-033-0130(38)(h)(A) through (D) have been satisfied for proposed photovoltaic solar power generation facilities on high-value farmland and arable land, and the requirements of OAR 660-033-0130(38)(h)(D) have been satisfied for proposed photovoltaic solar power generation facilities on nonarable land.

(f) A county may condition approval of a proposed photovoltaic solar power generation facility to address other issues, including but not limited to assuring that the design and operation of the facility will promote the prevention and mitigate the risk of wildfire.

(g) For a photovoltaic solar power generation facility located on arable or nonarable lands, the project is not located on 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 as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(h) For a photovoltaic solar power generation facility located on nonarable lands no more than 2,560 acres of the project will be located on arable soils.

(i) Notwithstanding any other rule in division 33, a county may determine that ORS 215.296 and OAR 660-033-0130(5) for a proposed photovoltaic solar power generation facility on agricultural land are met when the applicable provisions of this section are found to be satisfied.

(j) The county has identified and attached as conditions of approval all mitigation required pursuant to this rule.

(k) The county 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 upon 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 as defined in ORS 30.930(2) and (4).

(l) Nothing in this rule 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.

(m) Any applicable local provisions have been satisfied.

(10) Duration of Permit. A permit approved for a photovoltaic solar power generation facility shall be valid until commencement of construction or for six years, whichever is less. A county may grant up to two

extensions for a period of up to 24 months each when an applicant submits a written request for an extension of the development approval period to the county prior to the expiration of the approval period. The county may consider additional extensions in the manner provided in OAR 660-033-0130(44)(i)(K).

(11)) Use of ORESA: In addition to other sources, a county may rely on data from online mapping tools, such as ORESA data, to inform determinations made under this rule.

(12) REVIEW OF RULE EFFECTIVENESS: On or before July 1, 2027, the department will provide a report to the Land Conservation and Development Commission that:

(a) Is informed by coordination with parties consistent with those interests represented on the Rules Advisory Committee established pursuant to Oregon Laws 2023, chapter 442, section 37 *compiled as a note after* ORS197.732.

(b) Identifies those counties who have chosen to establish significant photovoltaic solar resource areas pursuant to section (4) and have not opted out of the provisions of OAR 660-033-0130(44)(a)(B).

(c) Identifies the number of counties that have chosen not to implement this rule for purposes of considering photovoltaic solar power generation facilities pursuant to subsection (4)(b).

(d) Describes how well the intent of this rule as provided in section (1) is being accomplished.

(e) Includes recommended updates, if any, the department identifies as being necessary to better accomplish the intent of this rule as provided in section (1).

(f) Subsequent reports reviewing the effectiveness of this rule will be provided at four-year intervals beginning on or before September 30, 2031 and will follow the provisions of subsection (a) through (e).

AGRICULTURAL MITIGATION

The purpose of this agricultural mitigation program is not to replace the lost economic value to the producer, who is being paid by the solar company, but the lost economic value to the community in the loss of agricultural production. Therefore, this methodology tries to make simple the process of calculating necessary mitigation for the lost community economic activity from using agricultural land for a photovoltaic solar power generation facility.

Directions

1.0 Getting Started.

1.1 Identify the subject project area.

1.2 Identify if the subject project area is comprised of lands used, or if not currently in use, best suited for - livestock grazing or cultivated agriculture.

1.3 Determine the various soils included within the subject project area and the number of acres in each soil class using data from the National Resource Conservation Service (NRCS). The NRCS On-Line Soil Survey is probably the best source of this information https://websoilsurvey.nrcs.usda.gov/app/.

2.0 Establish the Time Value of Money Adjusted Productivity Value (TVMAPV)[i]. This will include a series of steps.

2.1 For cultivated agriculture use the following:

a. Determine the most recent non-irrigated crop rent from the National Agricultural Statistics Service (NASS). If there is no information available for your county use the "Other Counties" figures (For Example: $52 from 2023).

b. Multiply the crop rate figure by the General Economic Contribution per Farm[ii] percentage of 0.56, which provides the Economic Contribution amount.

Example: Crop Rent of $52 x General Economic Contribution per Farm percentage of 0.56 = Economic Contribution amount of $29.12. This is the amount of revenue expected to be returned to the local economy for each acre in farm production.

c. Identify the duration of the Lease Agreement in years and multiply by the Economic Contribution.

Example: Lease Agreement of 30 years x Economic Contribution of $29.12 = $873.60. This is the total amount of revenue expected not to be returned to the local

economy for each acre included in the subject project area over the life of the Lease Agreement, in this example 30 years. Also described as Future Value (FV).

d. Apply a CAP RATE of 3%[iii] to discount the amount established in c., back to the Present Value (PV) by multiplying that amount by the number shown in table 2. The resulting figure is the Time Value of Money Adjusted Productivity Value (TVMAPV).

Example: *$873.60* as shown above in 2.1.c. *x .6533 for a lease agreement of 30 years as shown in table 2 = $570.76*

2.2 For Livestock Grazing use the following:

a. Determine the most recent pasture rent from the National Agricultural Statistics Service (NASS). If there is no information available for your county use the "Oregon" figures (For Example: $11.50 from 2023).

b. Multiply the crop rate figure by the General Economic Contribution per Farm percentage of 0.79, which provides the Economic Contribution amount.

Example: Pasture Rent of $11.50 x General Economic Contribution per Farm percentage of 0.79 = Economic Contribution of $9.085. This is the amount of revenue expected to be returned to the local economy for each acre in ranch production.

c. Identify the duration of the Lease Agreement in years and multiply by the Economic Contribution amount.

Example: Lease Agreement of 30 years x Economic Contribution of $9.085 = $272.55. This is the total amount of revenue not expected to be returned to the local economy for each acre included in the subject project area over the life of the Lease Agreement, in this example 30 years. Also described as Future Value (FV).

d. Apply a CAP RATE of 3% to discount the amount established in c., back to the Present Value (PV) by multiplying that number by the factor shown in Table 1. The resulting figure is the Time Value of Money Adjusted Productivity Value (TVMAPV).

Table 1.

LEASE AGREEMENT DURATION	*NUMBER*
20 YEARS	***.7439***
25 YEARS	***.6965***
30 YEARS	***.6533***
35 YEARS	***.6017***

Example 1: $873.60 as shown above in 2.1.c. x .6533 for a lease agreement of 30 years as shown in table 2 = $570.76

Example: 2 $272.55 as shown above in 2.2.c. x .6533 for a lease agreement of 30 years as shown in Table 1 = $178.07

3.0 Calculate Mitigation Responsibility.

3.1 Multiply the TVMAPV by the appropriate efficiency factor[iv] identified in Table 2, below.

Table 2

Efficiency Factor	
Class 1 Soils	2.5
Class 2 Soils	2
Class 3 Soils	1.75
Class 4 Soils	1.5
Class 5 Soils	1.25
Class 6 Soils	1

Example 1: $570.76 as shown for cultivated agriculture in 2.1.d. above x 1.75 for class 3 soil = $998.83. This figure represents the base value for cultivated agriculture modified to account for different soil capabilities.

Example 2: $178.07 as shown for livestock grazing in 2.2.d. above x 1 for class 6 soil capable of producing 300 lbs of forage per acre when applicable = $178.07. This figure represents the base value for livestock grazing modified to account for different soil capabilities.

3.2 Multiply the dollar amounts identified at 3.1 above by an administrative cost of 1.2%. Do not include Class 7 and 8 soils, or class 6 soils when not applicable. This is the total per acre mitigation cost for the identified soil class.

Example: *$998.83 x 1.2 = 1,198.60.*

3.3 Calculate the total value for all soil classes identified at 3.2 rounding to the nearest whole dollar.

Example:

62.3 acres of class 2 soils @ $1,369.82 per acre = $85,340.

915.3 acres of class 3 soils @ $1,198.60 per acre = $1,097,079.

3.4 Add the total value of all soil classes identified at 3.4. This is the total agricultural mitigation responsibility.

Example: $85,340 + $1,097,079 = ***$1,182,418.00***

---

[i] The Time-Value of Money Adjusted Productivity of a Farm or Ranch is intended to capture the economic productivity of the agricultural land over the life of the solar lease in today's dollars. It is calculated by assessing the Present Value of the agricultural lands contribution by multiplying the Crop Rent as a function of its productivity, by the general economic contribution % to capture its baseline, annual economic contribution to the community. The Present Value is then further calculated off that number using the expected CAP RATE growth and the years of the lease agreement.

[ii] General Economic Contribution per Farm and Ranch is based on an average of the local and non-local farm/ranch contributions from a joint OSU/COIC study of Central Oregon which found that local and non-local farms contributed $.74 and $.36 for every $1 produce sold. Local and non-local ranches contributed $.79 and $.66 for every $1 sold. https://www.coic.org/wp-content/uploads/2020/01/economicimpact_localfoods_centraloregon.pdf

[iii] CAP RATE is based on Farm Credit portfolio standards and USDA Quickstats statistics about agriculture in Eastern Oregon. Farm Credit uses a portfolio CAP Rate of 2-6%, however, Quickfacts tell us many farms in the area make no-profit, and are assumedly not applying for financing. We split the difference in assuming a range of 0-6%, making for a 3% CAP RATE assumption. https://www.fcsamerica.com/resources/learning-center/2021/cap-rate-calculator-streamlined-for-ease-of-use

[iv] The Efficiency Factor is intended to represent a sliding scale of difficulty for replacing the productivity of certain soils, with high productivity soils being very hard to replace, and low productivity soils being only somewhat difficult to replace.

OAR 660-033-0130

Photovoltaic Solar Sites in eastern Oregon

(38) A proposal to site a photovoltaic solar power generation facility **except for a photovoltaic solar power generation facility in eastern Oregon subject to the provisions of paragraphs (44)(a)(B) and (C)** shall be subject to the following definitions and provisions:

ALL NEW LANGUAGE BELOW IN SECTION 44

(44)(a) A county may review a proposed photovoltaic solar power generation facility on agricultural land in eastern Oregon under one of the following three alternatives:

(A) A county may review a proposed photovoltaic solar power generation facility on agricultural land under section (38).

(B) If a county has not adopted a program under OAR 660-023-0195, the county may review a proposed photovoltaic solar power generation facility on agricultural land located in eastern Oregon under the provisions of subsections (b) through (n) of this section; or

(C) If a county has adopted a program under the provisions of OAR 660-023-0195, a county may review a proposed photovoltaic solar power generation facility on agricultural land located in eastern Oregon.

(b) A proposal to site a photovoltaic solar power generation facility under paragraph (a)(B) is subject to the following definitions and provisions:

(A) “Arable land” means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(B) “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 at ORS 195.300(10) unless otherwise stated.

(C) “Eastern Oregon” means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of the state and the western boundary of Wasco County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the state.

(D) “High-value farmland means land described in ORS 195.300(10).

(E) “Nonarable land” means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(F) “Nonarable soils” means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable 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.

(G) “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 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. 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 1320 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 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(c)(A) If an applicant files an application for a proposed photovoltaic solar power generation facility pursuant to OAR 660-033-0130(45)(a)(B), a county must process the application unless a county has either:

(i) Approved a program for significant solar photovoltaic resource areas under the provisions of OAR 660-023-0195; or

(ii) Taken action through the county elected body, either prior to, or after the effective date of this rule, that declines to consider photovoltaic solar power generation facilities under paragraph (a)(B).

(B) A county may choose to consider photovoltaic solar power generation facilities under paragraphs (a)(A) or (C).

(d) A county may approve a photovoltaic solar power generation facility under paragraph (a)(B) as follows:

(A) On high-value farmland that qualifies for an exemption pursuant to the provisions of subparagraph (D)(vii) and that is not otherwise limited by the provisions of subparagraph (D)(vi), the facility may not use, occupy, or cover more than 160 acres not including lands devoted to temporary workforce housing.

(B) On arable land, the photovoltaic solar power generation facility may not use, occupy, or cover more than 1,280 acres not including lands devoted to temporary workforce housing.

(C) On non-arable land, the photovoltaic solar power generation facility may not use, occupy, or cover more than 1,920 acres not including lands devoted to temporary workforce housing.

(D) Notwithstanding paragraphs (A) through (C), a county may not approve a photovoltaic solar power generation facility under paragraph (a)(B) on land that is:

(i) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6)(a) and (b). The county may refine the exact location of Significant Sage-Grouse Habitat during consideration of a specific photovoltaic solar power generation facility but must consult with the Oregon Department of Fish and Wildlife (ODFW).

(ii) Priority Wildlife Connectivity Areas (PWCA's) as designated by ODFW that do not qualify under OAR 660-023-0195(4) (j)(D).

(iii) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. The county may refine the exact location of high use and very high use wildlife mitigation corridors during consideration of a specific photovoltaic solar power generation facility but must consult with ODFW.

(iv) Wildlife habitat characterized by ODFW as Category 1 based on field data provided by the applicant and developed in consultation with ODFW. The county may refine the exact location and characterization of Category 1 wildlife habitat during consideration of a specific photovoltaic solar power generation facility but must must consult with ODFW.

(v) Included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21.

(vi) Soils that are irrigated or not irrigated and NRCS classified as prime, unique, Class I or Class II, unless such soils make up no more than five percent of a proposed photovoltaic solar site and are present in an irregular configuration or configurations that prevent them from being independently managed for farm use.

(vii) High-Value Farmland as defined at ORS 195.300(10)(c) through (f) except otherwise described in paragraphs (vi) and (viii).

(viii) Agricultural lands protected under Goal 3 with an appurtenant water right on January 1, 2024. This subparagraph does not apply if the ability to use the appurtenant water right to irrigate subject property becomes prohibited due to a situation that is beyond the control of the water right holder including but not limited to: critical groundwater designations or other state regulatory action, reduced federal contract allocations, and other similar regulatory circumstances. If retained, the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes. Where this paragraph does not apply then no agricultural mitigation is required.

(viii) High-Value Farmland as defined at ORS 195.300(10)(c) through (f) except otherwise described in subparagraphs (vi) and (vii).

(ix) Sites where the construction and operation of the photovoltaic solar power generation facility will result in significant adverse impacts to historic, cultural or archaeological Resources that cannot be mitigated pursuant to OAR 660-023-0195(6).

(x) Within the Metolius Area of Critical State Concern identified as Area 1 and Area 2 in the management plan adopted by the commission, as referenced in ORS 197.416.

(e) Approval of a proposed photovoltaic solar power generation facility under paragraph (a)(B) is subject to the following requirements:

(A) The proposed photovoltaic solar power generation facility is located in an area with the following characteristics:

(i) Topography with a slope that is predominantly 15 percent or less;

(ii) An estimated Annual Solar Utility-Scale Capacity Factor of 19 percent or greater; and

(iii) Predominantly within 10 miles of a transmission line with a rating of 69 KV or above.

(B) For a proposed photovoltaic solar power generation facility on high-value farmland or arable land, a study area consisting of lands zoned for exclusive farm use located within two miles measured from the exterior boundary of the subject property shall be established and:

(i) If fewer than 320 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits wholly or partially within the study area, no further action is necessary.

(ii) When at least 320 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 as multiple facilities wholly of partially within the study area, the county 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(C) The proposed photovoltaic solar power generation facility shall take measures to mitigate agricultural impacts as provided in OAR 660-023-0195(5)(b)(B) and (C).

(D) The proposed photovoltaic solar power generation facility shall take measures to provide community benefits as provided in OAR 660-023-0195(7)(b).

(E) The proposed photovoltaic solar power generation facility shall mitigate potential impacts to fish and wildlife habitat pursuant to the requirements of ORS 215.446(3)(a).

(F) The proposed photovoltaic solar power generation facility shall mitigate potential impacts to historic, cultural, and archeological resources pursuant to OAR 660-023-0195(6).

(G) (i) The application will demonstrate that considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an individual with qualifications determined to be acceptable by the county demonstrating that such temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved workforce housing plan shall be attached to the decision as a condition of approval.

(ii) On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility must be removed or converted to an allowed use under section (19) or other statute or rule when project construction is complete.

(iii) The county may consider temporary workforce housing facilities not included in the initial approval through a minor amendment request filed after a decision to approve a

photovoltaic solar power generation facility. A minor amendment request shall be subject to section (5) and shall have no effect on the original approval of the project.

(H) The requirements of paragraphs (38)(h)(A) through (D)[1] have been satisfied for proposed photovoltaic solar power generation facilities on high-value farmland and arable land, and the requirements of paragraph (h)(D) have been satisfied for proposed photovoltaic solar power generation facilities on nonarable land.

(I) A county may condition approval of a proposed photovoltaic solar power generation facility to address other issues, including but not limited to assuring that the design and operation of the facility will promote the prevention and mitigate the risk of wildfire.

(J) For a photovoltaic solar power generation facility located on arable or nonarable lands, the project is not located on arable soils unless it can be demonstrated that:

(i) Siting the facility on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(K) For a photovoltaic solar power generation facility located on nonarable lands no more than 1,280 acres of the facility will be located on arable soils.

(L) A county that receives an application for a permit under this section shall, upon receipt of the application, provide notice as required by ORS 215.446(6) and (7).

(f) Notwithstanding any other rule in this division, a county may determine that ORS 215.296 and section (5) for a proposed photovoltaic solar power generation facility are met when it finds that the applicable provisions of subsections (b) through (e) are satisfied.

(g) A county shall satisfy the requirements of OAR 660-023-0195(9)(a) through (c).

(h) The county has identified and attached as conditions of approval all mitigation required pursuant to this rule.

(i) Any applicable local provisions have been satisfied.

(j) A permit approved for a photovoltaic solar power generation facility shall be valid until commencement of construction or for six years, whichever is less. A county may grant up to two extensions for a period of up to 24 months each when an applicant submits a written request for an extension of the development approval period prior to the expiration of the approval period.

(k) A county may grant a permit described in subsection (j) a third and final extension for a period of up to 24 months if:

(A) An applicant submits a written request for an extension of the development approval period prior to the expiration of the second extension granted under subsection (j);

[1] See the end of the document for the language in 660-033-0130(38)(h)(A) through (D)

(B) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(C) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(l) In addition to other sources, a local government may rely on data from online mapping tools, such as that data included in the Oregon Renewable Energy Siting Assessment (ORESA), to inform determinations made under this section.

(m) 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 as defined in ORS 30.930(2) and (4).

(n) 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.

660-033-0145
Agriculture/Forest Zones

(1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-0050;

(2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055; ~~**and**~~

(3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-0057.**; and**

(4) A county in eastern Oregon shall apply either OAR chapter 660, division 6 or 33 standards for siting a photovoltaic solar power generation facility in an agriculture/forest zone based on the predominant use of the tract on January 1, 2024.

OAR 660-033-0130(38(h)(A) through (D), referenced on Page 5, Line 152, Footnote 1, are shown here for reference. They are not proposed for amendment.

(h) The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10).

(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;

(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. The approved plan shall be attached to the decision as a condition of approval;

(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;

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed 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;

660-006-0025

Uses Authorized in Forest Zones

(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:

****

(j) Commercial utility facilities for the purpose of generating power**, not including photovoltaic solar power generation facilities in eastern Oregon**. A power generation facility considered under this subsection shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4;

(k) Commercial utility facilities for the purpose of generating power as a photovoltaic solar power generation facility in eastern Oregon, under the following standards:

(A) A power generation facility considered under this subsection shall not preclude more than 240 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4.

(B) An application for a facility under this subsection shall comply with the requirements of ORS 215.446(3).

(C) This subsection does not apply to the Metolius Area of Critical State Concern identified as Area 1 and Area 2 in the management plan adopted by the commission, as referenced in ORS 197.416.

(5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:

(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.

(6) Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.

****
****

660-006-0050

Uses Authorized in Agriculture/Forest Zones

(1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR chapter 660, divisions 6 and 33.

(2) Uses authorized in Exclusive Farm Use Zones in ORS chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominant use of the tract on January 1, 1993.

(3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035.

(4) A county in eastern Oregon shall apply either OAR chapter 660, division 6 or 33 standards for siting a photovoltaic solar power generation facility in an agriculture/forest zone based on the predominant use of the subject lot or parcel on January 1, 2024.

660-004-0022

Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule. Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060. Reasons that may allow transportation facilities and improvements that do not meet the requirements of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify the establishment of new urban development on undeveloped rural land are provided in OAR 660-014-0040. Reasons that may justify the establishment of temporary natural disaster related housing on undeveloped rural lands are provided in OAR 660-014-0090.

****

(3) Rural Industrial Development: A local government may consider a photovoltaic solar power generation facility as defined in OAR 660-033-0130(38)(f) to be a rural industrial use. For the siting of rural industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.

(4) A site justified for a photovoltaic solar power generation facility under section (3) and is also found to satisfy OAR 660-004-0020 shall remain zoned for exclusive farm use, forest use or mixed farm and forest; whichever is applicable. A county shall also continue to apply the relevant approval criteria at OAR 660-033-0130(38), OAR 660-033-0130(45) or OAR 660-006-0025(4)(k).

HV Farmland	All Other	Uses
		Farm/Forest Resource
A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R5,6	R5,6	A facility for the primary processing of forest products.
R28	R28	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141 or an establishment for the slaughter or processing of poultry pursuant to ORS 603.038.
		Natural Resource
A	A	Creation of, restoration of, or enhancement of wetlands.
R5,27	R5,27	The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species.
		Residential
A1,30	A1,30	Dwelling customarily provided in conjunction with farm use as provided in OAR 660-033-0135.
R9,30	R9,30	A relative farm help dwelling.
A24,30	A24,30	Accessory Farm Dwellings for year-round and seasonal farm workers.
A3,30	A3,30	One single-family dwelling on a lawfully created lot or parcel.
R5,10,30	R5,10,30	One manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.
R4,30	R4,30	Single-family residential dwelling, not provided in conjunction with farm use.
R5,30	R5,30	Residential home as defined in ORS 197.660, in existing dwellings.
R5,30	R5,30	Room and board arrangements for a maximum of five unrelated persons in existing residences.
R12,30	R12,30	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a

		county inventory as historic property as defined in ORS 358.480
A8,30	A8,30	Alteration, restoration, or replacement of a lawfully established dwelling.
		Commercial Uses
R5	R5	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or ORS 215.213(1)(u) and 215.283(1)(r), but excluding activities in conjunction with a marijuana crop.
R5,14	R5,14	Home occupations as provided in ORS 215.448.
A39	A39	Dog training classes or testing trials.
R5	R5	Commercial dog boarding kennels or dog training classes or testing trials that cannot be established under ORS 215.213(1)(z) or 215.283(1)(x).
R5,35	R5,35	An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks.
*18(a)	R5	Destination resort which is approved consistent with the requirements of Goal 8.
A	A	A winery as described in ORS 215.452 or 215.453, and 215.237.
R5	R5	A restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.
A	A	A cider business as provided in ORS 215.451
R or R5, 42	R or R5, 42	Agri-tourism and other commercial events or activities that are related to and supportive of agriculture, as described in ORS 215.213(11) or 215.283(4).
A23	A23	Farm stands.
R5	R5	A landscape contracting business, as defined in ORS 671.520, or a business providing landscape

		architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
R	R	Guest ranch in eastern Oregon as provided in chapter 84 Oregon Laws 2010.
A	A	Log truck parking as provided in ORS 215.311.
A	A	A farm brewery as provided in ORS 215.449.
R5, 41	R5, 41	Equine and equine-affiliated therapeutic and counseling activities.
		Mineral, Aggregate, Oil, and Gas Uses
A	A	Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
A	A	Operations for the exploration for minerals as defined by ORS 517.750.
R5	R5	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under this rule.
R5	R5	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
R5,15	R5,15	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
R5	R5	Processing of other mineral resources and other subsurface resources.
		Transportation
R5,7	R5,7	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.
A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.
R5	R5	Construction of additional passing and travel lanes requiring the acquisition of right of way but not

		resulting in the creation of new land parcels.
A	A	Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way but not resulting in the creation of new land parcels.
R5	R5	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public- owned property utilized to support the operation and maintenance of public roads and highways.
R5	R5	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
R13	R13	Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
R or R5	R or R5	Transportation improvements on rural lands as allowed by OAR 660-012- 0065
		Utility/Solid Waste Disposal Facilities
R16(a) or (b)	R16(a) or (b)	Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300 and wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet high.
R5	R5	Transmission towers over 200 feet in height.

A	A	Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.
A32	A32	Utility facility service lines.
R5,17	R5,22	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities or photovoltaic solar power generation facilities.
R5,37	R5,37	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
R5,38 **,44**	R5,38 **,44**	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
*18(a)	R5	A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
*18(a), 29(a)	A or R5,29(b)	Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-093-0050 and 340-096-0060.
		Parks/Public/Quasi-Public
18	R5,40	Youth camps in Eastern Oregon on land that is composed predominantly of class VI, VII or VIII soils.
R5	R5	Child care facilities, preschool recorded programs or school-age recorded programs consistent with ORS 215.213(2)(aa) or 215.283(2)(dd).
*18(a) or R18(b)	R5, 18(b)	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.
2,*18(a)	R2	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.

2,*18(a)	R2,5,19,43	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.
R2,5,31	R2,5,31	Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
A	A	Fire service facilities providing rural fire protection services.
R2,5,36	R2,5,36	Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
R2,*18(a) or R2, 18(c)	R2,5,20	Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.
R2,5,21	R2,5,21	Living history museum
R2	R2	Firearms training facility as provided in ORS 197.770.
R2,25	R2,25	Armed forces reserve center as provided for in ORS 215.213(1)(s).
A	A	Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.
R5	R5	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.
A26	A26	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.
R5	R5	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
R5	R5	Operations for the extraction of bottling water.
A11	A11	Land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids.
R5	R5	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(1).
A33	A33	An outdoor mass gathering as described in ORS 433.735.
R34	R34	An outdoor mass gathering of more than 3,000 persons any part of which is held outdoors and which continues or can reasonably

		be expected to continue for a period exceeding that allowable for an outdoor mass gathering as defined in ORS 433.735.

660-023-0190

Energy Sources

(1) For purposes of this rule:

(a) "Energy source" includes naturally occurring locations, accumulations, or deposits of one or more of the following resources used for the generation of energy: natural gas, surface water (i.e., dam sites), geothermal, solar, and wind areas. Energy sources applied for or approved through the Oregon Energy Facility Siting Council (EFSC) or the Federal Energy Regulatory Commission (FERC) may be deemed significant energy sources for purposes of Goal 5.

(b) "Protect," for energy sources, means to adopt plan and land use regulations for a significant energy source that limit new conflicting uses within the impact area of the site and authorize the present or future development or use of the energy source at the site.

(2) Local governments may amend their acknowledged comprehensive plans to address energy sources using the standards and procedures in OAR 660-023-0030 through 660-023-0050, and, if applicable OAR 660-023-0195. Except for photovoltaic solar power generation facilities, where EFSC or FERC regulate a local site or an energy facility that relies on a site specific energy source, that source shall be considered a significant energy source under OAR 660-023-0030. Alternatively, local governments may adopt a program to evaluate conflicts and develop a protection program on a case-by-case basis, i.e., upon application to develop an individual energy source, as follows:

(a) For proposals involving energy sources under the jurisdiction of EFSC or FERC that are not relied on for a photovoltaic solar power generation facility, the local government may comply with Goal 5 by amending its comprehensive plan and land use regulations to implement the EFSC or FERC decision on the proposal as per ORS 469.504; and

(b) For proposals involving energy sources not under the jurisdiction of EFSC or FERC, the local government may follow the standards and procedures of OAR 660-023-0030 through 660-023-0050, or OAR 660-023-0195, whichever is applicable.

(3) Local governments shall coordinate planning activities for energy sources with the Oregon Department of Energy.

Eastern Oregon Solar Siting Public Comments received until April 30, 2025

Exhibit 1_Oregon Solar & Storage Industries Association

Exhibit 2_Eng

Exhibit 3_Friends of Metolius

Exhibit 4_Sullivan

Exhibit 5_Turner

Exhibit 6_Oregon Association of Conservation Districts (Dec 2024)

Exhibit 7_ Oregon Association of Conservation Districts (Jan 2025)

Exhibit 8_New Sun Energy

Exhibit 9_Umatilla County

Exhibit 10_Teeman

Exhibit 11_Wasco County

Exhibit 12_Association of Oregon County Planning Directors

Exhibit 13_Morrow County

Exhibit 14_Ag for Oregon

Exhibit 15_Oregon Association of Conservation Districts (March 2025)

Exhibit 16_Confederated Tribes of Warm Springs

Exhibit 17_Chaisson

Exhibit 18_McCullough

Exhibit 19_Gunter

Exhibit 20_John Pouley, SHPO

Exhibit 21_Oregon Department of Fish and Wildlife

Exhibit 22_Central Oregon LandWatch

Exhibit 23_Oregon Department of Agriculture

Exhibit 24_Albrich

Exhibit 25_Hilderbrand

Exhibit 26_MN8 Energy LLC

Exhibit 27_New Sun Energy

Exhibit 28_Oregon Solar & Storage Industries Association

Exhibit 29_Oregon Wheat Growers League

Exhibit 30_Pine Gate Renewables

Exhibit 31_Renewable Northwest

Exhibit 32_The Nature Conservancy

November 4, 2024

Oregon Department of Land Conservation and Development
Oregon Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re: OSSIA Comments on Eastern Oregon Solar Siting Possibilities Rulemaking

Dear Department of Land Conservation and Development:

Oregon Solar + Storage Industries Association ("OSSIA") submits these written comments as a member of the Rulemaking Advisory Committee ("RAC") for the Eastern Oregon Solar Siting Rulemaking ("rulemaking"). OSSIA is a trade association that promotes clean, renewable, solar and storage technologies and whose members include renewable energy businesses, non-profit groups, and other solar and storage industry stakeholders. The rulemaking will directly affect OSSIA's members.

Section 35 of House Bill 3409 ("HB 3049") directed the Land Conservation and Development Commission ("LCDC") to consider and adopt administrative rules for the purpose of "Finding Opportunities and Reducing Conflict in Siting Photovoltaic Solar Power Generation Facilities". The current rule proposal is unlikely to result in streamlined solar permitting in "low conflict" locations because it is unnecessarily complex and contains numerous arbitrary standards. Therefore, despite the immense amount of time dedicated by RAC members and Department of Land Conservation and Development ("DLCD") staff, the draft rules produced to date do not meet the purpose of HB 3409. This letter documents OSSIA's concerns with the RAC process and draft rules to date and, more importantly, OSSIA's recommendations for achieving the purpose of HB 3409.

I. Executive Summary and Recommendations.

The rulemaking must result in meaningful, practical, and implementable regulations to achieve the legislative directive of HB 3409, which is to give local governments and applicants a pathway for siting solar facilities at lower conflict sites on agricultural and forest lands without requiring a corresponding Goal exception. The RAC has met six times since March 2024, and there have been dozens of associated technical advisory committee ("TAC") meetings. OSSIA proposed rulemaking language at the outset and gave commentary throughout the Rulemaking process, which has not been implemented. Despite attempts at collaboration and consensus building among the RAC members, the current rule proposal ("draft rule") is far from achieving the legislative objective and contains rules that would make solar permitting more difficult.

As described in more detail below, the RAC suffers from various procedural concerns (scope creep, opaque committee structure, ignoring RAC feedback, etc.) and substantive concerns (draft rules that are not data-driven or mappable, making solar permitting more difficult, arbitrary acreage and productivity limitations, potentially facial inconsistency with Goal 5, etc.). Notably, the RAC has *agreed* on a number of issues that DLCD has ignored or refused to incorporate into the draft language. Conversely, the draft rules include concepts and policies recommended by agency staff or interested parties rather than the RAC. See Section III. While there have been a surprising number of instances of alignment between various RAC stakeholders, the draft rules unfortunately appear to reflect the motive and opinion of DLCD staff, not the RAC.

There is insufficient time in the two remaining half-day meetings for the RAC to properly analyze and resolve all outstanding issues. To achieve the legislative objective, OSSIA therefore asks that DLCD limit the scope of the rules to the core issue and proposed relief: creating a permitting pathway for solar projects at lower conflicts sites that avoids triggering a corresponding Goal exception. DCLD should remove all provisions except for OAR 660-023-0195 (and necessary implementing changes in other regulations) and table additional concepts for subsequent RAC meetings or rulemakings.

In addition, OSSIA strongly urges DLCD to consider the following minimum approaches to the draft rules to ensure that they have at least some clear, positive effect:

- Make the rules binding upon adoption *unless* local governments opt-out of implementation (focus on working the "mandatory approach" language proposed in meeting packet #7);
- Formally request and provide a legal opinion from the Oregon Department of Justice as to the whether the draft rules are consistent with Goal 5 before rule adoption[1];
- Raise the acreage thresholds for Goal 3 exceptions outright under OAR 660-033-0130(38);
- Consider providing a preferred/streamlined pathway for solar near substations where solar is a high value use (raise the threshold requirements in -0195 for facilities within 2.5 miles of high-voltage substations (115kV or above)); and
- Review the effectiveness of the Rule one (1) year from date of adoption.

II. Policy Discussions have been Segregated into Technical Advisory Committees and have not been Fully Considered by the RAC.

OSSIA and other RAC members have repeatedly expressed concerns related to the Rulemaking process including the isolation between RAC and TAC meetings, which has resulted in

[1] OSSIA has repeatedly questioned the novel and untested approach DLCD is proposing to place these rules under Goal 5 regulations and is concerned about its resilience to legal challenge.

substantive policy proposals not vetted by the RAC. Substantive policy discussions have largely occurred in TAC meetings where very few RAC members are able to regularly attend. While DLCD staff has attempted to provide "report outs" of those discussions, the RAC itself has not given sufficient consideration to significant policy choices that are being discussed in the TAC meetings. Primary substantive provisions that have been largely omitted from RAC discussions but have been the focus of TAC conversations include forest lands and mitigation standards. Other issues like microgrids and agrivoltaics have been discussed in TACs but minimally addressed by the larger RAC group. This may be partially attributable to the overly broad scope of the draft rules. LCDC should not adopt substantive policy decisions in the Rulemaking that have not been fully discussed and recommended by the RAC.

III. RAC Feedback Has Not Been Adequately Incorporated.

Throughout the Rulemaking process, DLCD has repeatedly included language in iterations of the draft rules that conflict with RAC discussions and recommendations in prior meetings. For example, the RAC wholistically recommended *against* using urban growth boundaries (UGBs) as a metric for solar siting. Many RAC members have repeatedly recommended *against* using proximity to transmission lines as a limiting factor. And RAC members have frequently requested that mitigation standards be simplified.

Similarly, the draft rules have continually included proposals from DLCD staff that the RAC has not recommended or discussed. For example, the larger RAC has had almost no discussion addressing solar siting on forest lands. There has been some discussion on agrivoltaics, but RAC members have recommended *against* requiring counties to adopt an Agrivoltaics Development Plan and restricting the size and acreage of agrivoltaics facilities. The RAC has never discussed the need for changes to the Goal 2 reasons test in OAR 660-004-0022. And the RAC was confused and surprised when DLCD recommended an entirely new regulatory section (OAR 660-033-0130(45)) for facilities in Eastern Oregon. Overall, DLCD's practice of introducing new concepts before every single RAC meeting, rather than streamlining prior language and incorporating the RAC's feedback, has been frustrating to say the least.

IV. The Scope of the Draft Rule is Too Broad and Complex and Includes Concepts that Conflict with the Legislative Directive.

The draft rules are overly broad and complex, running afield from the legislative intent of HB 3409 to streamline solar siting in low conflict locations. OSSIA urges DLCD to limit the Rulemaking to the substantive heart of the issue: when and where the threshold for a Goal exception should be modified. Therefore, the draft rules should focus *only* on OAR 660-023-0195 (and any necessary implementing acreage changes to OAR 660-033-0130 and 660-006-0033). All other rulemaking concepts should be tabled for subsequent rulemakings or phases.

The draft rules are 31 pages long and attempt to address a litany of solar siting issues that are not directed at achieving the legislative intent and directive. First, there are a number of concepts that are unrelated to the Rulemaking including:

- Zoning underlying a Goal 2 Exception (OAR 660-004-0022(4))
- Removing solar from Goal 5 Energy Sources (OAR 660-023-0190(2))
- Predominance test for mixed farm/forest zones (OAR 660-006-0050(4))[2]

While these are valid siting issues, these concepts go beyond the legislative intent and directive because they are unrelated to finding low-conflict locations for solar. It is also unfair to the RAC for these concepts to be introduced so late in the process when threshold/baseline issues have not yet been resolved.

DLCD has also included concepts that raise the permitting burden in a variety of instances for all solar projects, not just solar projects located in low conflict areas. These concepts would increase the permitting burden on all facilities, which violates the statutory directive.[3] These concepts include:

- Establishing a totally new regulatory section for solar in Eastern Oregon and adding new permitting requirements related to soil health and wildfire (OAR 660-033-0130(45)[4]
- Removing solar from commercial utility facilities that are allowed on forest land under 10 acres without an exception (OAR 660-006-0025(j))
- Importing standards from agricultural land, and adding new standards, to solar on forest land including analysis of impacts on forest operations, soil erosion control plans, soil compaction tests, noxious weeds, soil health, and workforce housing (OAR 660-006-0033)

These concepts conflict with the legislative intent to work towards streamlining solar facility permitting in low conflict locations and add further complexity to the Rulemaking that is neither necessary nor appropriate. Therefore, these items should be immediately removed from the draft rules. If DLCD wishes to address these perceived solar siting issues, it can initiate another appropriate rulemaking to do so.

Other issues with the draft rules include:

[2] This is an appropriate clarifying change, but it has not been discussed by the RAC.
[3] We note that there is a provision related to the validity period of issued permits in OAR 660-006-0033(5), (6) and 660-033-0130(45), and a provision related to temporary workforce housing in OAR 660-006-0033(5), which the RAC did discuss and recommend and that would be appropriate to retain as they provide certainty to solar development.
[4] Desired changes recommended by the RAC can and should be addressed in OAR 660-033-0130(38).

- The draft rules are not quantifiable and therefore not meaningful;
- Policy determinations are not data-driven, resulting in arbitrary standards and outcomes (for example: forest productivity thresholds for forest lands and cultural resource densities)
- The draft rules arbitrarily limit the acreage thresholds based on jurisdictional thresholds of the Energy Facility Siting Council (EFSC) and DLCD has failed to properly analyze the Rulemaking's interaction with EFSC proceedings;
- DLCD has not analyzed the draft rules for consistency with other proposed DLCD rulemakings addressing cultural areas and farm and forest standards;
- The complexity of the program and the mitigation burden likely means that the draft rules will not expedite solar development; and
- The draft rule does not yet contain a clear implementation pathway.

Due to these issues, and because the scope of the draft rules has not, and cannot, be determined (*i.e.* where proposed projects would actually benefit from the Rulemaking), the draft rules fail to adequately identify areas of low conflict siting and do not achieve the legislative intent to "find locations to locate renewable energy facilities".

V. Conclusion

There are only two scheduled RAC meetings left to resolve the issues identified in this letter. We strongly recommend that DLCD: (1) include baseline updates to the permitting regulations (see pg. 2); and (2) that the remaining RAC meetings focus on analyzing and simplifying the complex framework proposed for low conflict siting (Division -0195). We are behind in our State's clean energy goals. This is an opportunity to create an investible structure to promote in-state solar projects that generate clean electricity. We look forward to continuing to collaborate with the RAC to reach these goals.

Thank you for your attention to these comments.

Sincerely,

Alyssa Forest
Policy & Regulatory Affairs Director
Oregon Solar + Storage Industries Association (OSSIA)
alyssa@oseig.org

From: Michael Eng

To: Les Anderson; jwilliams@co.lake.or.us; fskenergy@threeboys.com; mark.lindley@pgn.com; tsellers@ibew112.com; Jackandteresa@southworthbros.com; Duganmarieb@pgrenewables.com; myoklic@newsunenergy.net; Emily Griffith; marc@oregonagtrust.org; kimberly.preacher@navy.mil; mtotey@oregonhunters.org; andrew@friends.org; Teswcd@gmail.com; Greg.corbin@greendiamond.com; mwm@crearenewables.org; Brandon.mcmullen@harneycountyor.gov; lauren@oregonfb.org; will.vanvactor@crookcountyor.gov; Andrea.Kreiner@oacd.org; Brichardson@rmef.org; Laura.tabor@tnc.org; Denise@scoedd.org; Anahi Segovia Rodriguez; Aprils@owrc.org; THOMPSON Jeremy L * ODFW; Todd Farmer; JOHNSON James * ODA; TOKARCZYK John A * ODF; HUBNER Daniel * ODF; JACKMAN Tom * ODOE; CORNETT Todd * ODOE; BAYER Edith M * ODOE; MCKERNAN Amber * DSL; ZUMWALT Shawn * DSL; DARIN Michael * DGMI; ANDREWS Ryan M * WRD; Chad Higgins; FREEMAN Robin * PUC; DZIADUL Aurora * DLCD; CARNEY Sadie * DLCD; TAYLOR Casaria * DLCD; Nick Lelack; FOOTE Hilary * DLCD; Dan@oregoncleanpower.coop; WOLF Vernon * DSL; COCHRAN Brian * DSL; Peacher, Kimberly N CIV USN NAVFAC NW SVD WA (USA); Nicole Mann; Amanda Hoey; Ken Yates; Bentz, Randall M NFG NG (USA); BENNETT Mark * DLCD; DHall@dunncarney.com; Lauren Link; Mia Noren; Diane Teeman (Diane.teeman@burnspaiute-nsn.gov); Dalton Advocacy Amanda; BENTZ Randall * OMD; christina.rubidoux@klamathtribes.com; Holly Anderson; Patrick Mills; Audie Huber; Carey Miller; kaitlin.hakanson@klamathtribes.com; D.L. Teeman; Bobby Bruno; Tribal Historic Preservation Officer Warm Springs; austin.smithjr@ctwsbnr.org; tpo@ctuir.org; Bullion Elissa; Lora Elliott; johnathan.vanroekel@lcri.org; jdabulskis@co.sherman.or.us; Georgia Macnab; brian.walsh@mn8energy.com; Joshua Basofin; Phil Stenbeck; Ryan Krabill; POULEY John * OPRD

Cc: TATE Adam * DLCD; JININGS Jon * DLCD; HOWARD Gordon * DLCD; BREWER Angie * DLCD; HERT Dawn * DLCD; HAMMER Alexis * DLCD; Jamie Damon; Ariella Dahlin; PUNTON Amanda * DLCD; GREENE Kirstin * DLCD; WEINAND Julia R * DLCD; Ruby Gonzales

Subject: DLCD: Eastern Oregon Solar Siting RAC - my bottom line position

Date: Friday, November 8, 2024 8:24:43 AM

Dear RAC members,

I really appreciate everyone's earnestness and hard work to navigate through the technical and policy challenges in seeking a mutually acceptable and supported recommendation to LCDC, as well as Kearns & West's excellent facilitation to get us there.

I have come to view my role on the RAC as being one of the advocates for the general interests of rural Eastern Oregon counties (to the best of my best understanding), and especially for the interests of potential host communities for utility-scale solar development projects.

The bottom line for me to support the overall package of recommendations is the inclusion of a clear **"Community Benefits"** requirement. Without that provision, I will be an emphatic .

I would also need to see the inclusion of "microgrids", as one of the listed potential options for addressing the "Community Benefits" requirement. (Including specific technical details in the Rules regarding microgrids is not necessary — that can be negotiated later between the county and the developer.)

I am not so keen on the "one-time payment" formulas proposed in the latest draft Community Benefits language. I see these as problematic and difficult to objectively ascertain. I think I would prefer leaving the specifics of the Community Benefits determination to be largely left up to a negotiation between the permit applicant and the county (in consultation with tribes and close collaboration with the directly affected host communities). Each county would then be empowered to identify their own concerns and determine their own priorities. Such an approach is how one could achieve true buy-in from counties and their affected communities.

While I believe in the potential for agrivoltaics to mutually benefit both solar developers and rural communities, I acknowledge there is insufficient time for the RAC to more fully explore and develop specific policies and incentives to ensure a successful program. I would be

satisfied to instead highlight in DLCD's Report the potential for agrivoltaics to assist in achieving the state's renewable energy portfolio goals, along with a recommendation that it be pursued in a future effort.

Thank you for your consideration and I invite your feedback.

Mike Eng
Lostine Firewise
(520) 240-8921

Friends of the Metolius
P.O. Box 101
Camp Sherman, Oregon 97730
friendsofthemetolius@gmail.com
www.friendsofthemetolius.org

November 14, 2024

By email to: casaria.taylor@dlcd.oregon.gov
Casaria Taylor
Rules Coordinator
Oregon Department of Land Conservation and Development

Re: Eastern Oregon Solar Siting Possibilities

I am writing on behalf of Friends of the Metolius ("FOM"), a conservation group that has been an ardent supporter of protecting the Metolius Basin for over thirty years. Our organization's mission and stewardship is limited solely to protecting the legacy and natural resources of the Metolius Basin. The Metolius basin lies entirely in Jefferson County and within the boundary of what the Eastern Oregon Solar Siting project calls "Eastern Oregon."

For the reasons detailed in this letter, I am writing to request an addition to the draft rules promulgated for the Eastern Oregon Solar Siting project. Specifically, to add the following to Proposed Rule 660-006-0033:

> "(8) No Photovoltaic Solar Energy Generation Facility shall be sited, either wholly or partly, within any area designated under Oregon law as an Area of Critical State Concern."

In 2009, in response to public outcry for protection of the Metolius River, the Oregon legislature passed the Metolius Protection Act, prohibiting resort development in the area and providing a management plan for the region[1]. The act also designated the Metolius and its surrounding basin as an ***Area of Critical State Concern*** ("ACSC") in Oregon, the only such designation in the state.

Ninety-five percent of land in the Metolius Basin is public land that is managed by the USFS. The majority of the USFS-managed lands are zoned as forest management. The remaining five percent is private land. The basin is renowned for its Ponderosa Pine forests and the river is a central part of this forest ecosystem. There is a wide diversity of fire regimes and

[1] 1 OR. REV. STAT. § 197.416 (2021). See also OR. ADMIN. RULES § 660-043-0100 (2021) (detailing management plan for the Metolius Area of Critical State Concern).

vegetation in the Metolius Basin. Under USFS criteria, all five fire regimes are present, although much of the area historically experienced frequent low intensity fire. Higher elevations and moisture gradient areas support diverse subalpine, moist, and dry mixed conifer forests.

The Metolius River is spring-fed and considered one of the most stable rivers in the world for its size. The Metolius Basin is located on a steep rain gradient on the eastern slope of the Cascade Mountain range. The unique geology of the Metolius Basin creates springs and highly permeable outwash plains of sand and gravel left by glaciers. The river supports important fisheries, including one of the healthiest bull trout populations in the state. The Metolius River once supported large sockeye and spring chinook runs and significant efforts are being made under the relicensing of the Pelton/Round Butte dams to re-establish those runs.

The Metolius Basin supports a wide variety of wildlife. Large deer and elk populations, combined with the threat of "sagebrush subdivisions," led Governor Tom McCall to request in 1974 that the Land Conservation and Development Commission consider the Fly Creek portion of the Metolius Basin as an Area of Critical State Concern. This area also forms the eastern edge of habitat for the Northern spotted owl.

The Metolius River is an important recreational resource for the state. The basin attracts a large number of visitors as a result of its unique hydrology, natural beauty, and world-class fishing, hunting, and hiking. According to the USFS, several hundred thousand recreational visitors enjoy the basin every year. There are nine public campgrounds within the basin, and several lodges on the surrounding private lands. The day-use area at the Head of the Metolius River receives 120,000 to 130,000 visits per year.

The Metolius Basin is one of the most protected areas in Oregon. The river is a Federally designated Wild and Scenic River and an Oregon Scenic Waterway. In 1990 the Deschutes National Forest established the 86,000-acre Metolius Conservation Area to ensure that the Basin is managed to maintain a more natural condition in the future. And as noted above, in 2009, the state adopted the Metolius Protection Act and its management plan.

The State of Oregon has recognized the importance of the Metolius Protection Act and the ACSC designation in subsequent legislation. As an example, see OR. REV. STAT § 215.495(2)(i), which prohibits accessory dwelling units in a designated area of state concern (i.e., the Metolius ACSC).

Siting a Photovoltaic Solar Energy Generation Facility in the Metolius Basin would be contrary to established management plans and would be detrimental to, for example, elk and deer range and migration corridors, and other wildlife. The prohibition requested above, as an addition to Proposed Rule 660-006-0033, is necessary to protect this fragile and valuable Oregon resource and is consistent with other State and Federal actions taken.

Sincerely,

Douglas Hancock

President

Relationship of Proposed Solar Rules to Cultural Resources

In reviewing the proposed rules for Eastern Oregon photovoltaic arrays as it relates to cultural resources, I note first that the summary prepared for the proposed rules states that they have no impact on disparities in our state, apparently relying on the proposed cultural resources rules for support. I want to be assured that we are not just avoiding controversy without taking necessary steps to preserve cultural resources.

The general approach to this conflict is set out in proposed OAR 660-023-0195(7)(a)(F), which states:

> Sites that do not include Historic, Cultural or Archeological Resources. In the absence of easily obtainable data, a determination regarding the location of historic, cultural or archeological resources may be deferred to a property specific assessment but must be done in consultation with the Oregon State Historic Preservation Office (SHPO) and any federally recognized Indian Tribes that may be affected by the application.

If I read that portion of the rule correctly, it means that if there be no "easily obtainable data" (and this would ordinarily be the case, given the exemption from public records for evidence of a site having cultural resources), the consideration of such resources is "deferred" until there were a "property specific assessment" for that site. How would this ever happen in the absence of someone bringing attention to that resource? What induces the "consultation?" A property owner would not be inclined to having additional time and expense brought to the attention of public agencies, which is the current situation. If so, what has changed and how more likely would the resource be preserved?

This same approach is found in other sections of the proposed rule, namely proposed OAR 660-023-0195(7)(b)(F) and (7)(c)(I), and the same concerns apply.

Moreover, it appears under proposed section 660-023-0195(12)(d) that if the conflicts over cultural resources of a proposed array cannot be avoided or mitigated, the only remaining conflict resolution measure is paying money (presumably to a tribe in the event of possible destruction of a cultural resource). It is not at all clear how this subsection is consistent with subsection 660-023-0195(13)(d), the Program to Achieve the Goal, which states that the application for an array application accepted by the county demonstrates "that the construction and operation of the renewable energy facility, taking into account mitigation, will not result in significant adverse impacts to historic, cultural and archaeological resources." These are the very resources that are sought to be protected under the proposed cultural resources rule. May a photovoltaic array applicant buy its way out of a conflict by convincing a local government that its proposal is somehow more important than the cultural resource? There appears to be a great deal of time and effort spent on dealing with farm and forest lands, but not cultural resources.

From: Elizabeth Turner <peachlion555@gmail.com>
Sent: Friday, November 15, 2024 12:58 PM
To: ODA_info <info@oda.oregon.gov>; johnsonjw3@frontier.com; HOWARD Gordon * DLCD <gordon.howard@dlcd.oregon.gov>; info@dlcd.oregon.gov; sen.danielbonham@oregonlegislature.com
Subject: Comment for LCDC hearing in December on Solar.

I'm writing this comment early. I'm requesting that it be added to the other public comments being given in the last hearing.

I'm writing under duress over this situation about solar development. I have been charged with a manufactured crime that is completely false. There has been obstruction in court. The purpose is to intimidate and silence me regarding solar public process. My legal right. I refuse to allow that.

I have no financial connection to any part of solar and property. I wrote this comment from my long experience for Oregon's future efficient energy development and the future of agriculture.

I am uniquely qualified to make this comment.

First; I'm a founding member of Country Natural Beef. A member who with my husband ranched and sold cattle through CNB. I also ran the production end of CNB five years.

I worked with every ranch across the state weekly. I have knowledge of the diversity of operations of every part of the state..they are very unique. They incorporate in their yearly operations many different lands of different qualities. There would never be a livestock ranch on only A1 soil. Different lands are essential for year around operation.

CNB also used a five ranch average of five ranches financial situations. Ranches of different sizes and situations. That average gave so much understanding to working ranches.

Second; I was a associate director for 17 years of Wasco County Soil District. Bring exposed again to agriculture diversity and their needs. Helping decide viable projects to improve ranching.

I'm also responsible for the comment that brought NOAH as an organization to work with our soil district to identify projects that met standards they were working on. Working together for better management.

Planning training: I was also the initiator or the Wasco County Planning Goal 3 citizen group of 14. Kim Jacobson was our very great planning director then. Followed by equally terrific Doty DeVanny.

In total I spent about 17 years both rewriting planning for Goal 3 for the county with this group and being one of four who followed up for many years to work on problems.

I'm keeping these comments to the big picture. I feel it's where I can be most effective.

First this is the false narrative I see happening that threatens Oregon.

Prior to effective energy planning designating what agriculture grounds would meet criteria for energy, and efficiently managed infrastructure planning, money began flowing without any restraint all over the state. The false narrative is very clear:

HOW DARE YOU DEPRIVE US OF THIS MONEY!

Energy production development was subjugated to; we owe owners, just because they want it, to hodge podge energy all over with no plan other than they get paid. It encouraged those struggling or with no good future plans to grasp at money regardless of whether it has real energy value.

It has caused massive upheaval. Those signing up threaten their neighbors who want to farm. Why? Because they can't get power lines to them without going through their land.

In our county, somehow with the best fire fighting equipment, 18000 acres burned of the best wildlife habitat. Our Fish and Wildlife agent is dead. Someone's charged. More will come out about it. Goal 5 has been massively impacted.

In agriculture you learn not everyone should be rescued. Bad management happens in agriculture. Places need to turn over sometimes. CNB was a powerful learning tool of our responsibility to be creative and find options to increase income and decrease costs.

Many today in some crop areas have refused to do anything to market products or modernize. They rely on government programs and generic pricing. Not a great picture. However much they want us to feel bad about it; it's not our fault. Nor the states.

I believe it's absolutely essential that our leadership stop this free for all, runaway energy billion dollar disaster.

What is the true narrative:

Oregon has been a great place to live for generations. We must not elevate energy costs to the entire population through bad planning of it's citing and infrastructure. We don't want high power energy lines criss crossing all over In stead of a planned statewide infrastructure the experts approve. Bonniville has spent billions already with this problem.

PGE rates have doubled. The cost of living for energy workers across the state is 12 raise this year. Also bring passed to consumers. It is a real scenario if continued no one can afford to live in a home.

High power lines have many consequences. An expert should advise you.

True narrative is Oregon should create a plan first with information from producers from agriculture working with their county planning. You need that information for the experts to form a statewide energy plan that is now expanding onto agriculture ground.

What ground and where is it to form a efficient energy grid? This is about efficient energy. Not who thinks they have a right to money.

I absolutely agree they made this a hot potato hoping it would overwhelm good planning and common sense. I'm sorry that it appears you wear the pants and have to curb greed.

I believe the current situation in Wasco County has something to do with signing energy contacts, that guaranteed acre numbers to a energy company that were not legal when it happened..No due process was done with regard to land owners nor was it even legal to cite on agriculture ground then. That needs investigated by someone in charge who can't be framed with fake crimes.

We are being illegally and cruely treated to cover up for dirty deals and probably money paid. The quote money absolutely corrupts has always been true.

Last I would point to a future that appears to have some new energy solutions that can be big producers of energy that's clean and smaller foot prints.

At the interim agriculture committee meetings, both House and Senate; someone spoke on environmental issues. It was very glaring as just bordering on irresponsible that they cited increased temperatures as a problem. But they failed to say that solar creates massive heat increase. And alters weather. Changing weather patterns were blamed for successful farms being destroyed by atmosphere changes. We solar we creat them.

Thank you for considering my comment. Our Oregon Planning system can survive this. I'm thankful for the years of it's development that result of so much knowledge to act on.

Please send me a receipt that you did receive this.

Thank you

Elizabeth Turner

Wasco County

Yes, I set up a new email for safety purpose. It's my nickname. I was born a Lion..my babysitters would tell you how true it is.

Oregon Association of Conservation Districts

December 1, 2024

To: Land Conservation and Development Commission (LCDC)

From: Oregon Association of Conservation Districts

Re: Proposed Eastern Oregon Solar Siting Rulemaking

The Oregon Association of Conservation Districts (OACD) represents Oregon's 45 Soil and Water Conservation Districts (SWCDs), special districts governed by elected boards. The Districts protect and enhance soil quality, water quality and quantity, and habitat by supporting voluntary conservation in partnership with private landowners and managers as well as federal, state, and nonprofit partners.

OACD's executive director served as a member of the Eastern Oregon Solar Siting Regulatory Advisory Committee (RAC). OACD firmly believes in the need for greatly expanded carbon-free renewable energy in Oregon. OACD also firmly believes that Oregon needs a healthy and vibrant agriculture and agricultural economy. Thus, OACD's position throughout the RAC process was to try to achieve sustainable co-existence between utility-scale solar and agriculture.

OACD sees land in Eastern Oregon falling into three main categories:

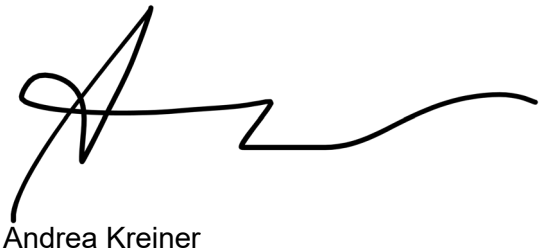
- Minimal to no conflict with wildlife and agriculture. These are the ideal locations for utility scale solar, but we recognize that there is not enough of this land within reasonable access to transmission to meet our energy needs. These are the lands where the siting process should be simplest and fastest.

- Potential for conflict, here we will focus on agricultural conflict. These lands would be active farmland, consistent with the proposed description in 660-023-0195 (7)(b) of the draft of the proposed rules discussed by the RAC during the 11-13-24 meeting (draft). OACD's main concerns here are regarding individual and cumulative impact on the agricultural viability in the area (county) surrounding a proposed solar installation. OACD strongly supports the proposal for agricultural mitigation in 660-023-0195 (11) and (12) of the draft. The process for siting for these lands should be efficient, provided that adequate mitigation is established.

- Agricultural land we do not want to see used for solar installations, consistent with the description in 660-023-0195 (7)(c)(E), (F), and (G) of the draft. Although solar installations are not prohibited on these lands, the siting process should be the most rigorous and in no way expedited.

OACD agrees that the work of the RAC has not been completed and should continue for the necessary additional meetings in order to be able to provide a complete recommendation to the LCDC. OACD will be willing to continue to serve on the RAC to fulfill our charge.

Thank you for the opportunity to provide input.



Andrea Kreiner
Executive Director
Oregon Association of Conservation Districts
Andrea.Kreiner@OACD.org
971-988-9929

Oregon Association of Conservation Districts

January 16, 2024

Chair Hallová, Vice Chair Lazo and Commission Members
Land Conservation and Development Commission

RE: Eastern Oregon Solar Siting

I am writing on behalf of the Oregon Association of Conservation Districts (OACD) as its Executive Director and as a member of the current Rulemaking Advisory Committee for this process. OACD represents the 45 Soil and Water Conservation Districts statewide, local governments and special districts with elected boards. The Districts protect and enhance soil and water quality and habitat through voluntary conservation in partnership with rural and urban landowners and managers.

The RAC Process

I commend the staff for a very transparent and inclusive rulemaking process with a diverse RAC membership. We were all provided with ample opportunity to fully share our views throughout the process, and the proposed draft discussed at the RAC meeting on January 9 (January RAC) reflects the RAC's discussion. However, hindsight is 20/20 and if we were to conduct the RAC again, I believe a different approach may have yielded a more streamlined proposal. I have shared that opinion and approach with staff and the RAC during our meeting on January 9, 2025.

General Agreement

OACD is in general support of most of the concepts in the January RAC draft. There is nothing in the proposal that causes us concern, in fact, we strongly support the inclusion and approach to agricultural mitigation as proposed in the January RAC draft, specifically **660-023-0195 Photovoltaic Solar Energy Resources in Eastern Oregon (5) Agricultural Mitigation.** As well as the definitions of areas requiring mitigation under **subsections (3)(a)(C)(iii)(3) and (4)(a)(C)(iii)(3).**

Concerns

Several proposals have been made by RAC members as alternative approaches that cause OACD great concern:

1. Increase the acreages where exceptions are required by an arbitrary number (ten-fold was suggested).

OACD is vehemently opposed to a ten-fold increase or any arbitrary increase in acreage where exceptions are required. Any discussions of increases in acreage must be accompanied by an analysis of cumulative impact on the agricultural economy in that county and whether that impact can be mitigated, and if so, how.

2. Re-evaluation of what is designated as High Value Farmland (HVF).

This is a very slippery slope. While OACD agrees that there may be some land designated as HVF that may better suited as a solar facility site, this is a very small percentage of land falling under HVF designation. Whether changing these would make enough additional land eligible for a speedier process to be worth the risk of creating an unforeseen impact on truly HVF is doubtful.

In conclusion, we greatly appreciate the opportunity for OACD to work collaboratively and serve as a part of the RAC on this important issue.
Sincerely,

Andrea Kreiner, Executive Director
Oregon Association of Conservation Districts
P.O. Box 10527, Portland, Oregon 97296
andrea.kreiner@oacd.org
971-988-9929
www.OACD.org

Submitted to Casaria.Taylor@DLCD.Oregon.gov

January 22, 2025

Land Conservation and Development Commission
635 Capitol Street NE Suite 150
Salem, OR 97301

RE: Eastern Oregon Solar Siting, Agenda Item 5

Dear Land Conservation and Development Commission,

NewSun Energy ("NewSun") submits these comments on the Department of Land Conservation and Development ("DLCD" or "Department") Eastern Solar Siting Rulemaking (the "Rulemaking"). NewSun's portfolio includes several sites in Eastern Oregon that are likely to seek permits through the county process, and NewSun has a long history of successfully working with counties to permit solar in a responsible and community-centered manner. NewSun is also a member of the Rulemaking Advisory Committee ("RAC") and has been meaningfully engaged with the Department throughout the Rulemaking process. Therefore, we provide these comments both as a RAC member and as a stakeholder that will be uniquely impacted by the Rulemaking.

I. RAC Process

We have voiced procedural concerns throughout the Rulemaking process that center on the apparent disconnect between RAC recommendations and Department Rulemaking drafts. For example, the RAC repeatedly discussed the *Department's* proposal to exclude siting in proximity to Urban Growth Boundaries ("UGBs") and voted twice to reject that proposal. Nevertheless, the Agenda Item 5 Meeting Materials (the "Staff Report") for the Commission's January 23, 2025 meeting (the "Commission Meeting") still include a Department recommendation to limit siting near UGBs surrounding very small population centers, which would arbitrarily eliminate highly viable, low conflict sites given that major electrical infrastructure like existing substations are often located near urban areas. This is just one example.

We are also disappointed with the procedure leading up to the Commission Meeting. We learned at the end of the last RAC meeting on January 9th, two weeks before the Commission Meeting, that the Staff Report was already prepared. When concerns were voiced that the Commission would not be reviewing materials that accurately represented the status of the Rulemaking, the Department refused to update the Staff Report, promising instead to give oral updates at the Commission Meeting. Unlike other rulemakings, the RAC has unique duties under House Bill 3409, including directly advising the Commission on the Rulemaking. Therefore, the RAC should be given sufficient opportunity to review and comment on staff reports. We hope that the Department provides an accurate report of the last RAC meeting where the RAC progressed significantly towards a recommendation that differs from the Staff Report.

II. Current Draft Rule

At the Rulemaking outset, we recommended strongly against a rule based on Statewide Land Use Planning Goal 5 in OAR 660 Division 23. We were, and remain, concerned that Goal 5 is an unnatural fit for this type of rule because the only "expedited" pathway that is proposed under the Rulemaking is to increase the acreage thresholds for a Goal 3 exception on EFU land. If the only

proposed remedy is related to agricultural land, then the only relevant factors are agricultural factors. But because the Rulemaking is based in Goal 5, the draft rule requires a multi-layer analysis to determine whether a property would qualify for the remedy. As stated in the Staff Report, the Department was unable to map eligible areas due to unmappable constraints and the absence of data. In addition, the draft rule would require several mitigation payments in addition to myriad consulting and legal costs necessary to analyze applicability and comply with a nascent regulatory pathway, creating a potentially prohibitive economic burden.

As a result, Applicants and counties will have difficulty implementing the draft rule. And, as a developer, we can say with certainty that we are highly unlikely to use this new rule given the complex analysis required to determine whether a property even qualifies and the burden of meeting a higher standard of notice, engagement, mitigation expenses, and consultant and legal fees. *Put simply, it is more likely that applicants will elect to use the existing Goal 3 exception pathway in OAR 660 Division 33, meaning that the Rulemaking has not achieved its objective of expediting solar permitting for low conflict sites.*

III. Alternate Proposal

However, the RAC has been presented with an alternate Rulemaking proposal to segregate the regulations applicable to Solar Resource Areas (i.e. a county-wide inventory of low conflict sites) from Solar Resource Sites (i.e. site-specific applications) and to simplify the standards and requirements for Sites in a manner that preserves the positive work of the RAC to identify solution pathways such as agricultural mitigation plans and community benefit programming. This would both preserve the Department's desire to adopt a nascent Goal 5 regulatory program while also providing a practical and meaningful pathway to lower conflict solar siting. While this proposal is still being developed, initial feedback from stakeholders is promising. *For these reasons, we strongly urge the Commission to delay a determination on the Rulemaking until the Department and the RAC can fully consider alternative proposals.*

IV. Conclusion

We appreciate the tremendous amount of time and effort that stakeholders have invested in the Rulemaking. We look forward to continued engagement with the RAC, Department, and Commission and are committed to reaching an outcome that achieves the legislative intent of House Bill 3409 to expedite solar permitting on low conflict sites.

Sincerely,

Max Yoklic
In-House Counsel, Permitting & Real Estate
NEWSUN ENERGY

cc:
Dr. Brenda Bateman, Commissioner Bennett, Casaria Taylor

Board of Commissioners

UMATILLA COUNTY
est. 1862

216 S. E. 4th Street
Pendleton, OR 97801

Daniel N. Dorran
541-278-6201

John M. Shafer
541-278-6203

Celinda A. Timmons
541-278-6202

January 22, 2025

Land Conservation and Development Commission
c/o Casaria Taylor
635 Capitol St., Ste. 150
Salem, Oregon 97301Eastern OR Solar RAC Members

Re: Eastern OR Solar Rulemaking Comments

Commission:

As an affected Eastern Oregon county, Umatilla County is pleased to provide comments on recent proposed rulemaking language to siting photovoltaic solar power generation facilities in Eastern Oregon.

Regrettably, the current proposed language forces counties to "opt-out" through a Post Acknowledgement Plan Amendment (PAPA). Umatilla County believes that the rule should be optional, and that counties should have the option to opt-in to the proposed rule changes if desired.

Permitting solar projects is already a complicated process for many eastern Oregon counties due to limited resources and staffing. Similarly, processing new Goal 5 PAPA requests is also complicated. Requiring eastern Oregon counties to evaluate Goal 5 to permit solar would be overly burdensome to a majority of the effected counties. Additionally, today, there is nothing preventing a county from applying Goal 5 to a significant solar resource area if desired by the county or an applicant.

The current rule language does not require mitigation to be equitable to impacts. While mitigation is important for all resources, this is particularly important for impacts to agriculture. Does the use of agrivoltaics provide an exemption for mitigation requirements? For example, a high value row crop is much more valuable than potential beekeeping under solar panels. Specifically, regarding agricultural mitigation, the current language does not require compensatory payments to go towards the loss of a crop or grazing. The language, "uplift opportunities for applicable agricultural sector" is very broad. This could be interpreted to fund a tasting room structure or other related facility. However, what has been lost is farm land. The RAC should consider narrowing this language down to be specific to the agricultural loss.

Regarding compensatory mitigation payments that benefit the community, perhaps the Rule should require that a community benefit committee be established under the County to determine how this money will be spent. Umatilla County has accomplished something similar for wind projects.

The language present under (b) (C) Implementation, the notice requirement of "general vicinity" is not a clear and objective land use standard. A clear and objective notice requirement regarding noticing distance should be recommended by the RAC for successful implementation by counties.

Lastly, the proposed rule language does not necessarily address battery storage. How will associated battery facilities be evaluated?

Thank you for your consideration.

Celinda A. Timmons
Chair, Board of Commissioners

Daniel N. Dorran,
Commissioner

John M. Shafer
Commissioner

From: GREENE Kirstin * DLCD
To: TATE Adam * DLCD; JININGS Jon * DLCD
Cc: HOWARD Gordon * DLCD; TAYLOR Casaria * DLCD; HERT Dawn * DLCD
Subject: Requst: Log Public Comment on Solar from Diane Teeman
Date: Wednesday, May 21, 2025 8:25:17 PM

Gents,

I realized this should be in our log, and possibly included in the response to comments. From Diane Teeman representing the Burns Paiute Tribe. On February 20, she texted this to me. I asked her to voice it out loud, which she also did,

“I think if it isn’t already a consideration, an attempt to speak to tribal culture in a definition that is more tribal centric would be useful. One of the problems tribes encounter is that legislation is written from the values and ideology of contemporary western culture and doesn’t fit well with tribal ontologies and epistemologies. The value of heritage across landscapes is different for many of our tribes than what archaeologists value.”

She aske that be consider the comment as official written input.

She also asked that this be in as written comment:

“For the section about notification, we often have a problem with someone sending a letter, often to the wrong contact. I think there should be more detail in what that notification should look like.”

Standing by if you’d like help with responses on these.

Thank you!

Kirstin Greene, AICP
Deputy Director
Pronouns: She/Hers
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Cell: 971.701.1584 | Main: 503-373-0050
kirstin.greene@dlcd.oregon.gov | www.oregon.gov/LCD

During the school year, I am typically in the Salem office on Monday and Thursday.

COMMUNITY DEVELOPMENT

2705 East Second Street • The Dalles, OR 97058
p: [541] 506-2560 • **f:** [541] 506-2561 • www.co.wasco.or.us

Pioneering pathways to prosperity.

March 17, 2025

Land Conservation and Development Commission
635 Capitol St NE, Ste 150
Salem, OR 97301-2540
Sent via: denise.johnson@dlcd.oregon.gov, cc: gordon.howard@dlcd.oregon.gov, jon.jinings@dlcd.oregon.gov, adam.tate@dlcd.oregon.gov

Re: Eastern Oregon Solar Siting

Dear Chair Hallova, Vice Chair Lazo, and Esteemed Commissioners;

Thank you for the opportunity to provide written comment on the Eastern Oregon Solar Siting rule update.

Opt Out is an Unfunded Mandate

The change to require Counties to opt-out is an unfunded mandate that will overburden Departments already contending with an onslaught of updated rules resulting from previous and current legislative sessions. While we appreciate the statewide urgency to address broad energy concerns, even those interested in the opt-out pathway will need to invest significant resources to evaluate impacts and package for our governing bodies. The opt-in requirement will still necessitate work, but can be planned and resources allocated when appropriate for individual jurisdictions.

Existing Conflicts in Rule

I believe there is an opportunity to address long-standing conflict in rule during this process. I have summarized these conflicts but am happy to provide additional information, including past memos I have provided to both Oregon Department of Energy (ODOE) and the Department of Land Conservation and Development (DLCD).

First, energy facilities sited in Exclusive Farm Use zones require an exception to Goal 3, based on reasons. Exceptions are, by definition a "comprehensive plan provision" that requires "an amendment to an acknowledged comprehensive plan" (OAR 660-015-0000(2) and ORS 197.732). As such, applications that include Goal Exceptions necessarily also require a Comprehensive Plan Amendment. Most jurisdictions have ignored this requirement, as no process is allocated during the EFSC review process for Comprehensive Plan Amendments.

Second, OAR 660-023-0190 (3) requires local governments to amend comprehensive plans to address energy sources using Division 23 standards. (1)(a) of this rule defines any energy source project that has been applied for through EFSC or FERC is deemed a significant energy source, and must necessarily be added to our Goal 5 inventories. During Periodic Review, Wasco County contemplated this requirement,

but found that there was not enough longitudinal or peer reviewed research or data to form the basis of an ESEE analysis to understand conflicting uses and alternatives. We are now requiring, as part of our participation in the EFSC review process, applicants submit a Comprehensive Plan amendment to address both the goal exception issue and the inventory requirement concurrent with EFSC review as there is not a defined process for achieving these requirements in rule.

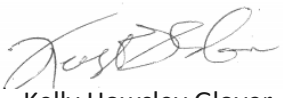
Finally, ORS 215.283 states that energy projects are a conditional use permit, and therefore projects have contacted our Department following a final site certification to achieve a conditional use permit. However, ORS 469.401(3) eliminates our ability to administer any permits following the issuance of a final site certificate. Our resolution of this conflict has been to submit a letter to the applicants, ODOE, and stakeholders.

While we have done our best to share these findings with ODOE, DLCD, and our counterparts statewide, we are aware that the rule presents this conflict to every jurisdiction that must weigh the relative legal questions and decide on their own approach. It seems there is a unique opportunity to ask the legislature for additional time to rectify these conflicts in a thoughtful way that. Resolving these conflicts may have the added effect of improving opportunities and reducing delays.

Beyond addressing these conflicts, I would encourage LCDC to advocate for an update to Goal 13.

Thank you for your consideration of these issues. I would encourage LCDC to revise the amendments to Division 33 to allow counties to opt-in to the new solar siting program, and also to consider making additional amendments to Division 23 to resolve some of these longstanding conflicts in rule and statute.

Sincerely,



Kelly Howsley Glover, PhD
Wasco County Community Development Director

COMMUNITY DEVELOPMENT

2705 East Second Street • The Dalles, OR 97058
p: [541] 506-2560 • **f:** [541] 506-2561 • www.co.wasco.or.us

Pioneering pathways to prosperity.

March 18, 2025

Land Conservation and Development Commission
635 Capitol St NE, Ste 150
Salem, OR 97301-2540
Sent via: denise.johnson@dlcd.oregon.gov, cc: gordon.howard@dlcd.oregon.gov, jon.jinings@dlcd.oregon.gov, adam.tate@dlcd.oregon.gov

Re: Eastern Oregon Solar Siting

Dear Chair Hallova, Vice Chair Lazo, and Esteemed Commissioners;

Thank you for the opportunity to provide written comment on the Eastern Oregon Solar Siting rule update.

Unfunded Mandate

The change to require Counties to opt-out is an unfunded mandate that will overburden Departments already contending with an onslaught of updated rules resulting from previous and current legislative sessions. While we appreciate the statewide urgency to address broad energy concerns, even those interested in the opt-out pathway will need to invest significant resources to evaluate impacts and package for our governing bodies. The opt-in requirement will still necessitate work, but can be planned and resources allocated when appropriate for individual jurisdictions.

Existing Conflicts in Rule

While not within scope of the rulemaking, I believe there is an opportunity to address long-standing conflict in rule during this process. I have summarized these conflicts but am happy to provide additional information, including past memos I have provided to both Oregon Department of Energy (ODOE) and the Department of Land Conservation and Development (DLCD).

First, energy facilities sited in Exclusive Farm Use zones require an exception to Goal 3, based on reasons. Exceptions are, by definition a "comprehensive plan provision" that requires "an amendment to an acknowledged comprehensive plan" (OAR 660-015-0000(2) and ORS 197.732). As such, applications that include Goal Exceptions necessarily also require a Comprehensive Plan Amendment. Most jurisdictions have ignored this requirement, as no process is allocated during the EFSC review process for Comprehensive Plan Amendments.

Second, OAR 660-023-0190 (3) requires local governments to amend comprehensive plans to address energy sources using Division 23 standards. (1)(a) of this rule defines any energy source project that has been applied for through EFSC or FERC is deemed a significant energy source, and must necessarily be added to our Goal 5 inventories. During Periodic Review, Wasco County contemplated this requirement,

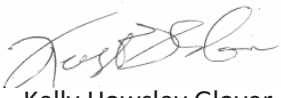
but found that there was not enough longitudinal or peer reviewed research or data to form the basis of an ESEE analysis to understand conflicting uses and alternatives. We are now requiring, as part of our participation in the EFSC review process, applicants submit a Comprehensive Plan amendment to address both the goal exception issue and the inventory requirement concurrent with EFSC review as there is not a defined process for achieving these requirements in rule.

Finally, ORS 215.283 states that energy projects are a conditional use permit, and therefore projects have contacted our Department following a final site certification to achieve a conditional use permit. However, ORS 469.401(3) eliminates our ability to administer any permits following the issuance of a final site certificate. Our resolution of this conflict has been to submit a letter to the applicants, ODOE, and stakeholders.

While we have done our best to share these findings with ODOE, DLCD, and our counterparts statewide, we are aware that the rule presents this conflict to every jurisdiction who must weigh the relative legal questions and decide on their own approach. It seems there is a unique opportunity to ask the legislature for additional time to rectify these conflicts in a thoughtful way that. Failing that, I would encourage LCDC to advocate for an update to Goal 13.

Thank you for your consideration of these issues. I would encourage LCDC to revise the amendments to Division 33 to allow counties to opt-in to the new solar siting program, and also to consider making additional amendments to Division 23 to resolve some of these longstanding conflicts in rule and statute.

Sincerely,



Kelly Howsley Glover, PhD
Wasco County Community Development Director

March 19, 2025

Land Conservation and Development Commission
635 Capitol St NE, Ste 150
Salem, OR 97301-2540
Sent via: denise.johnson@dlcd.oregon.gov, cc: gordon.howard@dlcd.oregon.gov, jon.jinings@dlcd.oregon.gov, adam.tate@dlcd.oregon.gov

Re: Eastern Oregon Solar Siting

Dear Chair Hallova, Vice Chair Lazo, and Esteemed Commissioners;

The Association of Oregon County Planning Director (AOCPD) group appreciates the opportunity to provide comments on the Eastern Oregon Solar Siting standards.

The current proposed language requires counties to "opt-out" for Division 33 (c)(A)(ii) through an official action of County governing body. AOCPD asks the Commission to revert the rule to the original "opt-in" intention.

Our primary reason in objecting to the "opt-out" requirement is that counties will be on a time limit to evaluate options and reduce information into accessible presentation for consideration by the public and governing bodies. Citizen involvement (Goal1) is a cornerstone to our statewide land use planning program, and our citizens deserve the opportunity to participate in the process. Furthermore, while DLCD staff has been helpful in providing an overview and some individual County analysis, we recognize that there are nuances of our individual programs and perspective that are worthwhile having the time to analyze and consider. That analysis and distillation of new rules takes time. Departments across the state are already overwhelmed by the results of other rulemaking, legislative updates, and permitting. Opt-out adds another unfunded mandate that will force us to deprioritize other critical efforts, like new housing rules.

Opt-in would allow counties to allocate resources in advance to the new rules and offer it careful consideration, as is required by Goal 2, Goal 3, Goal 5, and Goal 13.

We encourage LCDC to direct staff to revise the Division 33 proposal to revert it to an opt-in standard.

With our appreciation,

Kelly Howsley-Glover
2025 President
Association of Oregon County Planning Directors

BOARD OF COMMISSIONERS

110 N Court St. • P.O. Box 788
Heppner, OR 97836
541-676-5613
www.co.morrow.or.us

David Sykes, Chair
Jeff Wenholz, Commissioner
Gus Peterson, Commissioner

March 19, 2025

Land Conservation & Development Commission
c/o Casaria Taylor and Solar RAC Staff and Members
635 Capitol St., Suite 150
Salem, OR 97301

RE: Eastern Oregon Solar Rulemaking Draft Rule

Dear Commission and Members of the Solar Rule Advisory Committee:

Morrow County requests consideration of comments on the February 13, 2025 draft Eastern Oregon Solar Rules. As background, Morrow County currently has nine (9) solar projects in various stages of permitting or development. Four of those projects have been locally permitted by Morrow County with a Conditional Use Permit, and four have been permitted by the Energy Facility Siting Council (EFSC). The most recent project, a 6,981-acre project, was submitted to EFSC this month. This makes a total 30,8287 acres of solar in Morrow County. Additionally, our Planning Department was recently made aware of an approximately 10,000-acre project that is expected before the end of the year.

We share this data to demonstrate our experience with solar siting and development and to let you know that to date, we have found solar development to be compatible with farming on adjacent lands. Solar is an option for farmers who are seeking to diversify their business and in turn solar generates revenue for the county. We recognize solar does take land out of agriculture production and to that, we have found agricultural mitigation to alleviate negative impacts to the overall farming economy. We address that in more detail below.

The rules in place have changed over time but have created a path forward for permit approval. We understand that the Oregon Legislature adopted HB 3409 which directed the Land Conservation & Development Commission (LCDC) to consider and adopt Administrative Rules for "finding opportunity and reducing conflict in siting photovoltaic solar power generation facilities." The bill and Administrative Rules focus on eastern Oregon and require consideration of natural resources, community values, and coordination with Tribal, State and Local governments. We understand one of the goals was to minimize risk and uncertainty when a project is required to file an exception to Statewide Planning Goal 3 Farmland.

The attached GIS and data include a summary of solar projects and their respective soil classifications in Morrow County. These soil classifications are based on the ORS 215.710 high-value farm definition, which is not a like-for-like comparison of the soil types used in OAR 660-033-1030 rules for solar permitting. Our GIS staff was not able to map "arable soils" as defined

in OAR 660-033-0130(38) and proposed (45)(b) since there is not a readily available GIS layer. "Arable soils" is a subjective definition that requires a determination by a governing body. However, we include the soil and acreage data to illustrate the variety of soil types permitted for solar in Morrow County. The county finds value and recommends that the soil classifications found in ORS 215.710 also be applied to solar projects rather than creating two soil classifications, one unique to solar siting.

We note that even though the Oregon Legislature directed your agency to adopt new rules, the current and previous rules have created a path forward to permitting nearly 25,000 acres of solar. The new 6,981-acre project was filed under the existing OAR 660-033-0130 (38) rule. Given this large track record, we question the need to amend siting rules. Nonetheless, we provide comments on the draft rules.

We understand there are three options for counties in the current draft rule, as follows:
1) Continue to implement the current rules found in OAR 660-033-0130(38) (same as MCZO EFU Zone Section 3.010), or,
2) Carry out a countywide Goal 5 mapping and plan exercise to include specific siting standards under OAR 660-023-0195; or,
3) adopt a new set of rules OAR 660-033-0130(42).

The draft rules require a county to take a formal action to "opt-out" of adopting one of the new rules. That does create a burden and cost to the county, and we request that counties be allowed to retain existing standards without taking formal action. Morrow County would likely continue to implement the current rules (38) unless a compelling reason were raised for pursuing alternatives (2) or (3) above and providing the state or a third party could help provide financial and technical assistance.

Option (2) above provides a comprehensive approach to evaluating solar resources in the context of Statewide Planning Goal 5. There are merits to this approach, and it would require a comprehensive comparison of impacts of solar development on other natural resources. Such an exercise would require significant resources in terms of staffing and for GIS technical and other analysis. Morrow County may consider this option if we could identify resources and if it was valuable to the farming community.

Regarding option (3), the new standards, we recognize the intent was to establish standards for siting that would allow an applicant to avoid taking an exception to Statewide Planning Goal 3 Farmland. Given the size of solar projects, and the trend that projects are increasing in size, we see little incentive to adopt this standard that would give the county jurisdiction to permit only small projects (160 acres on high value farmland, 1,280 acres on arable lands and up to 1,920 acres on non-arable lands). If the acreage threshold were raised, and we think it should be, the County would be more inclined to consider this option. To justify a code update to incorporate these standards, county recommends the acreage thresholds be raised commensurate with current (38) rules or higher.

We strongly support the language in option (3) that requires EFSC to concur with a county finding regarding mitigation measures. More specifically, if Morrow County finds that

agricultural mitigation is appropriate then EFSC should be required to support the county decision. We have found agricultural mitigation programs to be a reasonable program to offset the economic impacts to the farming economy when the mitigation is in addition to compliance with siting standards.

The subsection (e) standards in new (45) rules, option (3) include incentives to locate within 10 miles to existing transmission lines. This language is also included in option (2) standards. We think that is a reasonable standard and, while 10 miles of transmission lines are quite long, it may serve to reduce the number and length of new transmission lines across farmland.

Our final comment is a question. Could a county adopt one or more of the three standards and allow a landowner or developer to choose the more desirable permitting path?

Thank you for your consideration of our comments.

Sincerely,

MORROW COUNTY BOARD OF COMMISSIONERS

David Sykes, Chair

Jeff Wenholz, Commissioner

August Peterson, Commissioner

<u>High Value Soils</u> as defined by the ORESA Mapping and Reporting Tool: Renewable Energy Siting Assessment.

This.data.layer.depicts.areas.of.soils.as.described.in.ORS.871❶❸76(0).and.OAR.❷❷6_699_ 6686(❹)¡.These.soils.make.up.part.of.the.definition.of.ƒhigh_value.farmlandƒ.in.ORS. 7❺❶966(76)(a).andOregon.Laws.866❸Chapter.080.(Ballot.Measure.0❺)¡.Features.in.this. layer.represent.areas.classified.as.ƒcoastalƒ.and.represent.areas.of.high_value.farmland.for. dairy.operations¡.This.summary.layer.was.created.by.merging.NRCS.SSURGO.soils. shapefiles.downloaded.in.866❸and.modified.by.the.Oregon.Department.of.Agriculture¡.The. only.attribute.kept.is.hvfl(soil.which.is.based.on.hvfl(final.with.the.soil.mapunit. removed¡OAR.❷❷6_699_6686(❹)¿(d).In.addition.to.that.land.described.in.subsection.(a).of. this.section?high_value.farmland?if.west.of.the.summit.of.the.Coast.Range.and.used.in. conjunction.with.a.dairy.operation.on.January.7?.7❺❺9?includes.tracts.composed. predominantly.of.the.following.soils.in.Class.III.or.IV.or.composed.predominantly.of.a. combination.of.the.soils.described.in.subsection.(a).of.this.section.and.the.following. soils¿(A).Subclassification.IIIe?specifically?Astoria?Hembre?Knappa?Meda?Quillayutte.and. Winema·(B).Subclassification.IIIw?specifically?Brenner.and.Chitwood·(C).Subclassification. IVe?specifically?Astoria?Hembre?Meda?Nehalem?Neskowin.and.Winema·.and(D). Subclassification.IVw?specifically?Coquille¡
(ODA?866❸)

TOTAL SOLAR ACREAGE IN MORROW COUNTY: 30,799ac.

These are projects in various stages of development and permitting in Morrow County. Both State and Locally approved projects.

Percentage of Solar Project Area Occupying High-Value Soils

The total area of solar projects (Both Locally and State Permitted) in Morrow County is ~30,799 acres. Based on a high-value soils shapefile downloaded from the ORESA Mapping and Reporting Tool, ~23,972.28 acres of the ~30,799 acres in approved/applied project boundaries are classified as high-value farmland soils, primarily suited for agricultural use under Oregon's legal definitions (e.g., ORS 215.710, OAR 660-033-0020). This represents approximately **77.83%** of the solar project area. The remaining **22.17%** (6,826.72 acres) includes non-high-value soils.

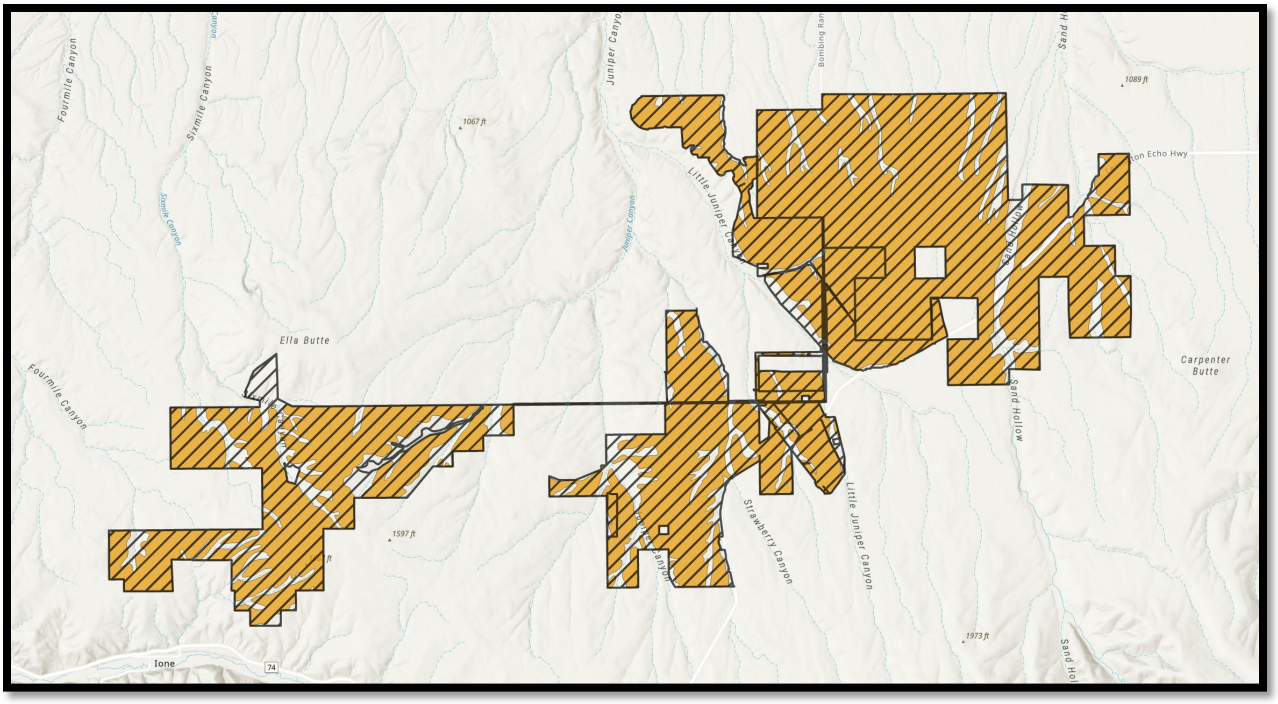
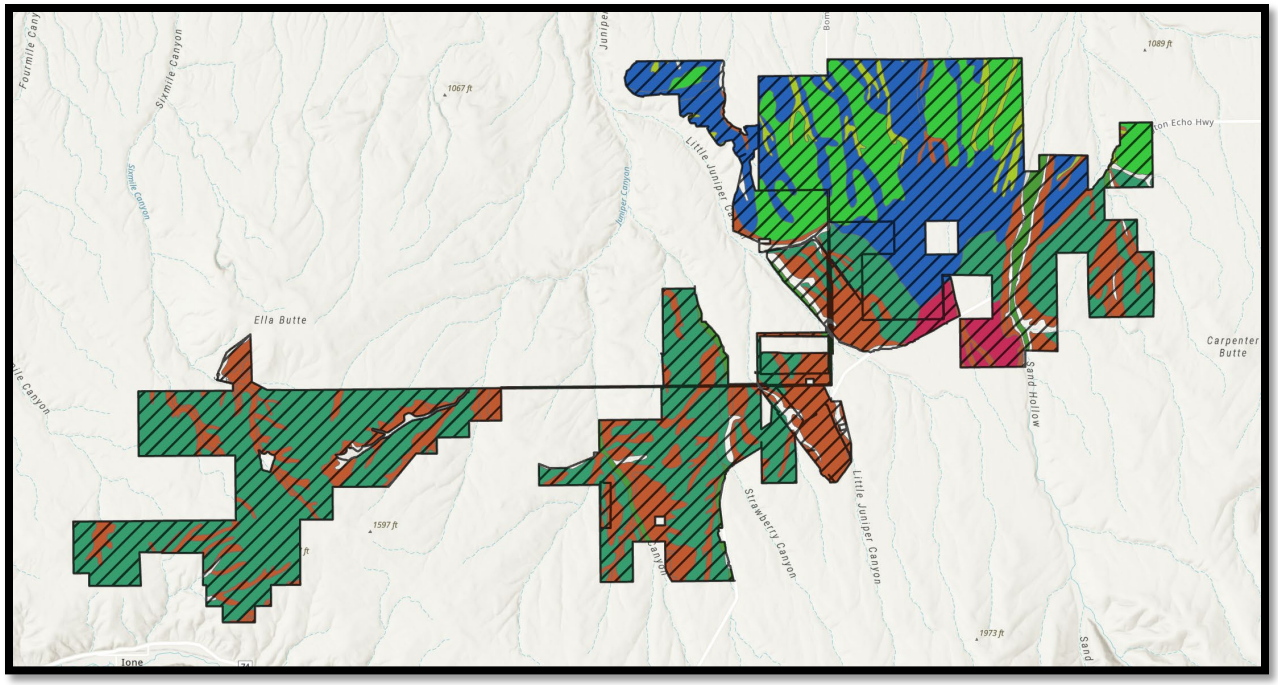


Figure.7

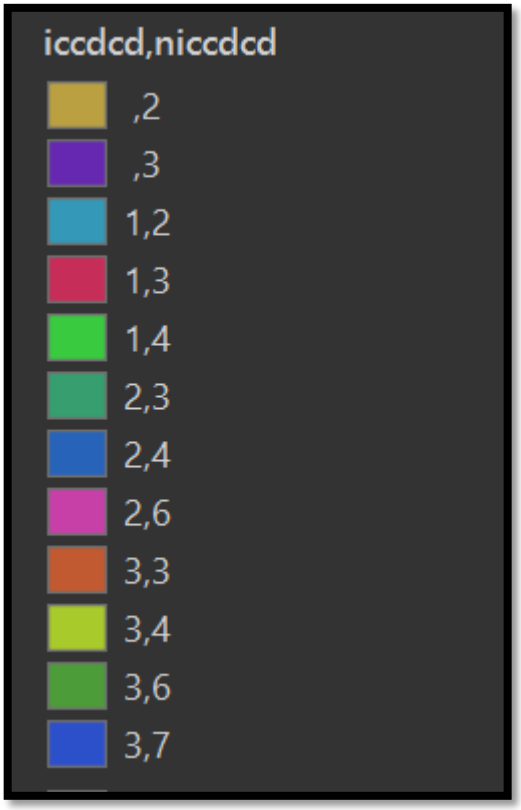
USDA Soils: (I only evaluated at an Irrigated Class)

Soil Class	**Acres**	**Percentage**
Class 1	4,172.6	~14%
Class 2	16,229.55	~53%
Class 3	7,687.56	~25%
Total	28,089.71	~92% (of 30,799ac)



ICCDCD =Irrigated Capability Class

NICCDCD= Non-Irrigated Capability Class



Ag for Oregon

Land for Tomorrow
March 20, 2025

To: Land Conservation and Development Commission:
From: Mike McCarthy PhD, McCarthy Family Farm llc
Re: Rulemaking-Solar
Chair Hallova and Members of the Commission

I represent Ag for Oregon; farmers, ranchers and forest land owners who advocate for improved conservation of our resource lands.
I am a first generation farmer in Hood River County where I derive my sole income from farming, raising apples, pears, cherries and managing our small forest. I started with 30 acres and now with my son farm 300 acres of orchard, some we own, some we lease and some we manage. By managing other farms and forest land I was able to expand my farm without farmstands, B and Bs and venues.

I have been involved in farm and forest land protection in Oregon now for 44 years. Without the Oregon Land Use Program there would be no fruit industry left in Hood River County. A $200 million dollar industry would be gone. The pear industry that produces 30-40% of pears grown in the US would be gone to subdivisions, restaurants, view homes and destination resorts. Instead we are able to grow Us grown healthy produce to fill shelves in US supermarkets all winter.

Solar and Renewable Energy
We all are aware of the huge need for renewable energy and we support expanding renewable production. A big concern is the exponential increase of electric energy use by EVs, AI, Data storage and for cooling. Unless we contain these uses we will never reasonably be able to meet Renewable goals.

-Protect High Value, irrigated and other productive farm land from solar arrays. Seek alternative sites.
-Protect water rights form loss by non use when solar is installed on farms.
-Do not assume Agrivoltaics will be widely adopted. From my experience growing many crops and operating many kinds of equipment it will be difficult to raise crops uniformly, efficiently, productively and profitably under solar.
-Prioritize solar on building, highway right of ways, parking lots. Include these sites in alternative analysis. These are already “at the grid”.
-Don’t let corporate energy companies drive the conversation.
-Do Cumulative Impact Analysis which will include the impact on Ag industries and “critical mass’ analysis.
-Build into the process decommissioning so it is guaranteed that the farmer is not responsible. Ensure land is brought back to arable with no soil contamination left.
-Do not burden farmers with new transmission line Right-of-ways. These can take many acres out of production and reduce nearby farm uses.
-Do not let EFSC control the siting of facilities on farm land. We have a land use system on EFU.
-Build in that the energy company will be responsible if the facility “melts down” from wildfire. This would include site and soil decontamination.
-Consider ground water impacts of the repeated herbicide use that will be required to control vegetation of the facility.

Oregon Association of Conservation Districts

March 24, 2024

To: Land Conservation and Development Commission (LCDC)

From: Oregon Association of Conservation Districts

Re: Proposed Eastern Oregon Solar Siting Rulemaking

The Oregon Association of Conservation Districts (OACD) represents Oregon's 45 Soil and Water Conservation Districts (SWCDs), special districts governed by elected boards. The Districts protect and enhance soil quality, water quality and quantity, and habitat by supporting voluntary conservation in partnership with private landowners and managers as well as federal, state, and nonprofit partners.

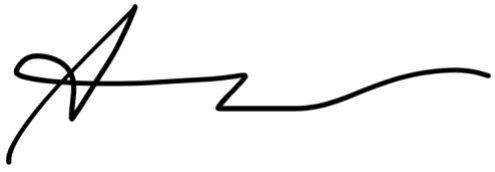
OACD's executive director served as a member of the Eastern Oregon Solar Siting Regulatory Advisory Committee (RAC). OACD firmly believes in the need for greatly expanded carbon-free renewable energy in Oregon. OACD also firmly believes that Oregon needs a healthy and vibrant agriculture and agricultural economy. Thus, OACD's position throughout the RAC process was to try to achieve sustainable co-existence between utility-scale solar and agriculture.

OACD is in support of the process used by the RAC and of the draft being considered for rulemaking. We feel the proposed rule strikes a balance between protecting farm and rangelands and meeting Oregon's renewable energy goals.

OACD supports in general the categories of farm and rangeland as used in the rulemaking. We agree with the categorization of land where the expedited process is not applicable. Although solar installations are not prohibited on these lands, the siting process should be the most rigorous and in no way expedited.

OACD strongly supports agricultural mitigation as included in Division 23. OACD's main concerns are regarding individual and cumulative impact on the agricultural viability in the area (county) surrounding a proposed solar installation. The process for siting should be efficient, provided that adequate mitigation is established.

Thank you again for the opportunity to participate in the RAC and provide comments on the proposed rulemaking.



Andrea Kreiner, Executive Director
Oregon Association of Conservation Districts
Andrea.Kreiner@OACD.org
971-988-9929

Confederated Tribes of Warm Springs, Oregon
PO Box C
Warm Springs, OR 97761
Phone: 541-553-1161
Fax: 541-553-1924

March 24, 2025

Land Conservation and Development Commission
635 Capitol Street NE Suite 150
Salem, OR 97301

Re: Rulemaking: Eastern Oregon Solar Siting ("Solar Siting rule") and Goal 5 Cultural Areas ("Cultural Areas rule")

Dear Chair Hallová and Commissioners:

I am the General Manager for the Branch of Natural Resources for the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe"), a federally recognized, sovereign Indian tribe and the legal successor-in-interest to the Indian signatories of the Treaty with the Tribes of Middle Oregon, dated June 25, 1855, 12 Stat. 963 ("1855 Treaty"). I am writing to express concerns regarding the above rulemaking efforts.

Since time immemorial, our predecessors used and occupied significant lands within what is now the state of Oregon. In our 1855 Treaty with the United States Government, the Tribe's predecessors ceded much of these lands, approximately 10 million acres, to the United States ("ceded lands"), including lands within Deschutes, Jefferson, Crook, Wasco, Hood River, Clackamas, Marion, Linn, Sherman, Gilliam, Morrow, Wheeler, Umatilla, Grant, Baker and Union counties.[1]

The 1855 Treaty recognizes the Tribe as a sovereign entity, possessing inherent rights to provide for the general welfare of its people, including the right to manage its natural resources for their benefit. The Treaty expressly reserves rights to the Tribe for its members to go outside (or "off") the Warm Springs Reservation to all of the lands and waters that it had used prior to the treaty to hunt, fish, gather roots and berries, and to pasture livestock. Those rights have been defined and upheld by federal courts since the early 1900's, meaning that the Tribe has legally enforceable Treaty protected rights in areas within and beyond the ceded lands if those areas were used by Tribal members from time to time at or before the time they entered the Treaty, and states are bound to observe these federal rights. *See Confederated Tribes v. Deschutes County*, 332 Or App 361 (2024) (holding that the 1855 Treaty was enacted as federal law and that the State of Oregon as well as its local governments must observe the 1855 Treaty).

The Tribe, therefore, has aboriginal ties, ancestral practices, and cultural and archeological connections to vast areas and resources within the state, much of which must be protected by the State of Oregon under applicable state and federal law. This is fundamentally accomplished through sovereign-to-sovereign coordination such as tribal/state co-management agreements for wildlife and fishery resources in areas throughout the state. The local decisions proposed in the above rules will impact these Tribal resources. While the Tribe understands these rulemakings to be well-intentioned, they bypass the sovereign-to-sovereign relationship that is necessary to manage these resources of tribal, statewide and regional concern.

[1] A copy of the Tribes' ceded lands map is attached.

It is incumbent on the Commission to engage in formal government-to-government consultation with Oregon's tribes on rulemaking that will impact tribal resources. *See* ORS 182.164 (policy to promote positive government-to-government relations with tribes). Further, the State of Oregon should be a leader in implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which provides, among others, that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."[2] The Tribe acknowledges and appreciates that the Commission's staff have engaged in staff level outreach, however, rules advisory committee engagement and/or specific staff level outreach is not formal consultation. Finalization of rulemaking and/or the effective dates should be paused until formal government-to-government consultation is conducted.

Without limiting the scope of concerns that could be raised during formal consultation with the Tribe and other Oregon tribes, I would like to highlight several elements within the foregoing rulemakings that exemplify why the Commission should engage in formal government-to-government consultation on the proposed rulemaking.

Delegation from State to Local Decision-Making/Solar Siting Rules. As it relates to energy facility siting, the Tribe has observed a trend that modifies the status quo of state agency decision-making in favor of local decision-making jurisdiction. The Tribe recognizes the legislative role in this trend and the complex interests involved in these decisions. With each incremental step away from sovereign-to-sovereign management to local control without formal tribal consultation, however, the Tribe has been concerned about state abrogation of its obligations to tribes.

For example, the Tribe understands that a primary goal of the proposed rule is to relieve the process from requiring an exception to statewide planning goal 3 – the agricultural lands goal. The Tribe is confident that local county jurisdictions are well-equipped to address impacts to agricultural lands (among other factors). However, the current draft removes any maximum acreage size limit for local jurisdiction over projects located on non-arable lands. These lands are typically in a currently undisturbed condition. It is on these lands, therefore, where tribal wildlife, roots, cultural plants, cultural landscapes and other tribal natural, cultural and archeological resources will be disproportionately impacted. In other words, the draft Solar Siting rule could fully delegate state decision-making to local jurisdictions on projects that either singularly or cumulatively are likely to pose major impacts to tribal resources and that involve impacts to resources at a scale never before considered by local governments.[3]

The State of Oregon is in the midst of a generational shift in its energy resource portfolio. The last time this occurred with the construction of the Columbia basin federal hydropower system, it was at the expense of tribal resources. *See* Historic and Ongoing Impacts of Federal Dams on the Columbia River Basin Tribes, U.S. Department of the Interior (June 2024). This tragic history underscores the critical importance of a meaningful and coordinated sovereign-to-sovereign relationship as it concerns tribal

[2] *See* Article 19.
[3] The Tribe further shares Morrow County's question regarding the need to further amend the siting rules in light of current siting progress. *See* March 19, 2025 Morrow County Board of Commissioners letter to LCDC Re: Eastern Oregon Rulemaking Draft Rule.

resources that support the very identity and welfare of tribes, particularly at the scale considered in the draft Solar Siting rules.

Local Designation and Evaluation of Tribal Resources. Each rule includes provisions where a local jurisdiction would designate and/or evaluate tribal cultural resources. The Tribe is not comfortable with local inventories of tribal cultural resources, is not comfortable with the procedures in the Cultural Areas rule relating to initiation and review of proposed inventory sites, and we do not understand how local decision makers, alone, are qualified to evaluate and determine the significance of tribal resources particularly at the scale contemplated in the Solar Siting rules. In addition, the Tribe objects to sensitive cultural resource reports being submitted to local governments that become a part of a local land use record. While we recognize the confidentiality language in the rule language, this is not sufficient. In the Tribe's experience, informational custody is necessary to protect this information from inadvertent disclosure and the unfortunate consequences of looting, destruction and/or desecration of sites.

Administrative Capacity/Adaptive Management/Solar Siting Rules. At the scale of development anticipated and necessary to achieve Oregon's energy decarbonization goals – goals that the Tribe supports – efficient administration of applications and projects and adaptive management of resources is going to be critically important. This supports retaining a sovereign-to-sovereign relationship in project siting. Differing local jurisdiction processes, available information and approvals, instead of a centralized state authority and transparent information bank, shifts burdens onto tribes to track and manage applications and resulting programs established to mitigate/compensate for tribal resource impacts—these are capacity resources that tribes do not have. The Tribe is also concerned about county capacity to address the increased siting authority.

Conclusion. The Tribe understands that local land use decision making is an expression of community values, and the Tribe respects and coordinates with its county and municipal neighbors. The scope of the Solar Siting and Cultural Areas rules, however, exceed customary local siting matters and create increased burdens on tribes.

As to the Cultural Areas rule, the Tribe appreciates the desire to improve *existing* local decision-making to better consider tribal cultural resources; however, the Tribe remains wary of the program established, particularly the inventory provisions.

Related to the draft Solar Siting rule, the Tribe supports the solar industry and understands the industry's call to reduce the complexities of Oregon land use siting. A fair reading of the current draft does not appear to achieve this goal. Instead of encouraging efficiencies in a centralized siting office that can coordinate procedurally and substantively on a sovereign-to-sovereign basis with tribes, it instead seeks to delegate existing exclusive state jurisdictional matters to multiple local jurisdictions to evaluate complex, large scale development impacts on tribal resources that are of statewide and regional concern.

Both of these rulemakings directly affect tribes. Accordingly, the Tribe requests that the Commission conduct statewide formal government-to-government consultations with Oregon tribes before finalizing these rules for implementation.

Through formal government-to-government consultations, the Commission will better learn about the history of tribal resource degradation, its impact to tribal communities, the mechanisms that facilitated these impacts and how tribes can work as partners to achieve common goals.

Sincerely,

Austin Smith Jr., General Manager
Branch of Natural Resources
The Confederated Tribes of the Warm Springs
Reservation of Oregon

cc: Geoff Huntington
CTWS Tribal Council

DLCD Rulemaking Comment Form Submission 4

Form submitted at 4/3/2025

Name: Nicole Chaisson

Email Address: Nchaisson@gmail.com

Organization or affiliation: Property Rights Oregon - Wasco County

Rule: OAR 660 (4, 6, 23, 33): Eastern Oregon Solar Siting Possibilities

Comment: DLCD and ODOE do not understand the extreme fire risks in Central Oregon. I live in Wasco County, near the end of the Columbia Gorge venturi, where the winds are strong. Summers are dry, and we are a tinderbox. We have no paid firefighters. We are all volunteers, using water tanks on pickups, hoes, shovels, and tractors with discs. Fighting a solar panel fire with water is not an option, and the acres of lithium batteries used to store solar and wind are subject to high temperatures and thermal runaways. Fire extinguishers cannot put out lithium battery fires—only smother them and hopefully slow them down. The Moss Battery plant fire burned for 6 days in California, and they had full firefighting capabilities. If you are going to site these projects in orange (your wildlife map), high-risk areas, you need to mandate better protection from fire. Siting these projects closer than 1/2 mile of a residence is unsafe. Two miles is best, but I'm guessing that won't fly with you or your developers or the state mandates. The bonds and escrows that these companies provide are funded annually or at a specific year (ours was 15). If the company goes bankrupt, is the bond still in force? I'm guessing it was the first to go unpaid when the company started having problems. Our escrow for Biglow (PGE) is $18.7 million… enough money to take out perhaps 1/3 of the towers. ODOE and DLCD are the "third" parties that say yay or nay for the amount, and they approve it. You can't have the arbitrator in bed with one of the parties. Finally, these projects are being sited on good crop ground. It may not meet the state definition of "premium" ground, but most of us farming make a damn good living off of it. We love our way of life. We need a hold harmless clause for normal farming practices. Without a hold harmless clause, we will be bankrupt if we start a fire (with extremely hot equipment or a spark during mowing) that burns into a solar or wind facility. Have you thought about the impact on people who will be surrounded by these solar farms? The wildlife will be restricted by chain link fences. We live in the country for the vistas people travel here for the same. We should not be a dumping ground for billion dollar companies to reach their green energy subsidies. My electricity bill has gone up over 50% and it will increase so that our privately owned company Wasco Electric can retrofit their lines for the power to be sent to the valley or the closest data center. Why do we have to pay more to subsidize billion dollar companies? A smarter thought is to require all new buildings to have solar. This includes parking lots to have solar roofs. Tom Mcall would be spinning in his grave to see our rural Ag land turned into a fire risk eye sore.

DLCD Rulemaking Comment Form Submission 3

Form submitted at 4/3/2025

Name: Kathy McCullough

Email Address: captainkathymccullough@gmail.com

Organization or affiliation: Retired living under Biglow wind farm

Rule: OAR 660 (4, 6, 23, 33): Eastern Oregon Solar Siting Possibilities

Comment: DLCD and ODOE do not understand the extreme fire risks in eastern Oregon. I live in Sherman County, at the end of the Columbia Gorge venturi, where the winds are strong. Summers are dry, and we are a tinderbox. We have no paid firefighters. We are all volunteers, using water tanks on pickups, hoes, shovels, and tractors with discs. Fighting a solar panel fire with water is not an option, and the acres of lithium batteries used to store solar and wind are subject to high temperatures and thermal runaways. As an airline pilot on a Boeing 747 cargo plane, I trained each year and had three different extinguishers for fires. None of them could put out lithium battery fires—only smother them and hopefully slow them down until landing. Over the Pacific Ocean, landing was not an option—only ditching was. The Moss Battery plant fire burned for 6 days in California, and they had full firefighting capabilities. If you are going to site these projects in orange (your wildlife map), high-risk areas, you need to mandate better protection from fire. Siting these projects closer than 1/2 mile of a residence is unsafe. Two miles is best, but I'm guessing that won't fly with you or your developers or the state mandates. The bonds and escrows that these companies provide are funded annually or at a specific year (ours was 15). If the company goes bankrupt, is the bond still in force? I'm guessing it was the first to go unpaid when the company started having problems. Our escrow for Biglow (PGE) is $18.7 million… enough money to take out perhaps 1/3 of the towers. ODOE and DLCD are the "third" parties that say yay or nay for the amount, and they approve it. You can't have the arbitrator in bed with one of the parties. Finally, these projects are being sited on good crop ground. It may not meet the state definition of "premium" ground, but most of us farming make a damn good living off of it. We love our way of life. We need a hold harmless clause for normal farming practices. Without a hold harmless clause, we will be bankrupt if we start a fire (with extremely hot equipment or a spark during mowing) that burns into a solar or wind facility.

DLCD Rulemaking Comment Form Submission 5

Form submitted at 4/4/2025

Name: Jennifer Gunter

Email Address: Jennof4@gmail.com

Organization or affiliation:

Rule: OAR 660 (4, 6, 23, 33): Eastern Oregon Solar Siting Possibilities

Comment: I strongly oppose the Eastern Oregon Solar Siting Rules under DLCD review. These rules exhibit critical deficiencies and inequities, disproportionately harming Eastern Oregon farmers and citizens with grossly insufficient protections against wildfires, financial ruin, and land loss. I urge rejection. Eastern Oregon's fierce winds and arid summers, often exceeding 100°F in Wasco and Sherman Counties, fuel extreme wildfire risks, yet OAR 660-033-0130 proposes mere half-mile setbacks. Solar panel fires and lithium battery runaways should demand two-mile buffers, or more—Sherman's volunteer firefighters, limited to shovels and pickup tanks, lack capacity to contain such threats. OAR 660-033-0130(8)(g)'s optional fire mitigation is a hollow gesture; the Moss Landing fire, evacuating 1,500-2,000 despite professional crews, not just volunteers dwarfing rural resources. Nollan v. California Coastal Commission (483 U.S. 825, 1987) mandates conditions match risks—this failure risks mass displacement and rural devastation. Decommissioning bonds, like Biglow's $18.7 million, are grossly insufficient covering a fraction of cleanup costs if developers fail, with no OAR 660 enforcement ensuring payment post-bankruptcy, shifting the burden to taxpayers. Rural Eastern Oregon lacks urban Portland's financial depth to absorb this—OAR 660-023-0110 protects wildlife zones but ignores fire threats to our sagebrush and wheat fields, risking TOTAL LOSS without rural-specific safeguards. Viable cropland, the economic lifeline for Eastern Oregon farmers, faces conversion—OAR 660-033-0130(3)(i)(A) exempts only Class VII-VIII soils, leaving Class VI fields, a damn good living, unprotected without compensation! Decades of stewardship erased for urban profit is indefensible, rural economies suffer while developers thrive. The absence of a hold harmless clause compounds this inequity. A harvest spark, from mowers or tractors, could ignite a solar site, bankrupting farmers with no recourse. Lucas v. South Carolina Coastal Council (505 U.S. 1003, 1992) deems this loss of use a Fifth Amendment taking, stripping land value without pay; Klamath Irrigation District v. United States (348 Or. 15, 2010) requires fair process; Penn Central Transportation Co. v. New York City (438 U.S. 104, 1978) warns of takings via economic hardship. These rules favor developers over rural equity—the eyesore, displacement risk, and economic devastation far outweigh ANY benefit. Vote NO to protect Eastern Oregon's rights and historical livelihoods. Jennifer Gunter Wasco County

EASTERN OREGON SOLAR SITING RULEMAKING ADVISORY COMMITTEE

MEETING PACKET #11

February 13, 2025

TO: Solar Siting Rulemaking Advisory Committee Members
FROM: Adam Tate, Renewable Energy Planner
SUBJECT: Rulemaking Advisory Committee (RAC) Meeting Packet #11

Dear Solar Siting Rulemaking Advisory Committee Members,

Thank you for continuing to bring your experience and expertise to this rulemaking process, we are grateful for the time and energy you have dedicated to helping us. As you know LCDC has extended our RAC process for two more meetings, the first of these is coming up next week on Thursday, February 20th. In this packet you will find a Meeting Summary from our January 9th RAC meeting, as well as updated rule drafts for Divisions 4, 6, 23 and 33. These new drafts have been simplified and changed in direct response to feedback from the RAC, from LCDC and public comments we have received. The new drafts for Divisions 23 and 33 are now in a format that will hopefully allow all of you to look at the language, look at the department's commentary on that language, and look at issues for discussion at the meeting. The most significant structural change in these new drafts is that they split the two options for Eastern Oregon counties between a direct application for sites (in Division 33) and the "areas" approach (in Division 23).

The new drafts for Divisions 4 and 6 are not as detailed as the drafts for Divisions 23 and 33 because they only have one or two issues each that we need to resolve. As usual, Divisions 23 and 33 will be the primary focus for us. Please take a look at these drafts ahead of time and come prepared to discuss them.

Following this RAC meeting, LCDC will have a public hearing on the rules at their March 20-21 meeting in Salem. Following that there will be an additional RAC meeting on April 2nd before the public comment period closes on April 11th.

The RAC meeting will be on Thursday, February 20th from 9:00 am to 4:00 pm PT, held virtually over Zoom for all participants.

RAC Meeting Packet Contents:

1. Cover Memo
2. Meeting Agenda
3. Summary from 10th RAC Meeting
4. Updated draft rule language for Divisions 4, 6, 23 & 33

To attend the all-virtual meeting please use the following Zoom link for the meeting:
Topic: DLCD: Eastern Oregon Solar Siting RAC Meeting
Time: Feb 20, 2025 09:00 AM Pacific Time (US and Canada)
Join Zoom Meeting
https://kearnswest.zoom.us/j/86268276628?pwd=ifzklpUmMJcaAedUrN9hYPJt2xyT55.1
Meeting ID: 862 6827 6628
Passcode: 001280

Casaria Taylor will be providing support for the Zoom meeting.
Casaria.taylor@dlcd.oregon.gov 971-600-7699.

Members of the public can livestream the meeting on the DLCD YouTube Channel
Oregon DLCD - YouTube

For reference all statewide planning land use planning goals may be found here. Information for this committee, including background information and meeting materials may be found on the Eastern Oregon Solar Siting project page Department of Land Conservation and Development : Eastern Oregon Solar Siting Possibilities : Laws and Rules : State of Oregon.

Thank you,

Adam Tate
Renewable Energy
Planner
Pronouns: He/His
Oregon Department of Land Conservation and
Development
Cell: 971-446-1079 | Main: 503-373-0050
adam.tate@dlcd.oregon.gov | www.oregon.gov/LCD

Jon Jinings
Community Services Specialist
Pronouns: He/His
Oregon Department of Land Conservation and
Development
Cell: 541-325-6928 | Main: 503-373-0050
jon.jinings@dlcd.oregon.gov | www.oregon.gov/LCD

AGENDA

Oregon Department of Land Conservation and Development (DLCD) - Solar Siting Rules Advisory Committee (RAC) Meeting

Date and Time

February 20, 2025, from 9:00 am – 4:00 pm PT

- The meeting will be held virtually via Zoom.
- Members of the public can livestream the meeting at https://www.youtube.com/@OregonDLCD.

Desired Outcomes and Purpose

- Discuss and resolve outstanding sections of the rule.
- Vote on rule package.

Note that if revisions end early, the vote would occur earlier.

Agenda

Time (PT)	Topic	Lead
9:00 – 9:10 am (10 min)	**Welcome and Roll Call**	Jamie Damon, Kearns & West Facilitator
9:10 – 10:00 am (50 min)	**Status of Revised Rules** • Presentation • Clarifying questions	DLCD
10:00 – 10:50 am (60 min)	**Rule Revisions Continued**	All
10:50 – 11:00 am (10 min)	*Break*	All
11:00 am – 12:00 pm (30 min)	**Rule Revisions Continued**	All
12:00 – 12:30 pm (30 min)	*Lunch Break*	All

12:30 – 2:00 pm (90 min)	**Rule Revisions Continued**	All
2:00 – 2:10 pm (10 min)	*Break*	All
2:10 – 3:30 pm (80 min)	**Round Robin Vote**	All
3:30 – 4:00 pm (30 min)	**Next Steps and Closing** • Timeline • RAC Report	Jamie Damon, Kearns & West Facilitator

Eastern Oregon Solar Opportunities Rulemaking Advisory Committee (RAC) Meeting Summary

January 9, 2024, RAC Meeting #10

9am – 5pm

Location: Virtual (Zoom)

This meeting was livestreamed, recorded, and available for viewing at https://www.youtube.com/Oregondlcd.

The following is a high-level summary and meeting overview. Please review the recording and archived meeting packet for details and presentation slides.

Meeting Attendees

RAC Member Attendees:

- Andrea Kreiner, Oregon Association of Conservation Districts
- April Snell, Oregon Water Resources Congress
- Bill Richardson, Rocky Mountain Elk Foundation
- Brandon McMullen, Harney County Planning Director
- Commissioner James Williams, Lake County
- Damien Hall, Oregon Solar+Storage Industries
- Dan Orzech, Oregon Clear Power
- Dugan Marieb, Pine Gate Renewables
- Elaine Albrich, Davis Wright Tremaine
- Emily Griffith, Renewable Northwest
- Greg Corbin, Green Diamond Resource Company
- Laura Tabor, The Nature Conservancy
- Marc Hudson, Oregon Agricultural Trust
- Mike W. McArthur, Community Renewable Energy Association
- Mike Totey, Oregon Hunters Association
- Max Yoklic, New Sun Energy
- Michael Eng, Lostine Fire Wise
- Thad Eakin, Oregon Wheat Growers League

Ex-Officio Attendees:

- Brian Cochran, Oregon Department of State Lands
- Chad Higgins, Oregon State University
- Commissioner Mark Bennett, Land Conservation and Development Commission
- Dan Hubner, Oregon Department of Forestry
- Jeremy Thompson, Oregon Department of Fish and Wildlife
- Todd Farmer, Oregon Military Department
- Tom Jackman, Oregon Department of Energy

DLCD Staff Attendees:

- Adam Tate, Oregon Department of Land Conservation and Development
- Alyssa Bonini, Oregon Department of Land Conservation and Development
- Amanda Punton, Oregon Department of Land Conservation and Development
- Casaria Taylor, Oregon Department of Land Conservation and Development
- Dawn Hert, Oregon Department of Land Conservation and Development
- Gordon Howard, Oregon Department of Land Conservation and Development
- Jon Jinings, Oregon Department of Land Conservation and Development
- Kirstin Greene, Oregon Department of Land Conservation and Development

Welcome, Opening Remarks, and Agenda Review

Jamie Damon, Kearns & West, introduced herself as a neutral third-party facilitator and facilitated introductions between RAC members. Jamie provided an overview of the meeting agenda and objectives. Commissioner Mark Bennett, of the Land Conservation and Development Commission provided brief opening remarks.

Cultural, Historical, Archeological, and Additional Updates

Jon Jinings, Department of Land Conservation and Development (DLCD), shared the Department's expectation for another RAC meeting following the January 23rd LCDC meeting. DLCD staff shared they were unable to provide updated maps prior to the meeting. Previously, the RAC had discussed maps as a possible illustrative tool to better understand how these rules would apply on the ground. After seeing the maps over the last couple of meetings, Jon asked the RAC if they would like room to consider the possibility of making other lands more available. Jon summarized DLCD's additional considerations for RAC discussions:

- Non-irrigated lands with irrigation districts and or AVAs
- Lands meeting the definitions at ORS 195.300(10)(c) and (f) that have no history of irrigation
- Not requiring agricultural mitigation for any class VI soils
- Recognizing that simple conditional use opportunities on forestlands are likely to be elevated from 10-acres to 240-acres
- Staying the course and including this issue in the "scheduled review" set to occur in a couple of years or less

Jamie facilitated a discussion among RAC members:

- **Irrigation Districts.** RAC members reflected on the variety of opportunities for additional solar development while ensuring protection of Oregon's various key resources. A RAC member shared that there could be a variety of opportunities for potential solar and other renewable energy development with partnership and within irrigation districts, but that it is too late in the process for additional discussions on siting within complex irrigation districts.

- **High Value Farmland.** RAC members discussed acreage thresholds within high value farmland and what areas could go through a siting determination process without needing an Energy Facility Siting Council (EFSC) exception.
- **RAC Capacity & Timeline.** While some RAC members expressed appreciation for DLCD's additional considerations, they also expressed that it indicates how much work still needed to be done to bring final recommendations to the LCDC. A RAC member suggested suspending the RAC until after the 2025 Oregon Legislative Sesson. Another RAC member recommended moving forward with what we have done-to-date and revisiting DLCD's additional considerations during the program review in two years.
- **Tribal Consultation and/or Communication.** A RAC member asked to know more about the Goal 5 Cultural Areas rule making. DLCD shared that on December 5th, 2024, LCDC passed the Goal 5 Cultural Areas Rule to require Tribal consultation and developer and/or applicant engagement with the nine federally recognized Tribes in Oregon. A RAC member asked if consultation is required with the Tribes that have treaty rights over resources in Oregon outside of the nine federally recognized Oregon Tribes. DLCD indicated that the additional engagement would be voluntary, and that Counties where development is sought could provide guidance. There was also discussion on each Tribe having their own definition of consultation and Governor Kotek's active Tribal Consultation Task Force. The RAC discussed how best to characterize the new coordination requirement in this rule making and agreed to change "consultation" to "communication" and "in coordination with" any federally recognized Indian Tribe that may be affected by an application.

The RAC elevated the importance of consistency, especially with the new Goal 5 rules and the Energy Facility Siting Council (EFSC) process.

Outstanding Sections (23, 33, 6 and 4)

Division 23

The RAC reviewed the Division 23 language included in the meeting packet. Jamie facilitated a discussion among RAC members regarding Division 23.

- **Agricultural Mitigation.** The RAC discussed mitigation payments and the use of a mitigation calculator. A RAC member suggested phrasing to clarify that the purpose of mitigation payments is to replace economic value that is lost in the agricultural economy, and the RAC agreed. Another RAC member asked for examples of each mitigation requirement to better understand a project's potential cumulative mitigation obligation. One RAC member highlighted that the charge of the RAC is to identify low conflict areas and expressed concern cumulative mitigation requirements was in conflict with the charge.
- **Historic, Cultural, and Archeological Resources Mitigation.** The group discussed this in the updates section above and decided to change "consult" to "coordinate and communicate".

- **Community Needs and Benefits.** RAC members discussed the rate per megawatt nameplate an applicant would be required to commit to. Some RAC members expressed concern around additional developer costs from agricultural and habitat mitigation and felt $1000 per nameplate megawatt is too high. A RAC member suggested $250-$300 and another suggested offering a range. The RAC discussed offering a set of examples conveying the variety of mitigation and community benefits cost, as a starting place for negotiations between Counties and developers
- **Program to Achieve the Goal.** RAC members reviewed the revisions discussed in the previous RAC meeting, and the requirements for noticing. One RAC member suggested the rules should have different notice requirements for sites versus areas. For areas, it's the full entities list, and for sites, it's the agencies that likely have an interest in verifying the information that is being submitted for the site.

Division 33

The RAC reviewed the Division 33 language included in the meeting packet. Jamie facilitated a discussion among RAC members regarding Division 33.

- **Specific Eastern Oregon Section.** In a previous meeting, DLCD indicated their preference to have two rule sections, with one specific to Eastern Oregon. Some RAC members shared they do not see the need for any separative changes to Division 33 and one RAC member suggested a cross reference to Division 23 to indicate that only sites or areas in Eastern Oregon qualify, helping to determine sites or areas that can use the pathway in division 23 to avoid a goal exception. Some RAC members agreed with this suggestion and found the separation over complicated.
- **Temporary Workforce Housing.** Several RAC members agreed to keep temporary workforce housing in the solar facility definition.
- **Acreage Thresholds.** The RAC discussed acreage limitations and thresholds. Some RAC members expressed concern with the rules as written, stating that the RAC may have identified low conflict locations, but have not streamlined the permitting for facilities in those locations. DLCD indicated it was the charge of the RAC to find balance for solar development and other land uses. Several RAC members brought forward new proposals aimed at elevating acreage thresholds, but the RAC was limited in their time to deliberate on these new proposals.

Some RAC members expressed concerns about scope creep, and divergence from directive in Division 33. A RAC member proposed scrapping all changes to Division 33 except for keeping temporary workforce housing in the solar facility definition; keeping the crosswalk to Division 23 for Eastern Oregon projects; and keeping permit validity/term language – essentially deleting all other new language and revert to existing adopted rule language. A majority of the RAC supported the proposal, in addition to moving new provisions to Division 23.

Division 6

The RAC agreed to move forward with the terminology “parcel” instead of “tract”.

A RAC member proposed increasing the forestry parcel acreage limit to 240, while some RAC members questioned why we are not having similar discussions for agricultural lands. RAC members discussed revisiting acreage thresholds and their applicability in future reviews.

A RAC member called for a vote to approve the recommendation in its current form, with the agreed upon amendments. A majority of the RAC voted in support of moving Division 6 forward. One RAC member objected to the underlying policy development process of only considering adjustments for forestry and not for agricultural lands, and a RAC member seconded. One RAC member expressed neutrality.

Division 4.

The RAC discussed the “Reasons” for exceptions, and a county’s obligation to limit the uses to those that are zoned within that exception and retain the underlying zone. One RAC member highlighted that the rules as written apply a similar concept to those counties that have adopted limited use zoning. One RAC member suggested allowing counties the flexibility to approve a concurrent zone change, while another RAC member shared that they were comfortable with adding that language.

Jamie called for a vote to move forward on this section. RAC votes were split, with a slight majority voting to move this forward. Some RAC members were slightly supportive, while others showed strong support. The RAC highlighted several concerns for LCDC consideration including retaining the underlying zone as assurances for agricultural use in the future and encouraging counties to consider zone-changes that allow development outright while limiting conflict and the need for mitigation.

Preliminary RAC Vote & Considerations

Jamie facilitated a fist-to-five vote among RAC members. Each voting RAC member was called on in last-name-alphabetical-order for them to share their level of support for the package of rules using the "fist to five" voting method and offering any additional suggestions, considerations or comments. Fist to Five is accomplished by raising hands as in voting, with the number of fingers raised indicating levels of support. RAC members can also choose not to vote by saying "I Abstain".

- A fist means, “I vote NO, I don't support any of it. This should not move forward."
- 1 finger means, “I don’t like most of this but it's not a hard no." or, “I think there is lots more work to do to gain my support”
- 2 fingers means, “I don’t support a lot of this, but I am not going to block this moving forward”
- 3 fingers means, “I am in the middle somewhere. Like some of it and do not like some of it. But I support moving forward"
- 4 fingers means, “This is mostly fine, support moving this forward."

- 5 fingers means, “I like this a lot. I give my full support.”

Jamie shared that it is in LCDC’s interest to see the RAC member’s various levels of support on the different concepts being proposed, their concerns, and the alternatives or tradeoffs the commission should consider.

Elaine Albrich: I am a 1. For Division 4, I object to all changes. I object to the language that would prevent a county from approving a concurrent zone change application with a goal exception for a solar facility. With Division 6, I support the increase in the goal exception and increasing the acreage threshold from 10 to 240 but have concern around the underlying policy development process of only considering adjustments for forestry and not for agricultural lands. For Division 33, I support the cleanup language for the predominance test. I object to all the proposed new language except the clarification that the definition of solar pv facility includes temporary workforce housing as an accessory, cross walking acreage thresholds to division 23, and keeping the permit validity and term language in there. With respect to Division 23, I respect the work the RAC has done and the time that has been committed to making Division 23 what it currently is. I respect and appreciate the collective effort and consensus building we have done over many months of gathering. I do not think we are there yet, and based on the current draft, I must vote no on moving it forward. There are some good elements in Division 23, particularly relating to agricultural mitigation and the community benefit agreement provisions. The rest of the rule structure is incredibly complicated and will be hard to navigate. I propose an alternative path forward for the RAC to consider whereby we increase the Goal 3 exception acreage thresholds to align with 215446 and the EFSC jurisdictional thresholds and allow projects to move forward with local review before counties without a goal exception, subject to the county approving a community benefit agreement that includes an agricultural mitigation element.

Greg Corbin: As a representative of the timber industry and forest products sector, I support the changes made in Division 6. I remain disappointed that we did not make more progress there and did not have a broader set of voices to address issues around forestry. My greatest concern at this point is that we have created a process, criteria, and restrictions that will result in these rules not being a widely used process and likely will not move the needle significantly. I do not think we have produced a process that is going to be widely used. For that reason, I have a hard time fitting where I stand in a fist to 5, so I am going to put myself in the middle with a 3 or 3.5. There has been a lot of good work done. I think that with some additional focus and time we might be able to move the needle further. But I do not think we are there yet, and I would not recommend moving the package forward in its current state.

Michael Eng: I am a 3 at this point. I have been disappointed with the lack of participation by the Public Utility Commission and the utilities. I think that has hindered our understanding of all the requirements and where our flexibility and options are. I think there has been inadequate representation of the broader public interest. The industry folks have done a great job at helping us understand what they would like and what they need, but they are a special interest trying to maximize benefits to the industry. My effort and goal have been to try and create incentives so that

the communities being impacted by this will feel that they're getting something meaningful and worthwhile from it, and that they're not being taken advantage of financial interests. Although our county Commissioner and our planner have done a great job providing valuable input, I feel like this burden is going to fall on county planning departments. I would have liked to see more input from the counties. I see incentives included in community benefits. I think increasing thresholds for agricultural lands is quite arbitrary and we will face resistance. If you look nationwide, and at this new administration, there has been a tremendous amount of resistance increasing around renewable energy projects. There is a great deal of Nimbyism out there. People are not seeing the benefit to their communities. The industry is going to have to flex and get creative to figure out how you make these projects attractive and supported by a community. How do we get people to embrace this as in their own self-interest and know they are getting some real benefit out of it? I think we have done some great work. I think we have been respectful in listening to each other. But I think we have not gotten something that is moving forward for the broader general interest and statewide interest for these projects.

Emily Griffith: I am a 1.5. We have come a long way on building consensus. My concern is around those places that seem uncertain or vague, that are easily appealable, and it plays into the larger questions of whether the program will be used. With the mapping exercise, we saw how much area was potentially eligible, and how much of the criteria were not able to be mapped. It is concerning that there might be even less available land than previously shown. What we heard from our members is that the criteria is still a bit complicated, and as Elaine mentioned, the ability to apply them. We have come a long way on consensus, but I do not know if one more meeting will achieve that.

Damien Hall: I would be at a 1. There is one thing in here that benefits solar, and that would be a path to increased acreage. Unfortunately, we have made that path too complex, and I am not sure if it exists. As a group, we are suffering from a flawed starting point- the vehicle that was delivered to us by Goal 5 is not a necessary vehicle for all this to be happening. I would be supportive of a proposal to increase acreage thresholds to jurisdictional thresholds and then allow for agricultural mitigation. The word “conflict”- we are letting it carry a lot of water here, and we need clarity on what we can and cannot achieve on that front. The idea of conflict, of making everyone happy, so that folks do not show up at a hearing and fill a county courthouse with strident opposition is illusory. A project can be better or worse for the community, but you cannot please everybody, and everybody still gets to show up and say what they think. Public sentiment about a project should not be mistaken with public policy direction about meeting the State's renewable energy goals. We cannot solve for making 100% of the people happy. I think we should invert our thinking on this. We have put up a whole bunch of gates and we cannot understand if it is even possible to increase the amount of solar that gets developed in the State. And we are like, let us come back in a couple of years and see if nothing’s happened. We need to identify where solar is allowed and revisit what is happening on the ground based on project data and revisit it frequently. Every 6 months? Let us allow the projects and then throttle it back if too much is happening. If we are trying to achieve increased renewable energy development so that we can meet the energy goals of the State, we

have a proposal that would do that. And I would shorten up reviewing timelines based on information on the ground.

Marc Hudson: I want to first reflect Greg's comments about Division 6. There is a big opportunity missed regarding forestry. With the right stakeholders, and a bit more time and energy, that would have been a broad area of work. I reflect Mike's comments about the Public Utility Commission and agrivoltaics. Regarding Division 23 and 33, I have small stuff. I do not have a lot to say on the complexity of the process, but it would be helpful to understand what the industry is looking at. In Division 3, there is a reference to prolonged drought which I have an issue with the non-statutory definition and could mean a lot of things. For Division 33, I do not dislike Elaine's proposal in the context of that being integrated and crosswalk. I appreciate the effort at creating a boundary line around what creates aggregated localized impact from multiple projects which is beyond local capacity. I think this approach may be too simplistic. Overall, I am probably a 2.5 to a 3.

Andrea Kreiner: As I have said all along, the key pieces to me are the impact on the agricultural economy and the agricultural communities. I propose dividing things into three areas. One being the places where you go ahead and build. Another being the areas where we do not want to speed up the process. Another being the areas we do want to speed up the process, but also recognize the impact, so we need agricultural mitigation. I am opposed to arbitrarily increasing the acreage but will consider an increase in acreage with a discussion of it with mitigation. I want to know what is stopping and holding up projects. I am at 3, because I can live with it, but it is very complicated, and I do not think we are streamlining. I do not think we are harmed by these rules, but I do not think it is going to achieve our goal. I do not think the framework is enabling us to streamline this process. If I were to go back and do this again, I would have started with what is causing projects not to go through easily. I do not think more meetings will help us accomplish our goal. We need to send a report to LCDC with where we are at and with our suggestions. I think we do ourselves a disservice in saying that we could delay till after the session and come back. That's kicking the ball down the road six more months. At this point, I do not think we should be requesting more time before we give LCDC a report.

Laura Tabor: I am a 3. Like what Marc was saying, I do not know what this looks like from a developer's perspective. And thinking about Max's comment, it seems all we are doing is adding costs. We are not streamlining things, and I am trying to understand how much of that cost is from the actual cost of agricultural mitigation and community benefit agreements versus the cost of an uncertain process. When I think of Division 23, the only change we made is to remove mitigation requirements for category 5. My concern around Elaine's proposal and just increasing thresholds and narrowing in on those community benefits and agricultural mitigation pieces, is that when hammering it out, we end up with just as long of a list. What have we defined as lower conflict? Regarding the things discussed today, I am comfortable with the forest change, and glad we are planning to have a future deeper conversation about forest land use, since that is a complex issue. For Division 33, I am agnostic on where those pieces go. I do think some of those provisions like reducing wildfire risk and soil health could be opportunities to reduce conflict and improve projects. On the water side of things, I agree with Marc's comment, and have some other thoughts

on how we could tighten that language. I also appreciated Damien's comment about shorter review timelines. And if we do move forward with something, making sure that that we have the opportunity to see how it is going, because a lot of what I am hearing on the developer concerns is that we are not sure if anything is going to work in this process. I liked Andrea's thoughts on making some recommendations and document to show LCDC where we have gotten. I agree that we might just lose a lot of momentum and end up rehashing a lot of things if we wait to reconvene until after session. From my perspective, I see no harm in moving forward and trying it, but I also hear the frustration that that may not solve the problem. And that is what we are here to do.

Dugan Marieb: I am a 1 right now. We are in a bind here. From the perspective of a company that develops in 33 states, Oregon is the one that makes us think the most, especially in terms of getting projects out the door and communicating with communities and Tribes. A rigorous process is good but also slows the project and makes it more expensive. As a native Oregonian, I appreciate that we always want to find a solution that can help the people. I am with the development community, but the reason I am at a developer is because I am a true believer that these projects can really deliver clean energy, clean air, as well as economic impact in rural communities that do not get a lot of investment otherwise. In terms of agricultural mitigation and community benefits, I think Pinegate projects deliver those and deliver more clarified versions of community benefits beyond tax revenue. I like a lot of the work we have done in Division 23 to standardize some of the best practices of the solar industry. I do think we did not compromise enough. I do not think we opened enough land agriculturally, as we have people, we have talked to on the ground who are landowners who do not agree with the way the state categorizes high value farmland, because it is not high value to them. Considerations around wildlife are key. It is a narrow path to finding a project that would be able to go through this, and I would rather use the processes we already have. More specifically, I cannot support any changes that would affect things that would not go through the streamlined path, both for policy reasons and for the charge of the legislation. In which the new approval standards are required, those are out of scope. We have produced some good ideas. There is a lot of stuff here that we can use and some great drafting from Jon and DLCD. I do not think that LCDC should declare victory, at least not with the RAC's consent at this point.

Mike McArthur: For me, this has been at least three years of discussions about solar siting in Oregon. The last 6-8 months have been the most formal part of that process. It is hard to find consensus on issues when there are competing interests. And that goes back to the State having competing goals. The legislature has set up this conflict by having renewable energy goals and agricultural forest land protection goals. If we are going to achieve both, there are going to have to be tradeoffs. I want to see ways in which decision-making can be increased locally. That is a fundamental Community Renewable Energy Association belief, recognizing we represent local governments who are involved in decisions and developers who are pushing projects and policies favorable to projects. And we must find a balance. We would like to see more projects go through the county conditional use project process because we think that each project has its own individual idiosyncrasies and geography and all the economic factors socioeconomic factors. We appreciate the community benefits recognition that there must be strong community benefits for

these projects to be acceptable to folks in their communities. We think what Pinegate has done is a real model for what can be accomplished. We still have questions about how this will change the siting process at the State level. It is important to report to LCDC on what the RAC has tried to accomplish, what the problems were, and why we did not find bright and shining opportunities. I am a 3-4 on most individual Divisions. I recommend moving this forward to LCDC with both the positives and the incompletes.

Brandon McMullen: I appreciate the different perspectives in this group and applaud the membership elements of this. This has been a good process for all the competing perspectives in this. From a county planning perspective, local comprehensive planning is not easy. You have to make decisions on the constant balance of planning, along with the desire to have economic development and prosperity and clean energy. Where are all these projects going? We are talking agriculture, so how do you build that into it? I like the framework that has been put into place as far as options for counties to move forward and I like the concepts of a more pragmatic approach where a county could launch into a Goal 5 process. Going back to Michael's question on county planning staff capacity, I would say, depending on the project and the approach, we would give it our best shot given the resources and time, and you just make it work. I am somewhere between 3 and 4. I like Andrea's and Mike's suggestions for asking for feedback on what we have.

Bill Richardson: The question of what we are trying to fix is valid, and we have all been wrestling with that since day one. I keep coming back to transmission capacity as one of our biggest obstacles. I have worked on this from a narrow lens. Like Laura said, we compromised on wildlife mitigation in Division 23. I am probably a 3 or 4 on the total package moving forward, like some of the last comments. This is a RAC, and sometimes it is the advice or result of a RAC that the agency needs to make a decision. I feel like we are at an impasse, and this needs to be solved in other ways.

April Snell: I am a 3. And in reflecting on this experience and the comments by other folks, I want to commend DLCD staff for working the best they can through this process, and Jamie and the team at Kearns and West. I am in the middle, and the reasons are both substantive as well as process. I will have little time to engage in additional meetings during the session. Throughout this process there are ideas that come up around language that relates to my constituency, the districts, and their patrons. I am sympathetic to the counties and county planners, as I know those folks who do that work never have enough resources or time. Outside of my water issues, have we created a more expedited process? I do not think so because I do not understand it well. There are some things in place that protect existing resources. From the water agriculture perspective, we want to make sure there are not unintended consequences to water right holders. If you are going to have language that talks about something dealing with land in their relationship to their water supply, it is best to use existing terminology. The designation of lands within irrigation districts being high value farmland is an area with opportunities for future discussion. We want to protect water right holders, and some of them are pursuing solar or floating solar, and they are running into issues with acreage limitations and the arduous process. We have not had enough time to get into the deep, complicated issues where there's challenges, but also opportunities outside or after session. If

there is interest in having more conversation about water and irrigation districts, I would be happy to participate. There is a list of things that are not recommended because we are not there yet but do deserve additional conversation.

Mike Totey: My interest on the RAC has been around wildlife and habitat, and I am comfortable with where we ended up here. If I were just thinking about the wildlife components, I would be a strong 4. Speaking to the broader set of rules and complexities, I appreciate what others have said- Mike McArthur's talked about competing goals and that is where we are at. Overall, I am around a 3. I do not know if we have produced a streamlined process. Just today, we heard a proposal for a tenfold acreage increase, and if it were as simple as that, I believe that would have been brought up eight months ago instead of now. It is hard to have confidence that what we have here is going to resolve our issues or challenges. I am looking forward to the staff report. There's challenging work for staff to do, with a lot of information, and as much time as we have spent on this, there are still more discussions to come.

Commissioner James Williams: I am a 3-4 on Division 4. I am 4 on Division 33 and 3. I am a 4 on Division 23. I just shared a letter with DLCD, and they can share that with the RAC. For Division 6, we need a few wider perspectives on forestry at the table. I do feel like thresholds can change as they have been changing. I think we will end up tweaking things, whether in the RAC or in our own capacity representing the organizations we do and visiting legislators. Division 33, I am a 3 only with the amendments that we talked about, otherwise I am a 2. I feel like we put a lot of work into Division 23, with a lot of innovation, so I am giving that a 4. I feel I am being generous with my scoring because when I step back, I am not sure this moves the needle and actually fixes what we think is broke. I am going to be patiently watching to see how many developers and counties take advantage of this process. Land use is difficult. It is not my expertise; it is not my background. I know there are big challenges in our State, and I'm not sure this process is going to solve those problems. It is important to move forward with what we have produced so far. Oregon is continuing to lead the way and making mistakes, and we are trying to pave a road to what we feel needs success. I appreciate the thoughtful process and comments throughout the day. Personally, this has been educational for me, and I have learned a lot. There is a lot more work to do.

Max Yoklic: It has been a pleasure getting to know everybody and learn different perspectives. I think this roundtable discussion has been the best discussion we have had on these issues, and that shows how much work has gone into it, and what we are honing in on. From the developer side, I have spoken to the consensus that this program is not going to be used because it is too complex, nascent, and potentially subject to litigation and new case precedent. We've identified some lower conflict sites, and we have produced a new pathway, but that pathway is not streamlined or efficient. We are not expediting the outcomes of trying to achieve more renewable energy projects in better locations. That became apparent through the mapping process. There is more work to do, and I agree with other RAC members around needing to revisit solar rules with more frequency and not doing this every five years. As Mike McArthur said, land use is at odds with our clean energy goals. The smart people here give me hope that we can get to a good outcome. Despite people's fist to five numbers, I heard almost every RAC member say they either do not

think this will achieve the goal of the legislature or this is not expedited path, or this is not going to be used, and that means were not there yet. We produced good agricultural mitigation and community benefits and a pathway for more strategic and creative community involvement. I think the agency wants to test this Goal 5 proposal, despite the developer community proposing changes to the goal exceptions in the first meeting and throughout the process. I will leave the RAC and the department with a compromise proposal: leave Division 23 and let us see what the counties do and the administrative burden they face. Keep agricultural mitigation in the context of community benefits, and give that approval to the counties, and we let the counties decide what community benefits and agricultural mitigation is appropriate per project based on community inputs. We put cultural, historical, archeological, and ODFW habitat mitigation policies in Division 33. We could raise Goal 3 exception thresholds and raise new county jurisdictional thresholds. Thanks everyone for their hard work, it has been a pleasure, and I hope we can get to an outcome.

Next Steps and Closing

Jamie closed by thanking the RAC for being tough on the issues and soft on the people. Gordon Howard provided brief closing remarks and thanked the RAC for their participation and comments today. Commissioner Mark Bennett provided some closing remarks and encouraged people to communicate directly with LCDC.

Jamie suggested using this meeting summary to reflect discussion and be a deliverable to LCDC. Jamie offered to develop a RAC summary for their discussion at their last meeting as a "report from the RAC" to LCDC. The RAC generally agreed with that approach.

Next Steps:

- DLCD to schedule additional half day RAC meeting the week of January 28 after the January 23 LCDC meeting. It was noted that the last day for LCDC to receive public comment and input from the RAC is February 5.

Meeting Adjourn

The meeting adjourned at 4:53 pm.

660-004-0018
Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):

(a) That are the same as the existing land uses on the exception site;

(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;

(d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section

(4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 or 660-014-0090 with regard to urban development on rural land. (4) "Reasons" Exceptions: (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, OAR 660-014-0040, or OAR 660-014-0090, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception. (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required. (c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.	*This is the language that would be added, if the RAC agrees, not allowing rezones from the underlying farm or forest zoning district when a goal exception is approved.* *d) When a local government approves an exception for a photovoltaic solar power generation facility under OAR 660-004-0020 through OAR 660-004-0022 the subject property shall remain zoned for exclusive farm use, forest use or mixed farm and forest; whichever is applicable. The local government shall also continue to apply the relevant approval criteria included at OAR 660-033-0130(38), OAR 660-033-0130(45) or OAR 660-006-0025(4).*

660-006-0025 **Uses Authorized in Forest Zones** (4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule: ********** (j) Commercial utility facilities for the purpose of generating power, not including photovoltaic solar power generation facilities in eastern Oregon. A power generation facility considered under this subsection shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4; **(k) Commercial utility facilities for the purpose of generating power as a photovoltaic solar power generation facility in eastern Oregon, under the following standards:** **(A) A power generation facility considered under this subsection shall not preclude more than 240 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4.** **(B) An application for a facility under this subsection shall comply with the requirements of ORS 215.446(3).** (5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands: (a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; (b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and (c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule. (6) Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands. ********** ********** **660-006-0050** Uses Authorized in Agriculture/Forest Zones (1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR chapter 660, divisions 6 and 33. (2) Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominant use of the tract on January 1, 1993. (3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035. **(4) A county in Eastern Oregon shall apply either OAR chapter 660, division 6 or 33 standards for siting a photovoltaic solar power generation**	*On forest land in Eastern Oregon, the maximum size of a project that does not require an exception to Goal 4 would go from 10 acres to 240 acres.* *This would require the proposal to meet the basic standards the legislature has set forth in ORS 215.446* *This copies language in Division 33 for mixed farm-forest lands.*

1 2	**facility in an agriculture/forest zone based on the predominant use of the subject lot or parcel on January 1, 2024.**	*Relies on lot or parcel, rather than "tract" to determine predominant use.*

(1) **Introduction and Intent.** This rule is designed to assist local governments in eastern Oregon to identify opportunities and reduce conflicts for the development of photovoltaic solar power energy generation facilities. This division provides regulatory relief for projects proposed to be sited in significant photovoltaic solar resource areas and sites, subject to the standards and requirements of this rule. Photovoltaic solar resource areas and sites are presumed to comply with Goal 3 when in compliance with this division. This division is intended to help achieve the successful development of photovoltaic solar energy generation in eastern Oregon that: (a) Makes meaningful contributions to the state's clean energy goals; (b) Increases potential for local governments and local residents to share the benefits of solar development; and (c) Suitably account for potential conflicts with the values and resources identified under Section 35(2) of HB 3409 (2023) and this rule.	*Same as previous drafts.*	*Department is not aware of any additional issues.*
(2) **Definitions:** (a) "Annual solar utility scale capacity factor" means the amount of energy produced in a typical year, as a fraction of maximum possible energy for 100% of the hours of the year. (b) "Archaeological Resources" is a term that is synonymous with and has the same meaning as "archaeological site" as defined in OAR 660-023-0210(1)(a), which means a geographic locality in Oregon, including but not limited to submerged and submersible lands but not the bed of the sea within the state's jurisdiction, that contains archaeological objects as defined in ORS 358.905(1)(a) and the contextual associations of the objects with: (A) Each other; or (B) Biotic or geological remains or deposits. Examples of archaeological sites include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites. (c) "Cultural Resources" is a term that is synonymous with and has the same meaning as "cultural areas" defined in OAR 660-023-0210(1)(b), which means archaeological sites, culturally significant landscape features , and sites	*Provided definition of Annual solar utility scale capacity factor.*	*Could consider reducing language as follows: "Archaeological Resources" is a term that is synonymous with and has the same meaning as "archaeological site" as defined in OAR 660-023-0210(1)(a).* *Could consider reducing language as follows: "Cultural Resources" is a term that is synonymous with and has the same meaning as "cultural*

	where both are present. Also referred to as "cultural resource site."		*areas" defined in OAR 660-023-0210(1)(b),*
	(d) “Eastern Oregon” means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of the state and the western boundary of Wasco County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the state.		
	(e) “Historic Resources” are those buildings, structures, objects, sites, or districts that potentially have a significant relationship to events or conditions of the human past.		
	(f) “Microgrid” means a local electric grid with discrete electrical boundaries, acting as a single and controllable entity and able to operate in grid-connected or island mode.		
	(g) “Military Special Use Airspace” is airspace of defined dimensions identified by an area on the surface of the earth wherein activities must be confined because of their nature, or wherein limitations may be imposed upon aircraft operations that are not a part of those activities Limitations may be imposed upon aircraft operations that are not a part of the airspace activities. Military special use airspace includes any associated underlying surface and subsurface training areas.		
	(h) “Military Training Route” means airspace of defined vertical and lateral dimensions established for the conduct of military flight training at indicated airspeeds in excess of 250 knots.		
	(i) “Oregon Renewable Energy Siting Assessment (ORESA)” is a renewable energy mapping tool housed on Oregon Explorer.		
	(j) “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 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	*This definition, from OAR 660-033-0130, replaces the “solar sites” language that used to be in this draft. Since the concept of individual site review is moved to 660-033, this division now speaks to individual applications submitted after a county adopts a program under this section to designate areas of a county for renewable solar development.*	

	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. 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 1320 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 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84. (k) “Significant Photovoltaic solar resource area” is an area consisting of lands that are particularly well suited for the siting of photovoltaic solar power generation facilities because they have been determined to be significant pursuant to section 3 of this rule. Multiple photovoltaic solar power generation facilities may be located within a photovoltaic solar resource area. (l) “Transmission Line” is a linear utility facility by which a utility provider transmits or transfers electricity from a point of origin or generation or between transfer stations. (m) "Tribe" as defined in ORS 182.162(2), means a federally recognized Indian tribe in Oregon, except where the definition in ORS 97.740 applies by statute.	*This language also includes the workforce housing provisions as with the definition in OAR 660-033.*	
	(3) **Significant Photovoltaic Solar Resource Areas**: (a) Counties may establish significant photovoltaic solar resource areas through the adoption of a local program consistent with this section that includes a comprehensive plan amendment and implementing land use regulations found to be consistent with the provisions of this rule. (b) To implement this rule for the purpose of establishing significant photovoltaic solar resource areas a county shall follow the post-acknowledgment plan amendment process pursuant to OAR 660-018.	*The designation of areas as part of a program is a comprehensive plan amendment requiring notice to the department as with any other plan amendment.*	*Department is not aware of any additional issues.*

	(c) Prior to conducting a hearing to consider an ordinance establishing a significant photovoltaic solar resource area or areas a local government will hold one or more public meetings to solicit input from county residents. The public meeting(s) must occur in areas of the county that include lands likely to be determined significant photovoltaic solar resources. The county must provide mailed notice of the meeting(s) to property owners in the within such areas and within a two-mile radius of such areas. The county must also provide mailed notice to any physical address assigned to property in the general vicinity of such areas as shown in county assessor records that are not the same as the property owner's address. (d) In addition to submitting the notice of the proposed amendment to the Director of the Department of Land Conservation and Development required by ORS 197.610(1), the county shall provide notice of the Post-Acknowledgement Plan Amendment to: (A) The State Department of Fish and Wildlife; (B) The State Department of Energy; (C) The State Historic Preservation Officer; (D) The Oregon Department of Agriculture; (E) The Oregon Department of Aviation; (F) The United States Department of Defense; (G) The Oregon Legislative Commission on Indian Services (LCIS); and (H) Federally recognized Indian tribes that may be affected by the application. Each county shall obtain a list of tribes with an ancestral connection to land within their jurisdiction from the Oregon Legislative Commission on Indian Affairs and shall send notice to all tribes in the commission's response.	*Requirement for public meetings and input as part of the county planning process under this option.* *Notice required to these parties as well.*	
	(e) When designating a significant photovoltaic solar resource area, a county may choose not to identify conflicting uses as would otherwise be required by OAR 660-023-0030 through 660-023-0050. In the alternative, a county may choose to conduct a more detailed analysis that may lead to the identification of conflicting uses. (f) If a county chooses to identify conflicting uses under subsection (3)(e) of this rule, a county may choose not to limit or prohibit conflicting uses on nearby or surrounding lands. In the alternative, a county may choose to conduct a more detailed analysis of economic, social, environmental and energy (ESEE) consequences that could lead to a decision to limit or prohibit conflicting uses within a	*This language was in previous draft, moved to front of this section.* *This language was in previous draft, moved to front of this section.*	*Department is not aware of any additional issues.*

	significant photovoltaic solar resource area for photovoltaic solar power generation facilities or on lands nearby a photovoltaic solar resource site. (g) If a county chooses to conduct an additional analysis subsection (3)(f) of this rule, it must follow the provisions of OAR 660-023-0040.		
	(h) (A) To qualify as a significant photovoltaic solar resource area, an area must be primarily constituted of lands which have the following characteristics: (i) Topography with a slope that is predominantly 15% or less; (ii) An estimated Annual Solar Utility-Scale Capacity Factor of 19 percent or greater; and. (iii) Location predominantly within 10 miles of a transmission line with a rating of 69 KV or above. (B) A county may determine that additional areas within the county, despite not qualifying as potentially significant photovoltaic solar resource areas under subsection (3)(h)(A) of this rule, have potential for renewable solar energy development significant enough to be designated as significant photovoltaic solar resource areas; (C) A county may determine that areas within the county, despite qualifying as potentially significant photovoltaic solar resource areas under subsection (3)(h)(A) of this rule, have constraints or limitations that allow the county to not include such sites as significant photovoltaic solar resource areas.	*Basic characteristics of significance previously agreed to.* *These two sections give a county flexibility, when designing a county-wide program, to add and subtract areas of solar significance based upon individual circumstances.*	*Is the RAC agreed on this definition of significance?* *Issue: should counties be given discretion to add to or subtract from the basic definition of significance in section (h)(A)? Counties would not be able to do this under the "sites" language in Division 33*
	(i) For any significant photovoltaic solar resource area, a site within that area with the following characteristics requires no mitigation: (A) Agricultural lands protected under Goal 3 that are: (i) comprised of soils as classified by the U.S. Natural Resources Conservation Service (NRCS) with an agricultural capability class VII and VIII; or (ii) comprised of soils as classified by the U.S. Natural Resources Conservation Service (NRCS with an agricultural capability class VI and do not have the ability to produce 300 pounds of forage per acre per year;	*No change to previous draft, these areas are allowed to develop without any additional agricultural, cultural/archaeological, or wildlife habitat mitigation.*	*Issue: are these categories of agricultural lands that don't require mitigation correct?* *Issue: are these categories of wildlife habitat that don't*

	(B) Lands characterized by ODFW as Category 5 or 6, or other areas of poor to no value as wildlife habitat or with little or no restoration potential based on field data provided by the applicant and developed in consultation with ODFW. The exact location or categorization of wildlife habitat may be refined during consideration of a site but must be done in consultation with ODFW. (C) Sites where the construction and operation of the photovoltaic solar power generation facility will not result in significant adverse impacts to Historic, Cultural or Archaeological Resources because no such resources are present, or if resources are present, they will be avoided through project design to the extent that no additional mitigation is necessary, as provided in section 5 of this rule. (D) Notwithstanding subsections (3)(i)(A) through (C) of this rule, a county may find that sites within solar photovoltaic resource areas described in subsections (3)(i)(a) through (3)(c) of this rule require additional mitigation measures as specified by the county;	*Cultural/archaeological significance will always require a site-by-site analysis, because these resources cannot be publicly mapped and many are unknown at this time. Section 5 will give procedures for how to do this.* *This allows counties to be more strict and require mitigation for these resources if the county believes it is necessary.*	*require mitigation correct?* *Issue: given the unknown nature of archaeological and cultural resources, a site by site analysis seems to be the only way to deal with this issue.*
	(j) For any significant photovoltaic solar resource area, a site within that area with the following characteristics requires mitigation: (A) Agricultural lands protected under Goal 3 that are: (i) comprised of soils with an agricultural capability class VI as classified by the U.S. Natural Resources Conservation Service (NRCS) and have the ability to produce greater than 300 pounds of forage per acre per year if the site consists of at least 640 acres; (ii) comprised of soils with an agricultural capability class III, IV, or V as classified by the U.S. Natural Resources Conservation Service (NRCS) , without an appurtenant water right on January 1, 2024; (iii) Mitigation for agricultural lands described in this subsection must be consistent with the requirements of section (4) of this rule. (B) Wildlife habitat characterized by ODFW as Category 2 that is not otherwise limited by section (3)(k) and wildlife habitat characterized by ODFW as Category 3 or 4 based on field data provided by the applicant and developed in consultation with ODFW. The exact location or categorization of Category 2, 3, or 4 wildlife habitat may be refined during consideration of a site but must be done in	*Same as previous mitigation section, with one difference noted below.*	*Issue: are these categories of agricultural lands that require mitigation correct?* *Issue: are these categories of wildlife habitat that require mitigation correct?*

	consultation with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a). (C) Wildlife Habitat: Eastern Oregon Deer Winter Range, Eastern Oregon Elk Winter Range, Big Horn Sheep Habitat, and Pronghorn Essential and Limited Habitat as identified by Oregon Renewable Energy Siting Assessment (ORESA). The exact location of wildlife habitat identified by this subsection may be refined during consideration of a site but in consultation with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a). (D) Priority Wildlife Conservation Areas where the ODFW makes a finding, based on site specific conditions, that mitigation for wildlife habitat consistent with the requirements of ORS 215.446(3)(a) reduces impacts from the photovoltaic solar power generation facility to a level acceptable to ODFW. € Sites where the construction and operation of the photovoltaic solar power generation facility may result in significant adverse impacts to Historic, Cultural or Archaeological Resources as defined in Section (2) but the project incorporates necessary mitigation measures pursuant to section 5 of this rule. (F) Notwithstanding subsections (3)(j)(A) through € of this rule, a county may find that individual sites within solar photovoltaic resource areas described in subsections (3)(j)(A) through € of this rule have impacts that are too significant to be mitigated and thus are not eligible for approval under the provisions of this section.	*This has been reworded – previous version had this category entirely in the "off-limits" section but allowed a determination by ODFW that it might be mitigated. This puts such areas into the "mitigation required" category.* *Section 5 will provide how to do this.* *This allows a county to be stricter than the baseline and move areas from "mitigation required" to "not allowed."*	*Issue: should counties be allowed to be stricter than the "mitigation required" baseline? Counties would not be able to do this under the "sites" language in Division 33.*
	(k) For any significant photovoltaic solar resource area, a site within that area with the following characteristics is not eligible for approval of a project under the provisions of this section: (A) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6)(a) and (b). The exact location of Significant Sage-Grouse Habitat may be refined during consideration of a specific project but must be done in consultation with the Oregon Department of Fish and Wildlife (ODFW). (B) Priority Wildlife Connectivity Areas (PWCA's) as designated by the ODFW that do not qualify under subsection (3)(j)(D) of this rule.	*Same as before, with changes to the Priority Wildlife Conservation Area language as discussed above.*	*Issue: are these categories of wildlife habitat that are excluded from consideration under these rules correct?*

	(C) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. The exact location of high use and very high use wildlife mitigation corridors may be refined during consideration of a site but must be done in consultation with ODFW. (D) Wildlife habitat characterized by ODFW as Category 1 based on field data provided by the applicant and developed in consultation with ODFW. The exact location and characterization of Category 1 wildlife habitat may be refined during consideration of a site but must be done in consultation with ODFW. (E) Soils that are irrigated or not irrigated and classified prime, unique, Class I or Class II as classified by the U.S. Natural Resources Conservation Service (NRCS), unless such soils make up no more than five percent of a proposed Photovoltaic Solar Site and are present in an irregular configuration or configurations that prevent them from being independently managed for farm use. (F) High-Value Farmland as defined at ORS 195.300(10)(c) through (f) that does not qualify for an exemption pursuant to the provisions of subsection (3)(k)(G) and that is not otherwise limited by the provisions of subsection (3)(k)(E). (G) Agricultural lands protected under Goal 3 with an appurtenant water right on January 1, 2024. This subsection does not apply if the ability to use the appurtenant water right to irrigate subject property becomes limited or prohibited due to a situation that is beyond the control of the water right holder including but not limited to: prolonged drought, critical groundwater designations or other state regulatory action, reduced federal contract allocations, and other similar regulatory circumstances. If retained, the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes. (H) Sites where the construction and operation of the photovoltaic solar power generation facility will result in significant adverse impacts to Historic, Cultural or Archaeological Resources that cannot be mitigated pursuant to the provisions of section 5 of this rule. (I) Lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21.		*Issue: are these categories of agricultural lands that are excluded under these rules correct?* *Issue: should lands within one mile of an urban growth boundary for a city*

		This is where previous language excluding areas within one mile of UGB for a city with more than 2,500 population – further discussion at Commission	*with population greater than 2,500 be excluded under these rules?*
	(4) **Agricultural Mitigation**: (a) For the purposes of this subsection, "compensatory mitigation" means the replacement or enhancement of the impacted resource in equal or greater amounts than predicted to be impacted by a development. (b) Compensatory mitigation for agricultural land may be accomplished in one of the following ways: (A) A county may approve a method, or methods proposed by the applicant when substantial evidence in the record demonstrates that the proposed compensatory mitigation will: (i) Be suitably durable to last until the impact has been removed or no longer exists; (ii) Proximate by being located in the same county or an adjacent county or counties as the proposed impact; and either (iii) Result in no net loss of the agricultural productivity of the property; or (iv) Provide an uplift to the relevant agricultural economy. (B) As an alternative to mitigation provided under subsection (5)(a)(A) necessary compensatory mitigation for agricultural lands protected under Goal 3 may be accomplished by use of a one-time compensatory mitigation payment for the purpose of replacing economic value that is lost by the local community when agricultural land is converted to photovoltaic solar development. The compensatory mitigation payment is to be established pursuant to the calculator included as Attachment A. Use of the mitigation calculator, which is based on the following items, will be considered in all instances to comply with the requirements of this rule: (i) Crop and Pasture Rent Rates gathered from the USDA NASS Quickstats database from the published irrigated, unirrigated crop and pasture rental rates. (ii) General Economic Contribution per Farm and Ranch is based on an average of the local and non-local farm/ranch contributions, determined as	*This is the same as before – a county can use the objective method based upon calculations, or design a more subjective agricultural mitigation method that meets the standards set here.* *Attachment A spreadsheet would be adopted as an appendix to this rule.*	*Department is not aware of any additional issues.*

follows: for local and non-local farms, $.74 and $.36 for every $1 produce sold, and for local and non-local ranches, $.79 and $.66 for every $1 sold. (iii) The Time-Value of Money Adjusted Productivity of a Farm or Ranch intended to capture the economic productivity of the agricultural land over the life of the solar lease in today's dollars, which is calculated by assessing the Present Value of the agricultural lands contribution by multiplying the Crop Rent as a function of its productivity, by the general economic contribution % to capture its baseline, annual economic contribution to the community. The Present Value is then further calculated from that number using the expected CAP RATE growth and the years of the lease agreement. (C) The compensatory mitigation payment established under subsection (5)(a)(B) may be received by the county, a unit of county government, a 501-c-3 not for profit organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to provide uplift opportunities for the applicable agricultural sector.		
(5) Historic, Cultural, and Archaeological Resources: The proposed photovoltaic solar power generation facility shall mitigate potential impacts to historic, cultural, and archeological resources pursuant to the requirements of ORS 215.446(3)(b) and OAR 660-023-0210. (a) Prior to submittal of an application for development of a photovoltaic solar power generation facility within a renewable photovoltaic solar energy area, an applicant shall compile information on the renewable photovoltaic solar energy site or land within a renewable photovoltaic solar energy area that includes, among other things a records review, field survey, site inventory and cultural resources survey completed by a professional archaeologist as defined in ORS 97.740. (b) The applicant shall transmit the information compiled to the State Historic Preservation Office (SHPO) any Tribe that may be affected by the application, and applicable local government at least 60 days prior to submitting the application to the county.	*This section is currently undergoing consultation, so there may still be some changes.* *This would need to be done for every application submitted – to make an individualized determination as to which of the three categories (no impacts, mitigated impacts, not allowed) the site falls into.*	*Is this the best method for dealing with the issue of archaeological, historical, and cultural resources and potential conflicts?*

	(c) The information compiled, including the location of any cultural resources shall be kept confidential and not included in the local record. (d) Based upon the information compiled and submitted and comments received, if any, from SHPO and any Tribe that may be affected by the application, a county shall make one of the following determinations in its decision regarding the application : (A) No historical, archaeological, or cultural resources are present; (B) Historical, archaeological, or cultural resources are present, but will be avoided through project design to the extent that no additional mitigation is necessary; (C) Historical, archaeological, or cultural resources are present, but mitigation measures will reduce impacts so that there are no significant adverse impacts to historical, archaeological, or cultural resources; (D) Historical, archaeological, or cultural resources are present, and development will result in significant adverse impacts which cannot be mitigated and an archaeological permit from SHPO may not be obtained. (e) The county shall include any mitigation measures as conditions of approval in the final decision.		
	(6) Community Benefits: All applications for a photovoltaic solar power generation facility within a photovoltaic solar resource area or site shall identify how the project will contribute to addressing community needs and benefits. Identified contributions, financial or otherwise, will be in addition to property tax revenues or payments in lieu of taxes. (a) A county may approve a proposal submitted by the applicant when substantial evidence in the record demonstrates: (A) The proposed contribution or contributions are meaningful and reasonable; (B) The proposed contribution or contributions will serve to help improve a community's social health, well-being, and functioning; and	*This section is unchanged from previous versions, with addition of $1K per nameplate MW filled in below.*	

	(C) The contribution(s) is received by the county or a unit of county government, a 501-c-3 not for profit organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to provide uplift opportunities for the community or communities that stand to have the most direct relationship with the subject project. (b) Rather than the standards provided in subsection (6)(a), a county may require one of the following options to address community needs and benefits, which demonstrate compliance with the requirements of this section: (A) The applicant has conducted detailed public outreach activities in advance of submitting an application; and (B) The applicant commits to contributing a one-time payment in an amount representing $1,000 per nameplate MW prior to construction; or (C) The applicant commits to ensuring that emergency service providers are guaranteed a source of electricity during a power outage event through providing battery storage or some other method; or (D) The applicant creates a Microgrid addressing identified community needs.	*$1K per nameplate MW should equal about $167 per acre.*	*Is this the correct amount for mitigation payments?*
	(7) Maximum Size of Sites A county may approve a photovoltaic solar power generation facility under OAR 660-033-0130(45)(a)(C) as follows: (a) On high-value farmland that qualifies for an exemption pursuant to the provisions of subsection (3)(k)(G) of this section and that is not otherwise limited by the provisions of subsection (3)(k)(E) of this section, the facility may not use, occupy, or cover more than 240 acres. (b) On arable land, the facility may not use, occupy or cover more than 2,560 acres. (c) On non-arable land, the size of the facility is not limited by this rule.	*Allowances in this section are the maximum allowed by ORS 215.446.* *This provision is intended to be limited to lands outside of an irrigation district that have lost their ability to irrigate post January 1, 2024 and do not include "Soils that are irrigated or not irrigated and classified prime, unique, Class I or Class II, unless..."* *Although the county maximum for nonarable lands is 3,840 acres, this language means EFSC would no longer require a goal exception on nonarable lands either.*	*Related to the issue of allowance for this method on high-value farmland.* *Is this an appropriate measure for this rule, or should the limit set be 3,840 acres, and larger EFSC projects would still require a goal exception?*

(8) **Miscellaneous**. A local government may approve a photovoltaic solar power generation facility within a significant photovoltaic solar resource area by determining that the following items have been satisfied: (a) An application shall identify whether the proposed site is within a Military Special Use Airspace or a Military Training Route, as may be shown by the ORESA mapping tool or equivalent map. Any application located beneath or within a Military Special Use Airspace or a Military Training Route with a proposed floor elevation of 500 feet above ground level (AGL) or less shall include a glint and glare analysis for the applicable utilized military airspace. Any measures necessary to avoid possible conflicts with low flying aircraft as identified in the glint and glare analysis will be developed in coordination with the United States Department of Defense or Oregon Military Department as applicable, described in the application materials, and attached as conditions of approval to the county decision.	*No changes to previous military language.*	*Department is not aware of any additional issues.*
(b) The applicant has contacted and sought comments from the entities listed in subsections (3)(d)(A), and (F)) of this rule at least 30 days prior to submitting a land use application. The requirements of this subsection do not apply when the county code requires a pre-application conference prior to submitting an application that includes at a minimum, those entities listed in subsections (3)(d)(A), (F), and (H) of this rule.	*(3)(d)(**A) The State Department of Fish and Wildlife;*** *(B) The State Department of Energy;* *(C) The State Historic Preservation Officer;* *(D) The Oregon Department of Agriculture.* *(E) The Oregon Department of Aviation;* ***(F) The United States Department of Defense;*** *(G) The Oregon Legislative Commission on Indian Services (LCIS); and* *(H) Federally recognized Indian tribes that may be affected by the application.*	*Department is not aware of any additional issues.*
(c) For a proposed photovoltaic solar power generation facility on high-value farmland, the application shall include a cumulative impacts analysis as set forth in OAR 660-033-0130(38)(h)(G), except that the acreage threshold for the analysis set forth in OAR 660-033-0130(38(h)(G)(i) and (ii) shall be 300 acres and the impact area set forth in OAR 660-033-0130(38)(h)G) would be a distance of 2.5 miles.	*This requirement is already in section 660-033-0130(38) but would be modified here to reflect larger acreage totals and a corresponding larger impact area. The numbers in section (38) are 48 acres and one mile radius, reflecting conditions and sizes primarily in Western Oregon.*	*Should this cumulative impacts analysis be imported from existing language in OAR 660-033-0130(38), and if so, are the modifications to correct for size of sites in Eastern Oregon correct?*

(d) For a proposed photovoltaic solar power generation facility on arable land, the application shall include a cumulative impacts analysis as set forth in OAR 660-033-0138(i)(D) except that the acreage threshold for the analysis set forth in OAR 660-033-0130(38(i)(D)(i) and (ii) shall be 2,000 acres and the impact area set forth in OAR 660-033-0130(38)(h)G) would be a distance of five miles.	*This requirement is already in section 660-033-0130(38) but would be modified here to reflect larger acreage totals and a corresponding larger impact area. The numbers in section (38) are 80 acres and one mile radius.*	
(e) (A) The application will ensure that considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an adequately qualified individual, that demonstrates how temporary workforce housing resulting in a benefit to the local community will be accommodated or that such temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved plan shall be attached to the decision as a condition of approval. (B) On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility 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. (C) 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 photovoltaic solar power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall not have no effect on the original approval of the project.	*These provisions are not currently included in OAR 660-033-130(38). This language attempts to capture the RAC discussion.*	*Department is not aware of any additional issues.*
(f) The requirements of OAR 660-033-0130(38)(h)(A) through (D) have been satisfied for proposed photovoltaic solar power generation facilities on high-value farmland and arable land, and the requirements of OAR 660-033-0130(38)(h)(D) have been satisfied for proposed photovoltaic solar power generation facilities on nonarable land.	*These are a direct reference to existing requirements for all solar development on high value and arable farmland. They read as follows in section (38):* *(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*	*Should solar developments using this method be subject to these requirements that are applied to sites using the current method for review of solar developments provided in OAR 660-033-0130(38)?*

		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; *(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. The approved plan shall be attached to the decision as a condition of approval;* *(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;* *(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed 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;*	
	(g) A county may condition approval of a proposed photovoltaic solar power generation facility to address other issues, including but not limited to assuring that the design and operation of the facility will promote the prevention and mitigate the risk of wildfire. The county may approve a wildfire	*While other conditions of approval aren't mandated by these rules, a county is explicitly authorized to add other conditions, such as wildfire risk mitigation.*	*There remains a question as to whether new requirements regarding wildlife and soil health should be*

	plan prepared by an adequately qualified individual that is consistent with the provisions identified at OAR 660-006-0029(1)(d) and OAR 660-006-0035, and then attach implementation of that plan as a condition of approval.		*made mandatory as opposed to at the discretion of the county.* *Alternatively, the section could be removed entirely, because counties can arguably impose such conditions on their own anyway.*
	(h) For a photovoltaic solar power generation facility located on arable or nonarable lands, the project is not located on 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 as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils; (i) For a photovoltaic solar power generation facility located on nonarable lands no more than 2,560 acres of the project will be located on arable soils.	*This language addresses two issues: 1) a site that is arable land but contains some nonarable soils; and 2) a site that is nonarable land but contains some arable soils.* *The express limitations on high value soils are sufficient to make this issue moot for high value soils.* *In each case, this language would require "first choice" for location of the solar facility on nonarable soils, unless the applicant and county could make one of the two findings expressed in subsections (i) and (ii).* *The current language on this issue in Section (38) reads as follows:* *(E) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);* *(F) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:* *(i) Non high-value farmland soils are not available on the subject tract;* *(ii) 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*	*If a site qualifies as nonarable farmland, should the application be required to try to stay off of arable soils (a minority of the overall site)?* *If a site qualifies as arable farmland, should the application be required to locate as much as feasible on nonarable soils (a minority of the overall site)?* *An alternative on nonarable lands would be to allow development on arable soils within the project site if those soils would have allowed solar development under the provisions of OAR 660-023-0195 and not allow such development if those soils would not have allowed solar development under the provisions of OAR 660-023-0195.*

	(iii) 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 non high-value farmland soils;	
(j) The county has identified and attached as conditions of approval all mitigation required pursuant to this rule. (k) Any applicable local provisions have been satisfied.		*Department is not aware of any additional issues.*
(9) **Farm Impacts Test**: Notwithstanding any other rule in Division 33, a county may determine that ORS 215.296 and OAR 660-033-0130(5) for a proposed photovoltaic solar power generation facility on agricultural land are met when the applicable provisions of this section are found to be satisfied.	*This is the provision that states compliance with these rules satisfies the "farm impacts" or "good neighbor" test set by the Legislature in ORS 215.296*	*Department is not aware of any additional issues.*
(10) **Use of ORESA**: In addition to other sources, a local government may rely on data from online mapping tools, such as that data included in the Oregon Renewable Energy Siting Assessment (ORESA), to inform determinations made under this rule.	*This is language referencing using ORESA as an option.*	*Department is not aware of any additional issues.*
(11) **REVIEW OF RULE EFFECTIVENESS**: On or before July 1, 2027, the department will provide a report to the Land Conservation and Development Commission that: (a) Is informed by coordination with parties consistent with those interests represented on the Rules Advisory Committee established pursuant to Section 37 of HB 3409 (2023). (b) Identifies those counties who have chosen to establish significant photovoltaic solar resource areas pursuant to section 4 of this rule and have not opted out of the provisions of OAR 660-033-0130(45)(a)(B). (c) Identifies the number of counties that have chosen not to implement this rule for purposes of considering photovoltaic solar power generation facilities pursuant to section (3)(b) of this rule. (d) Describes how well the intent of this rule as stated in section (1) is being accomplished. (e) Includes recommended updates, if any, the department identifies as being necessary to better	*Now that the rule adoption is delayed until June, 2025, and the effective date is also delayed to allow local governments to decide whether to opt in or opt out, the department recommends pushing back the date for the report to the commission by six months to July 1, 2027.*	*Should the report date be moved from January 1, 2027, the date in the previous draft, to July 1, 2027?*

1 2	accomplish the intent of this rule as stated in section (1).		

1

OAR 660-033-0130		
…		
(38) A proposal to site a photovoltaic solar power generation facility except for a photovoltaic solar power generation facility **in Eastern Oregon subject to the provisions of subsections (45)(a)(B) and (C)** shall be subject to the following definitions and provisions:	*The division 38 language is otherwise unchanged. This method remains available with no changes for Eastern Oregon counties and solar developers.*	*Should the existing Division 38 method for Eastern Oregon solar remain completely unchanged? Or should additional conditions regarding wildfire and soil health, perhaps other things, be added?*
…		
(45)(a) A county may review a proposed photovoltaic solar power generation facility on agricultural land in Eastern Oregon under one of the following three alternatives:		
(A) A county may review a proposed photovoltaic solar power generation facility on agricultural land under the provisions of OAR 660-033-0130(38).	*The section (38) existing method, unchanged.*	
(B) If a county has not adopted a program under the provisions of OAR 660-023-0195, a county may review a proposed photovoltaic solar power generation facility on agricultural land reviewed in Eastern Oregon under the provisions of subsections (b) through (l) of this section; or	*A county has the option of using this method under OAR 660-033-0130(45) or adopting a program under OAR 660-023-0195.*	*Clear delineation between three methods for considering solar in Eastern Oregon. Does this work?*
(C) A county may review a proposed photovoltaic solar power generation facility on agricultural land reviewed in Eastern Oregon under the provisions of OAR 660-023-0195.	*This is the third option, going to OAR 660-023-0195 for a more individualized county program re: solar development.*	
(b) A proposal to site a photovoltaic solar power generation facility under OAR 660-038-0130(45)(a)(B) shall be subject to the following definitions and provisions:	*These definitions are the same as in Section (38) except as indicated.*	*The department is not aware of any problems with any of these definitions.*
(A) “Arable land” means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.	*A key point to remember: all of the soils definition that involve “land” mean that a parcel of land is looked at as a whole, and if a majority of the soils are “high-value,” “arable,” or “nonarable,” then the whole parcel is classified as that category, despite the existence of a minority of soils in the parcel in another category.*	
(B) “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 at ORS 195.300(10) unless otherwise stated.		
(C) “Eastern Oregon” means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of the state and the western boundary of Wasco	*New definition added.*	

	County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the state. (D) “High-value farmland means land described in ORS 195.300(10). (E) “Nonarable land” means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils. (F) “Nonarable soils” means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable 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. (G) “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 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. 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 1320 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	*This language added regarding temporary workforce housing comes from the existing definition in the department’s administrative rules governing wind energy.*	

	facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.		
	(c)(A) A county shall consider applications for a proposed photovoltaic solar power generation facility pursuant to OAR 660-033-0130(45)(a)(B) unless a county has either: (i) Approved a program for significant solar photovoltaic resource areas under the provisions of OAR 660-023-0195; or (ii) Taken action through the county elected body, either prior to, or after the effective date of this rule that declines to consider photovoltaic solar power generation facilities under OAR 660-033-0130(45)(a)(B). (B) A county may choose to consider photovoltaic solar power generation facilities under OAR 660-033-0130(45)(a)(A) or (C).	*This is the "opt out" provision – the county will directly apply the rules in this section unless they take action, through the county elected body, to "opt out." It would not require a post-acknowledgment plan amendment, thus would not be a land use decision.* *The existing rules in Section (38) and the program adoption in 660-023-0195 are entirely voluntary for counties.*	*Should counties have to formally opt out of the rules, otherwise apply the "sites" rules in this section directly?* *The department is not aware of any issues with this provision.*
	(d) A county may approve a photovoltaic solar power generation facility under OAR 660-033-0130(45)(a)(B) as follows: (A) On high-value farmland that qualifies for an exemption pursuant to the provisions of subsection (d)(D)(vii) of this section and that is not otherwise limited by the provisions of subsection (d)(D)(vi) of this section, the facility may not use, occupy, or cover more than 160 acres. (B) On arable land, the photovoltaic solar power generation facility may not use, occupy, or cover more than 1,280 acres. (C) On non-arable land, the photovoltaic solar power generation facility may not use, occupy, or cover more than 1,920 acres.	*A very limited allowance on high value farmlands, see language below for details.* *The maximum that these rules can allow on high value farmland is 240 acres per ORS 215.446. This number is lower to encourage counties and solar developers toward the 660-023-0195 "program" method.* *This is simpler than the provisions in OAR 660-023-0195 and is half the maximum that these rules can allow (2,560 acres).* *This is simpler than the provisions in OAR 660-023-0195 and is half the maximum that these rules can allow (3,840 acres).*	*Are these the correct restrictions for any solar development on high-value farmland pursuant to these rules?* *Are these numbers appropriate to encourage counties and solar developers who want even larger sites to use the 660-023 method?*

	(D) Notwithstanding subsections (45)(d)(A) through (C) of this section, a county may not approve a photovoltaic solar power generation facility under OAR 660-033-0130(45)(a)(B) on land that is: (i) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6)(a) and (b). The exact location of Significant Sage-Grouse Habitat may be refined during consideration of a specific project but must be done in consultation with ODFW. (ii) Priority Wildlife Connectivity Areas (PWCA's) as designated by the Oregon Department of Fish and Wildlife (ODFW) that do not qualify under section 660-023-0195(3)(d)(E). (iii) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. The exact location of high use and very high use wildlife mitigation corridors may be refined during consideration of a site but must be done in consultation with ODFW. (iv) Wildlife habitat characterized by ODFW as Category 1 based on field data provided by the applicant and developed in consultation with ODFW. The exact location and characterization of Category 1 wildlife habitat may be refined during consideration of a site but must be done in consultation with ODFW.	*These sections import the prohibitions on the most sensitive wildlife habitat that have been negotiated and are in OAR 660-023-0195.*	*Should wildlife habitat provisions be less restrictive under this method than under the "areas" method in OAR 660-023?*
	(v) On lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21.	*Imported from OAR 660-023-0195.*	*The "one mile from a UGB with a population of greater than 2,500 is removed because it reflects the views of the RAC at this time. The department intends to bring this issue before the commission for its review.*
	(vi) Soils that are irrigated or not irrigated and classified prime, unique, Class I or Class II, as classified by the U.S. Natural Resources Conservation Service (NRCS), unless such soils make up no more than five percent of a proposed Photovoltaic Solar Site and are present in an irregular configuration or configurations that	*Identical to language included at draft OAR 660-023-0195(3)(k)(E).*	*Are these the correct restrictions for any solar development on high-value farmland pursuant to these rules?*

	prevent them from being independently managed for farm use. (vii) Agricultural lands protected under Goal 3 with an appurtenant water right on January 1, 2024. This subsection does not apply if the ability to use the appurtenant water right to irrigate subject property becomes limited or prohibited due to a situation that is beyond the control of the water right holder including but not limited to: prolonged drought, critical groundwater designations or other state regulatory action, reduced federal contract allocations, and other similar regulatory circumstances. If retained, the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes. . (viii) Sites where the construction and operation of the photovoltaic solar power generation facility will result in significant adverse impacts to Historic, Cultural or Archaeological Resources that cannot be mitigated pursuant to the provisions of OAR 660-023-0195(5).	*From draft OAR 660-023-0195(3)(k)(G).* *Consistent with language included at draft OAR 660-023-0195(3)(k)(H).*	*The base language in OAR 660-023-0195(5) is still under consultation with SHPO and Tribes.*
	(e) Approval of a proposed photovoltaic solar power generation facility under OAR 660-033-0130(45)(a)(B) is subject to the following requirements: (A) The proposed photovoltaic solar power generation facility is located in an area with the following characteristics: (i) Topography with a slope that is predominantly 15% or less; (ii) An estimated Annual Solar Utility-Scale Capacity Factor of 19 percent or greater; and (iii) Location predominantly within 10 miles of a transmission line with a rating of 69 KV or above.	*This language is imported from the language negotiated in OAR 660-023-0195.*	*The department does not see including the ability of counties ot vary "significant" solar areas as in the OAR 660-9023-0195 rules, since these rules are to be directly applied by counties.*
	(B) For a proposed photovoltaic solar power generation facility on high-value farmland, the application shall include a cumulative impacts analysis as set forth in OAR 660-033-0130(38)(h)(G), except that the acreage threshold for the analysis set forth in OAR 660-033-0130(38(h)(G)(i) and (ii) shall be 300 acres and the impact area set forth in OAR 660-033-0130(38)(h)G) would be a distance of 2.5 miles.	*This requirement is already in section (38) but would be modified here to reflect larger acreage totals and a corresponding larger impact area. The numbers in section (38) are 48 acres and one mile radius, reflecting conditions and sizes primarily in Western Oregon.*	*Should these requirements from Section (38), which apply to all solar development today, be carried over to this section, and if so, should the numbers be enlarged to reflect*

	(C) For a proposed photovoltaic solar power generation facility on arable land, the application shall include a cumulative impacts analysis as set forth in OAR 660-033-0138(i)(D) except that the acreage threshold for the analysis set forth in OAR 660-033-0130(38(i)(D)(i) and (ii) shall be 2,000 acres and the impact area set forth in OAR 660-033-0130(38)(h)G) would be a distance of five miles.	*This requirement is already in section (38) but would be modified here to reflect larger acreage totals and a corresponding larger impact area. The numbers in section (38) are 80 acres and one mile radius.*	*larger projects in Eastern Oregon?*
	(D) The proposed photovoltaic solar power generation facility shall take measures to mitigate agricultural impacts as set forth in OAR 660-023-0195(4) (B) and (C).	*The reference here is to the "one-time cash payment" section for agricultural mitigation in OAR 660-023-0195(4). This is simpler and more objective for counties and solar developers to implement.*	*The department does not see a good way to allow the county discretion found in parallel provisions in OAR 660-023-0195, since this would be directly applied by the counties.*
	(E) The proposed photovoltaic solar power generation facility shall take measures to provide community benefits as set forth in OAR 660-023-0195(6)(b).	*The reference here is to the simpler and less subjective option for community benefits in OAR 660-023-0195(6). This is simpler and more objective for counties and solar developers to implement.*	*Same comment as directly above.*
	(F) The proposed photovoltaic solar power generation facility shall mitigate potential impacts to fish and wildlife habitat pursuant to the requirements of ORS 215.446(3)(a).	*While shorter, this is basically the requirement that is also in OAR 660-023-0195.*	
	(G) The proposed photovoltaic solar power generation facility shall mitigate potential impacts to historic, cultural, and archeological resources pursuant to the requirements of OAR 660-023-0195(5).	*This would need to be done for every application submitted – to make an individualized determination as to which of the three categories (no impacts, mitigated impacts, not allowed) the site falls into.*	*This section is currently undergoing consultation with SHPO and Tribes, so is not final.*
	(H) (i) The application will ensure that considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an adequately qualified individual, that demonstrates how temporary workforce housing resulting in a benefit to the local community will be accommodated or that	*These provisions are new.*	*The department is not aware of any issues with this provision.*

	such temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved plan shall be attached to the decision as a condition of approval. (ii) On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility 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. (iii) 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 photovoltaic solar power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall not have no effect on the original approval of the project.		
	(I) The requirements of OAR 660-033-0130(38)(h)(A) through (D) have been satisfied for proposed photovoltaic solar power generation facilities on high-value farmland and arable land, and the requirements of OAR 660-033-0130(38)(h)(D) have been satisfied for proposed photovoltaic solar power generation facilities on nonarable land.	*These are a direct reference to existing requirements for all solar development on high value and arable farmland. They read as follows in section (38):* *(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;* *(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*	*Should these standards, which apply to solar developments throughout Oregon through Section 38, apply to projects in Eastern Oregon reviewed under this method?*

		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. The approved plan shall be attached to the decision as a condition of approval; *(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;* *(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed 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;*	
	(J) A county may condition approval of a proposed photovoltaic solar power generation facility to address other issues, including but not limited to assuring that the design and operation of the facility will promote the prevention and mitigate the risk of wildfire. The county may approve a wildfire plan prepared by an adequately qualified individual that is consistent with the provisions identified at OAR 660-006-0029(1)(d) and OAR 660-006-0035, and then attach implementation of that plan as a condition of approval.	*While other conditions of approval aren't mandated by these rules, a county is explicitly authorized to add other conditions, such as wildfire risk mitigation.*	*Should new requirements regarding wildlife and soil health should be made mandatory as opposed to at the discretion of the county?*
	(K) For a photovoltaic solar power generation facility located on arable or nonarable lands, the	*This language addresses two issues: 1) a site that is arable*	*Should these requirements,*

project is not located on arable soils unless it can be demonstrated that: (i) Siting the facility on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or (ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils; (L) For a photovoltaic solar power generation facility located on nonarable lands no more than	*land but contains some nonarable soils; and 2) a site that is nonarable land but contains some arable soils.* *The express limitations on high value soils at (d)(D)(vi) "Soils that are irrigated or not irrigated and classified prime, unique, Class I or Class II…" are sufficient to make this issue moot for high value soils.* *In each case, this language would require "first choice" for location of the solar facility on nonarable soils, unless the applicant and county could make one of the two findings expressed in subsections (i) and (ii).* *The current language in section (38) reads as follows:* *(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:* *(i) Nonarable soils are not available on the subject tract;* *(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or* *(iii) 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;*	*currently required of all solar developments under section (38), be required for projects considered under these rules as well?* *An alternative on nonarable lands would be to allow development on arable soils within the project site if those soils would have allowed solar development under the provisions of OAR 660-023-0195 and not allow such development if those soils would not have allowed solar development under the provisions of OAR 660-023-0195.*

	1,280 acres of the facility will be located on arable soils.		
	(f) Notwithstanding any other rule in this division, a county may determine that ORS 215.296 and OAR 660-033-0130(5) for a proposed photovoltaic solar power generation facility are met when the applicable provisions of OAR 660-033-0130(45)(b) through (e) are found to be satisfied.	*This is the provision that states compliance with these rules satisfies the "farm impacts" or "good neighbor" test set by the Legislature in ORS 215.296.*	*The department is not aware of any issues with this provision.*
	(g) A county shall satisfy the requirements of OAR 660-023-0195(8)(a) and (b).	*This is a reference to the Department of Defense airspace requirements in OAR 660-023-0195,*	*The department is not aware of any issues with this provision.*
	(h) A permit approved for a photovoltaic solar power generation facility shall be valid until commencement of construction or for six years, whichever is less. A county may grant up to two extensions for a period of up to 24 months each when an applicant makes a written request for an extension of the development approval period that is submitted to the county prior to the expiration of the approval period. (i) A county may grant a permit described in subsection (j) a third and final extension for period of up to 24 months if: (A) An applicant makes a written request for an extension of the development approval period prior to the expiration of the second extension granted under subsection (f) of this section; (B) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and (C) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.	*This is the time period before expiration of a permit language agreed to in Moro by the RAC.*	*The department is not aware of any issues with this provision.*
	(j) In addition to other sources, a local government may rely on data from online mapping tools, such as that data included in the Oregon Renewable Energy Siting Assessment (ORESA), to inform determinations made under this rule.	*This is language referencing using ORESA as an option.*	*The department is not aware of any issues with this provision.*
	(k) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that	*These last two provisions are in Section (38) and are carried over to here.*	*The department is not aware of any*

	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 as defined in ORS 30.930(2) and (4). (l) 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.		*issues with this provision.*
	660-033-0145 Agriculture/Forest Zones (1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-0050; (2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055; and (3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-0057. **(4) A county in Eastern Oregon shall apply either OAR chapter 660, division 6 or 33 standards for siting a photovoltaic solar power generation facility in an agriculture/forest zone based on the predominant use of the tract on January 1, 2024.**	*Language regarding mixed farm-forest zoning districts agreed to by the RAC.*	*The department is not aware of any issues with this provision.*

	RULE LANGUAGE	COMMENTARY	DISCUSSION POINTS
1	(1) **Introduction and Intent.** This rule is designed to assist local governments in eastern Oregon to identify opportunities and reduce conflicts for the development of photovoltaic solar power energy generation facilities. This division provides regulatory relief for projects proposed to be sited in significant photovoltaic solar resource areas and sites, subject to the standards and requirements of this rule. Photovoltaic solar resource areas and sites are presumed to comply with Goal 3 when in compliance with this division. This division is intended to help achieve the successful development of photovoltaic solar energy generation in eastern Oregon that: (a) Makes meaningful contributions to the state's clean energy goals; (b) Increases potential for local governments and local residents to share the benefits of solar development; and (c) Suitably account for potential conflicts with the values and resources identified under Section 35(2) of HB 3409 (2023) and this rule.	*Same as previous drafts.*	*Department is not aware of any additional issues.*
26	(2) **Definitions:** (a) "Annual solar utility scale capacity factor" means the amount of energy produced in a typical year, as a fraction of maximum possible energy for 100% of the hours of the year. (b) "Archaeological Resources" is a term that is synonymous with and has the same meaning as "archaeological site" as defined in OAR 660-023-0210(1)(a), which means a geographic locality in Oregon, including but not limited to submerged and submersible lands but not the bed of the sea within the state's jurisdiction, that contains archaeological objects as defined in ORS 358.905(1)(a) and the contextual associations of the objects with: (A) Each other; or (B) Biotic or geological remains or deposits. Examples of archaeological sites include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites. (c) "Cultural Resources" is a term that is synonymous with and has the same meaning as "cultural areas" defined in OAR 660-023-0210(1)(b), which means archaeological sites, culturally significant landscape features , and sites	*Provided definition of Annual solar utility scale capacity factor.*	*Could consider reducing language as follows: "Archaeological Resources" is a term that is synonymous with and has the same meaning as "archaeological site" as defined in OAR 660-023-0210(1)(a).* *Could consider reducing language as follows: "Cultural Resources" is a term that is synonymous with and has the same meaning as "cultural*

Summary of Comments on Attachment_G_2025_Solar_PublicCommentCompilation.pdf

Page: 64

Author: John.Pouley Subject: Sticky Note Date: 2/27/2025 9:12:56 AM -08'00'
Archaeological Site is defined in ORS 358.905, as well as Archaeological Object as noted in the last sentence of the paragraph.

	RULE LANGUAGE	COMMENTARY	DISCUSSION POINTS
1	where both are present. Also referred to as		*areas" defined in*
2	"cultural resource site."		*OAR 660-023-*
3			*0210(1)(b),*
4	(d) “Eastern Oregon” means that portion of the		
5	State of Oregon lying east of a line beginning at		
6	the intersection of the northern boundary of the		
7	state and the western boundary of Wasco County,		
8	thence southerly along the western boundaries of		
9	the counties of Wasco, Jefferson, Deschutes and		
10	Klamath to the southern boundary of the state.		
11			
12	(e) “Historic Resources” are those buildings,		
13	structures, objects, sites, or districts that potentially		
14	have a significant relationship to events or		
15	conditions of the human past.		
16			
17	(f) “Microgrid” means a local electric grid with		
18	discrete electrical boundaries, acting as a single		
19	and controllable entity and able to operate in grid-		
20	connected or island mode.		
21			
22	(g) “Military Special Use Airspace” is airspace of		
23	defined dimensions identified by an area on the		
24	surface of the earth wherein activities must be		
25	confined because of their nature, or wherein		
26	limitations may be imposed upon aircraft		
27	operations that are not a part of those activities		
28	Limitations may be imposed upon aircraft		
29	operations that are not a part of the airspace		
30	activities. Military special use airspace includes		
31	any associated underlying surface and subsurface		
32	training areas.		
33			
34	(h) “Military Training Route” means airspace of		
35	defined vertical and lateral dimensions established		
36	for the conduct of military flight training at indicated		
37	airspeeds in excess of 250 knots.		
38			
39	(i) “Oregon Renewable Energy Siting Assessment		
40	(ORESA)” is a renewable energy mapping tool		
41	housed on Oregon Explorer.		
42			
43	(j) “Photovoltaic solar power generation facility”	*This definition, from OAR 660-033-0130, replaces the “solar sites” language that used to be in this draft. Since the concept of individual site review is moved to 660-033, this division now speaks to individual applications submitted after a county adopts a program under this section to designate areas of a county for renewable solar development.*	
44	includes, but is not limited to, an assembly of		
45	equipment that converts sunlight into electricity		
46	and then stores, transfers, or both, that electricity.		
47	This includes photovoltaic modules, mounting and		
48	solar tracking equipment, foundations, inverters,		
49	wiring, storage devices and other components.		
50	Photovoltaic solar power generation facilities also		
51	include electrical cable collection systems		
52	connecting the photovoltaic solar generation		
53	facility to a transmission line, all necessary grid		
54	integration equipment, new or expanded private		
55	roads constructed to serve the photovoltaic solar		
56	power generation facility, office, operation and		

Page: 65

Author: John.Pouley Subject: Sticky Note Date: 2/28/2025 8:10:45 AM -08'00'

Buildings, structures, objects, sites and districts are all National Register of Historic Places (36CFR60) property types, and defined in federal regulations and National Register Bulletins. Please refer to National Register Bulletin 15 for definitions.

It can get confusing when a state redefines things that are already defined, if that makes sense. Also, the term "Historic Property" as defined in 36CFR800.16(l) specifically relates to Buildings, structures, objects, sites and districts that are listed or eligible for inclusion in the National Register.

Section 101 (54 U.S.C. § 302101 and 302301)

According to Section 101, the Secretary of the Interior (SOI) is authorized to “expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture” at the National, State and Local levels. In consultation with the National Conference of State Historic Preservation Officers (NCSHPO), the SOI created regulations for State Historic Preservation Programs. Part of these regulations indicate that State programs submitted to the SOI under these regulations shall be approved if it is determined that it provides for the designation and appointment by a Governor of a State Historic Preservation Officer (SHPO) among other criteria.

	RULE LANGUAGE	COMMENTARY	DISCUSSION POINTS
	(c) Prior to conducting a hearing to consider an ordinance establishing a significant photovoltaic solar resource area or areas a local government will hold one or more public meetings to solicit input from county residents. The public meeting(s) must occur in areas of the county that include lands likely to be determined significant photovoltaic solar resources. The county must provide mailed notice of the meeting(s) to property owners in the within such areas and within a two-mile radius of such areas. The county must also provide mailed notice to any physical address assigned to property in the general vicinity of such areas as shown in county assessor records that are not the same as the property owner's address.	*Requirement for public meetings and input as part of the county planning process under this option.*	
	(d) In addition to submitting the notice of the proposed amendment to the Director of the Department of Land Conservation and Development required by ORS 197.610(1), the county shall provide notice of the Post-Acknowledgement Plan Amendment to: (A) The State Department of Fish and Wildlife; (B) The State Department of Energy; (C) The State Historic Preservation Officer; (D) The Oregon Department of Agriculture; (E) The Oregon Department of Aviation; (F) The United States Department of Defense; (G) The Oregon Legislative Commission on Indian Services (LCIS); and (H) Federally recognized Indian tribes that may be affected by the application. Each county shall obtain a list of tribes with an ancestral connection to land within their jurisdiction from the Oregon Legislative Commission on Indian Affairs and shall send notice to all tribes in the commission's response.	*Notice required to these parties as well.*	
	(e) When designating a significant photovoltaic solar resource area, a county may choose not to identify conflicting uses as would otherwise be required by OAR 660-023-0030 through 660-023-0050. In the alternative, a county may choose to conduct a more detailed analysis that may lead to the identification of conflicting uses.	*This language was in previous draft, moved to front of this section.*	*Department is not aware of any additional issues.*
	(f) If a county chooses to identify conflicting uses under subsection (3)(e) of this rule, a county may choose not to limit or prohibit conflicting uses on nearby or surrounding lands. In the alternative, a county may choose to conduct a more detailed analysis of economic, social, environmental and energy (ESEE) consequences that could lead to a decision to limit or prohibit conflicting uses within a	*This language was in previous draft, moved to front of this section.*	

Page: 67

Author: John.Pouley Subject: Sticky Note Date: 2/28/2025 11:53:18 AM -08'00'
It is unclear why this needs to go to SHPO. What is the expectation for SHPO to receive a Post-Acknowledgement Plan?

	RULE LANGUAGE	COMMENTARY	DISCUSSION POINTS
	(B) Lands characterized by ODFW as Category 5 or 6, or other areas of poor to no value as wildlife habitat or with little or no restoration potential based on field data provided by the applicant and developed in consultation with ODFW. The exact location or categorization of wildlife habitat may be refined during consideration of a site but must be done in consultation with ODFW. (C) Sites where the construction and operation of the photovoltaic solar power generation facility will not result in significant adverse impacts to Historic, Cultural or Archaeological Resources because no such resources are present, or if resources are present, they will be avoided through project design to the extent that no additional mitigation is necessary, as provided in section 5 of this rule (D) Notwithstanding subsections (3)(i)(A) through (C) of this rule, a county may find that sites within solar photovoltaic resource areas described in subsections (3)(i)(a) through (3)(c) of this rule require additional mitigation measures as specified by the county;	*Cultural/archaeological significance will always require a site-by-site analysis, because these resources cannot be publicly mapped and many are unknown at this time. Section 5 will give procedures for how to do this.* *This allows counties to be more strict and require mitigation for these resources if the county believes it is necessary.*	*require mitigation correct?* *Issue: given the unknown nature of archaeological and cultural resources, a site by site analysis seems to be the only way to deal with this issue.*
	(j) For any significant photovoltaic solar resource area, a site within that area with the following characteristics requires mitigation: (A) Agricultural lands protected under Goal 3 that are: (i) comprised of soils with an agricultural capability class VI as classified by the U.S. Natural Resources Conservation Service (NRCS) and have the ability to produce greater than 300 pounds of forage per acre per year if the site consists of at least 640 acres; (ii) comprised of soils with an agricultural capability class III, IV, or V as classified by the U.S. Natural Resources Conservation Service (NRCS) , without an appurtenant water right on January 1, 2024; (iii) Mitigation for agricultural lands described in this subsection must be consistent with the requirements of section (4) of this rule. (B) Wildlife habitat characterized by ODFW as Category 2 that is not otherwise limited by section (3)(k) and wildlife habitat characterized by ODFW as Category 3 or 4 based on field data provided by the applicant and developed in consultation with ODFW. The exact location or categorization of Category 2, 3, or 4 wildlife habitat may be refined during consideration of a site but must be done in	*Same as previous mitigation section, with one difference noted below.*	*Issue: are these categories of agricultural lands that require mitigation correct?* *Issue: are these categories of wildlife habitat that require mitigation correct?*

Page: 69

Author: John.Pouley Subject: Sticky Note Date: 2/28/2025 11:58:34 AM -08'00'
First, there needs to be an attempt to look. Second, avoidance does not equate to no need for mitigation. Archaeological sites need to have the four NRHP criteria applied, and then based on the proposed project, assessed in terms of adverse effects (similar to 36CFR800.5). If an adverse effect would affect any of the qualifying NRHP aspects of integrity, whether the archaeological site is avoided or not, then there would still be a reason to look at mitigation options.

	RULE LANGUAGE	COMMENTARY	DISCUSSION POINTS
1	consultation with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a).		
2			
3	(C) Wildlife Habitat: Eastern Oregon Deer Winter Range, Eastern Oregon Elk Winter Range, Big Horn Sheep Habitat, and Pronghorn Essential and Limited Habitat as identified by Oregon Renewable Energy Siting Assessment (ORESA). The exact location of wildlife habitat identified by this subsection may be refined during consideration of a site but in consultation with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a).	*This has been reworded – previous version had this category entirely in the "off-limits" section but allowed a determination by ODFW that it might be mitigated. This puts such areas into the "mitigation required" category.*	
4			
5	(D) Priority Wildlife Conservation Areas where the ODFW makes a finding, based on site specific conditions, that mitigation for wildlife habitat consistent with the requirements of ORS 215.446(3)(a) reduces impacts from the photovoltaic solar power generation facility to a level acceptable to ODFW.	*Section 5 will provide how to do this.*	
6			
7	€ Sites where the construction and operation of the photovoltaic solar power generation facility may result in significant adverse impacts to Historic, Cultural or Archaeological Resources as defined in Section (2) but the project incorporates necessary mitigation measures pursuant to section 5 of this rule.	*This allows a county to be stricter than the baseline and move areas from "mitigation required" to "not allowed."*	*Issue: should counties be allowed to be stricter than the "mitigation required" baseline? Counties would not be able to do this under the "sites" language in Division 33.*
8			
9	(F) Notwithstanding subsections (3)(j)(A) through € of this rule, a county may find that individual sites within solar photovoltaic resource areas described in subsections (3)(j)(A) through € of this rule have impacts that are too significant to be mitigated and thus are not eligible for approval under the provisions of this section.		
10			
11	(k) For any significant photovoltaic solar resource area, a site within that area with the following characteristics is not eligible for approval of a project under the provisions of this section:	*Same as before, with changes to the Priority Wildlife Conservation Area language as discussed above.*	
12			
13	(A) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6)(a) and (b). The exact location of Significant Sage-Grouse Habitat may be refined during consideration of a specific project but must be done in consultation with the Oregon Department of Fish and Wildlife (ODFW).		*Issue: are these categories of wildlife habitat that are excluded from consideration under these rules correct?*
14			
15	(B) Priority Wildlife Connectivity Areas (PWCA's) as designated by the ODFW that do not qualify under subsection (3)(j)(D) of this rule.		

Page: 70

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 12:22:20 PM
What is meant by "significant adverse impacts to Historic, Cultural, or Archaeological Resources? Please refer again to the definition of "Historic Property" and the process for evaluating and assessing adverse effects in 36CFR800.4-36CFR800.5. Without definitions for "significant adverse effects" and a process for assessing appropriate mitigations, it lacks guidance. The federal regulations have both, and are referenced here as a guide with a process to make it clear what an adverse effect is, and how to mitigate.

	RULE LANGUAGE	COMMENTARY	DISCUSSION POINTS
	follows: for local and non-local farms, $.74 and $.36 for every $1 produce sold, and for local and non-local ranches, $.79 and $.66 for every $1 sold. (iii) The Time-Value of Money Adjusted Productivity of a Farm or Ranch intended to capture the economic productivity of the agricultural land over the life of the solar lease in today's dollars, which is calculated by assessing the Present Value of the agricultural lands contribution by multiplying the Crop Rent as a function of its productivity, by the general economic contribution % to capture its baseline, annual economic contribution to the community. The Present Value is then further calculated from that number using the expected CAP RATE growth and the years of the lease agreement. (C) The compensatory mitigation payment established under subsection (5)(a)(B) may be received by the county, a unit of county government, a 501-c-3 not for profit organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to provide uplift opportunities for the applicable agricultural sector.		
	(5) Historic, Cultural, and Archaeological Resources: The proposed photovoltaic solar power generation facility shall mitigate potential impacts to historic, cultural, and archeological resources pursuant to the requirements of ORS 215.446(3)(b) and OAR 660-023-0210. (a) Prior to submittal of an application for development of a photovoltaic solar power generation facility within a renewable photovoltaic solar energy area, an applicant shall compile information on the renewable photovoltaic solar energy site or land within a renewable photovoltaic solar energy area that includes, among other things a records review, field survey, site inventory and cultural resources survey completed by a professional archaeologist as defined in ORS 97.740. (b) The applicant shall transmit the information compiled to the State Historic Preservation Office (SHPO) any Tribe that may be affected by the applica and applicable local government at least 60 days prior to submitting the application to the county.	*This section is currently undergoing consultation, so there may still be some changes.* *This would need to be done for every application submitted – to make an individualized determination as to which of the three categories (no impacts, mitigated impacts, not allowed) the site falls into.*	*Is this the best method for dealing with the issue of archaeological, historical, and cultural resources and potential conflicts?*

Page: 73

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:17:35 PM
This works for pedestrian survey looking at the ground. If a permit is needed for collection or excavation, an Oregon Qualified Archaeologist (ORS 390.235) is needed.

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:19:40 PM
Wondering how many of these would be submitted each year. There are capacity concerns depending on volume.

	RULE LANGUAGE	COMMENTARY	DISCUSSION POINTS
55	(c) The information compiled, ~~including the location~~		
56	of any cultural resources, shall be kept confidential		
1	and not included in the local record.		
2			
3	(d) Based upon the information compiled and		
4	submitted and comments received, if any, from		
5	SHPO and any Tribe that may be affected by the		
6	application, a county shall make one of the		
7	following determinations in its decision regarding		
8	the application		
9	:		
10	(A) No historical, archaeological, or cultural		
11	resources are present;		
12			
13	(B) Historical, archaeological, or cultural resources		
14	are present, but will be avoided through project		
15	design to the extent that no additional mitigation is		
16	necessary;		
17			
18	(C) Historical, archaeological, or cultural resources		
19	are present, but mitigation measures will reduce		
20	impacts so that there are no significant adverse		
21	impacts to historical, archaeological, or cultural		
22	resources;		
23			
24	(D) Historical, archaeological, or cultural resources		
25	are present, and development will result in		
26	significant adverse impacts which cannot be		
27	mitigated and an archaeological permit from SHPO		
28	may not be obtained.		
29			
30	(e) The county shall include any mitigation		
31	measures as conditions of approval in the final		
32	decision.		
33			
34	**(6) Community Benefits:**		
35	All applications for a photovoltaic solar power	*This section is unchanged from previous versions, with addition of $1K per nameplate MW filled in below.*	
36	generation facility within a photovoltaic solar		
37	resource area or site shall identify how the project		
38	will contribute to addressing community needs and		
39	benefits. Identified contributions, financial or		
40	otherwise, will be in addition to property tax		
41	revenues or payments in lieu of taxes.		
42			
43	(a) A county may approve a proposal submitted by		
44	the applicant when substantial evidence in the		
45	record demonstrates:		
46			
47	(A) The proposed contribution or contributions are		
48	meaningful and reasonable;		
49			
50	(B) The proposed contribution or contributions will		
51	serve to help improve a community's social health,		
52	well-being, and functioning; and		
53			
54			

Page: 74

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:21:14 PM
See ORS 192.345 (11) which relates to archaeological objects and sites.

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:22:45 PM
Given the nature of archaeological sites, this statement could never be an absolute. Recommend "low probability" but have an Inadvertent Discovery Plan (IDP) in place (LCIS has one that is great).

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:31:20 PM
Previously, application of the NRHP criteria and assessment of effects under federal regulations (36CFR800.4 and 36CFR800.5) were provided as a guide. Since this is all based on eligibility to the National Register, there should be some application of the four criteria, and seven aspects of integrity. Based on that data, then it is possible to reach an informed decision of no effect or no adverse effect. As a purposely ridiculous example, one could build a waterpark that "avoids" an archaeological site by inches. However, that would still have an adverse effect on qualities that make the property eligible to the NRHP. Adverse effects are more than physical.

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:32:20 PM
How are these developed? Are they based on National Register qualifying characteristics?

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:34:15 PM
Two things here. First, mitigation is the process for addressing unavoidable adverse effects. Second, it has nothing to do with whether or not a permit from SHPO may be obtained. With that said, a permit is required by statute (ORS 358.920, for any excavation, injury, alteration, or destruction of an archaeological site in Oregon.

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:35:14 PM
This should also include measures to minimize or avoid (based on any NRHP qualifying characteristics).

Page: 86

Author: John.Pouley Subject: Sticky Note Date: 3/14/2025 1:38:01 PM
As with a previous comment, mitigation is how adverse effects are addressed.

	RULE LANGUAGE	COMMENTARY	DISCUSSION POINTS
1–25	prevent them from being independently managed for farm use. (vii) Agricultural lands protected under Goal 3 with an appurtenant water right on January 1, 2024. This subsection does not apply if the ability to use the appurtenant water right to irrigate subject property becomes limited or prohibited due to a situation that is beyond the control of the water right holder including but not limited to: prolonged drought, critical groundwater designations or other state regulatory action, reduced federal contract allocations, and other similar regulatory circumstances. If retained, the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes. . (viii) Sites where the construction and operation of the photovoltaic solar power generation facility will result in significant adverse impacts to Historic, Cultural or Archaeological Resources that cannot be mitigated pursuant to the provisions of OAR 660-023-0195(5)	*From draft OAR 660-023-0195(3)(k)(G).* *Consistent with language included in draft OAR 660-023-0195(3)(k)(H).*	*The base language in OAR 660-023-0195(5) is still under consultation with SHPO and Tribes.*
27–43	(e) Approval of a proposed photovoltaic solar power generation facility under OAR 660-033-0130(45)(a)(B) is subject to the following requirements: (A) The proposed photovoltaic solar power generation facility is located in an area with the following characteristics: (i) Topography with a slope that is predominantly 15% or less; (ii) An estimated Annual Solar Utility-Scale Capacity Factor of 19 percent or greater; and (iii) Location predominantly within 10 miles of a transmission line with a rating of 69 KV or above.	*This language is imported from the language negotiated in OAR 660-023-0195.*	*The department does not see including the ability of counties ot vary "significant" solar areas as in the OAR 660-9023-0195 rules, since these rules are to be directly applied by counties.*
44–53	(B) For a proposed photovoltaic solar power generation facility on high-value farmland, the application shall include a cumulative impacts analysis as set forth in OAR 660-033-0130(38)(h)(G), except that the acreage threshold for the analysis set forth in OAR 660-033-0130(38(h)(G)(i) and (ii) shall be 300 acres and the impact area set forth in OAR 660-033-0130(38)(h)G) would be a distance of 2.5 miles.	*This requirement is already in section (38) but would be modified here to reflect larger acreage totals and a corresponding larger impact area. The numbers in section (38) are 48 acres and one mile radius, reflecting conditions and sizes primarily in Western Oregon.*	*Should these requirements from Section (38), which apply to all solar development today, be carried over to this section, and if so, should the numbers be enlarged to reflect*

Oregon
Tina Kotek, Governor

Oregon Department of Fish and Wildlife
Habitat Division
4034 Fairview Industrial Dr SE

Salem, OR 97302
503-947-6044
FAX: 503-947-6042
dfw.state.or.us

April 20, 2025

Oregon Department of Land Conservation and Development
Oregon Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, OR 97301

RE: Proposed Eastern Oregon Least Conflict Solar Siting

The Oregon Department of Fish and Wildlife (ODFW) appreciates the opportunity to provide comment and feedback on the proposed rulemaking regarding solar siting in Eastern Oregon. ODFW participated on the rulemaking advisory committee as an ex-officio member, and appreciated the opportunities provided by DLCD staff to engage with other committee member to collaborate on issues and challenges surrounding the siting of solar resources. ODFW provided information on potential impacts to species and habitats from facility siting, and engagement within the process allowed for increased awareness, and recognition within the proposed rule, of existing resources of concern that benefit from avoidance or mitigation of impacts.

The final rule package culminating from the work of this advisory committee not only highlights specific areas where solar siting should receive consideration of offsets for impacts but also attempts to provide regulatory relief for projects that can be sited in areas of lower habitat value. The balance created within the current draft should provide protection for species and an additional pathway to meeting Oregon's renewable energy goals.

ODFW thanks DLCD staff for allowing our participation in this process and looks forward to continued engagement with all interested parties in the renewable energy siting realm in the future.

Sincerely,

Jeremy Thompson
Energy Coordinator- Oregon Department of Fish and Wildlife

CENTRAL OREGON LANDWATCH

2843 NW Lolo Drive., Ste. 200 | Bend, OR 97703
Phone (541) 647-2930
www.colw.org

April 21, 2025

sent via email: adam.tate@dlcd.oregon.gov, jon.jinings@dlcd.oregon.gov

Solar Siting Rulemaking Advisory Committee Members
c/o: Adam Tate, Renewable Energy Planner
Oregon Department of Land Conservation and Development
635 Capitol Street NE Suite 150
Salem, OR 97301

Re: Eastern Oregon Solar Siting Rulemaking – comments on final draft rules

Dear Solar Siting Rulemaking Advisory Committee Members:

Thank you for the opportunity to submit comments on the rule amendments to OAR Ch. 600 Divisions 4, 6, 23, and 33 that would implement HB 3409 (2023).

Central Oregon LandWatch ("LandWatch") is a Bend-based nonprofit organization which has worked to uphold our statewide land use planning system in Central Oregon for over 35 years. With over 900 members, LandWatch has a long history of protecting farm and forestland, supporting responsible urban development, and advocating for the wildlife and wild places of our region.

Overall, LandWatch supports the proposed rule amendments. The proposed rules create a process through which counties can hopefully identify and prioritize photovoltaic solar energy generation on sites that do not pose significant impacts on culturally significant areas, wildlife habitat, farmland, and forestland. However, over the course of the rulemaking process, several issues emerged that we do not believe are adequately addressed by the draft rules. We offer the following feedback on those issues to inform final rule amendments prior to adoption:

- **Prohibit solar development within 1 mile of a UGB**.

Many cities in Central and Eastern Oregon are growing and may need more land to accommodate urban housing and employment. Resource land (EFU and Forest land) can be included in urban reserves, and when they are, these EFU and Forest lands can be first priority

CENTRAL OREGON LANDWATCH
2843 NW Lolo Drive., Ste. 200 | Bend, OR 97703
Phone (541) 647-2930
www.colw.org

for UGB expansions. Siting solar development close to UGBs, including on EFU and Forest lands, can limit future potential UGB expansion opportunities. An interesting example is currently playing out in Bend, where a solar facility within one mile of the UGB was sited on EFU land several years ago. Now, that landowner is seeking to rezone the land from EFU to a rural residential zone, presumably to become eligible for UGB expansion.[1]

- **Require solar development applications seeking Goal exceptions to maintain current zoning**.

We agree with the staff recommendation that projects seeking an exception to Goal 3 or Goal 4 must maintain their EFU or Forest zoning. As explored and streamlined by this rulemaking, solar energy siting is a conditionally allowed use on both EFU and Forest lands. There is no reason a project property should lose that zoning when a goal exception is approved. Maintaining that zoning will help ensure the property returns to farm or forest use following the lifetime of a solar energy project.

- **Exclude the Metolius Area of Critical State Concern (ACSC) from any eligibility for solar energy development**.

The state's current and potential future ACSCs should be explicitly excluded from any solar energy development under any of the three tracks for permitting proposed by the draft rules. The Metolius ACSC plan was approved by the legislature in 2009 and is intended to "to protect the outstanding water, wildlife and scenic values of the area." ACSC Plan at page 4. This special place should be off limits to large-scale energy development, including solar.

- **Goal exceptions should be required for projects larger than 3,840 acres on nonarable lands.**

The draft rules would impose no limit on the size of solar facilities on nonarable lands, including projects larger than 3,840 acres reviewed by EFSC. Nonarable lands are often used as rangeland for livestock grazing throughout Central and Eastern Oregon, which is a farm use

[1] https://www.deschutes.org/cd/page/247-24-000097-pa-247-24-000098-zc-bcl-llc-comprehensive-plan-amendment-and-zone-change

under Goal 3. An exception to Goal 3 should be required for projects of this size on agricultural lands.

- **Counties should defer to the expertise of Tribes when determining the value and/or appropriate mitigation for impacts to cultural resources**.

In the Commission's recently adopted Cultural Area Rules at OAR 660-023-0210, Tribal governments are recognized as an "authoritative source of knowledge on landscape features that are significant to their tribe's culture." OAR 660-023-0210(4)(a). The solar siting rules should recognize the same, leaving no discretion for counties to disagree about the value of Tribal cultural resources.

- **The rules' maximum acreages on high-value farmland should be lower**.

The rules allow for conversion of either up to 240 acres of high-value farmland if using the Div. 23 rules, or up to 160 acres if using the Div. 33 rules. Both of these acreages should be reduced. LandWatch supports the overall intent of the rules to identify low-controversy areas for solar energy development. High-value farmland is not low-controversy. In many eastern Oregon counties, high-value farmland is in limited supply and should be highly protected by the current rulemaking. We recommend the Div. 23 rules allow only up to 80 acres, and the Div. 33 rules only 12 acres (consistent with OAR 660-033-0130(38)), for conversion of high-value farmland.

- **ODFW concurrence should be required for all wildlife habitat determinations**.

Many provisions of the draft rules call for certain wildlife habitat identification to be done in consultation with ODFW. We recommend that instead of mere consultation, the rules should require "ODFW concurrence" or "ODFW approval." Simple consultation with ODFW does not ensure agreement by ODFW. Without ODFW concurrence, "consultation" could be achieved by only reaching out to ODFW, even though ODFW may strongly disagree with an applicant's characterization of habitat location, quantity, quality, or the adequacy of proposed mitigation. To truly balance solar energy siting with protection of wildlife habitat, the draft rules

should respect ODFW's expert status and require ODFW concurrence on any habitat-related matters.

- **Agricultural lands with appurtenant water rights that have been leased for instream use should be ineligible for solar siting**.

The draft rules, at OAR 660-023-0195(3)(k)(H) and OAR 660-033-0130(45)(d)(D)(vii), make lands with an appurtenant water right ineligible for solar energy facility siting unless the "ability to use the appurtenant water right [] becomes limited or prohibited" due to certain "regulator circumstances." These draft rules also state that "if retained, the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes." In many areas in Central and Eastern Oregon, some water rights owners temporarily lease their water rights for instream use. These instream leases can only occur a maximum of four out of five years, or otherwise the owner risks forfeiture of the water right. Thus, these leased water rights are retained by the owner of the appurtenant land. The rules should specify that lands in this situation with temporary instream leases are also ineligible for solar energy siting.

- **Prioritize siting solar energy projects on nonarable lands versus arable lands.**

The rules should require compliance with the standards at OAR 660-033-0130(38)(d)(D)(vi), which require a showing that siting on nonarable lands is impracticable before siting on arable lands, for projects sited under the new OAR 660-033-0130(45) rules. We support the draft rules that include this requirement at OAR 660-033-0130(45)(e)(K).

- **The rules should require an agricultural lands cumulative effects analysis.**

The existing agricultural lands cumulative effects analysis at OAR 660-033-0130(38)(h)(G)(ii) should be required for both the "Option 1" (directly application of the rules to sites) and "Option 2" (adoption in the county comprehensive plan of significant solar energy resources). The new rules seek to streamline and incentivize solar development in certain low-

conflict areas. These areas are likely to become concentrated with solar energy development, making cumulative effects considerations more relevant.

- **The rules should require a cumulative effects analysis for wildlife habitat.**

Similar to above, a concentration of solar energy development will have a cumulative impact on wildlife habitat. For big game species that seasonally travel across large ranges, multiple solar energy projects can disastrously impact their life cycle. In addition to the habitat value categories contemplated by the draft rules, the rules should require a cumulative effects analysis for wildlife habitat, and set a threshold for when cumulative effects of solar projects are too significant on species such that alternative locations must be pursued.

- **The rules should limit the quantity of lands over which counties have discretion to include or exclude from significant photovoltaic solar resource areas.**

The draft rules, at OAR 660-023-0195(3)(h)(B), allow counties to either exclude areas from significance even though they meet the criteria, or include areas as significant even though they do not meet the criteria. We agree with the needs for local discretion in limited circumstances, but we are concerned about potential misuse of these discretionary carveouts. We recommend that a numerical limit be places on these discretionary exclusions and inclusions, such as no more than 10% of the overall area being designated as significant.

Thank you for your consideration of these comments and for your work to develop rules to implement HB 3409 (2023).

Regards,

Rory Isbell
Staff Attorney and Rural Lands Program Director
Central Oregon LandWatch
2843 NW Lolo Drive, Suite 200
Bend, Oregon 97703
(541) 647-2930 x804
rory@colw.org

OREGON DEPARTMENT OF AGRICULTURE
Protect. Promote. Prosper.

635 Capitol St NE, Salem, OR 97301-2532
503.986.4552 | Oregon.gov/ODA

April 24, 2025

Rules Coordinator
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301
casaria.taylor@dlcd.oregon.gov

Re: Public Comment on Eastern Oregon Solar Siting Possibilities OAR 660 (4,6,23,33)

Thank you for the opportunity to provide comments on the proposed rules related to solar siting in Eastern Oregon.

These comments are to express concern regarding the proposed approach to mitigation—specifically, the one-time payments to counties intended to offset the loss of agricultural economic activity due to solar siting. While mitigation is a critical component of balancing Oregon's clean energy goals with our strong agricultural economy, the current methodology used to determine payment levels is inadequate and does not reflect on-the-ground realities.

The use of USDA Census of Agriculture data and Conservation Reserve Program (CRP) rent estimates to calculate the value of land does not align with actual land costs or income potential. For example, in Morrow County, the state USDA FSA Committee must annually adjust CRP payment estimates because land is not typically leased on a monthly basis. This discrepancy results in underestimating the real economic impact of removing land from productive agricultural use.

Moreover, the one-time payment model fails to account for long-term opportunity costs. These include the lost potential for new agricultural entrepreneurs to establish operations, as well as the broader impact on the community when farming families are pushed out. When these families leave, it reduces the county's tax base and affects the viability of essential services, including schools and public safety. This erosion of rural community infrastructure cannot be offset with a single payment.

In addition to mitigation concerns, we urge DLCD to consider adopting a cap on the total amount of farmable (or ranchable) land that can be used for solar siting—similar to the Conservation Reserve Program (CRP), which caps participation at 25% of a county's farmable acreage. Without a similar threshold, we risk piecemeal conversion of high-quality agricultural lands over time, leading to cumulative and irreversible impacts on Oregon's food systems and rural economies.

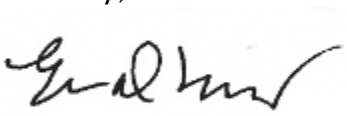
Finally, while proposed rules appear to prioritize protecting Class I and II soils, in practice, solar development often targets the next tier of valuable agricultural land—typically flat, deep-soil areas that are well-suited for livestock grazing or specialty crop production. These lands are an essential part of the agricultural mosaic landscape and should not be viewed as expendable simply because they do not fall into the highest soil classifications.

We strongly urge DLCD to revise the proposed rules to include:

- A more accurate and locally grounded formula for mitigation payments.
- Ongoing or tiered payment structures that reflect long-term losses.
- A maximum percentage cap on the amount of farmland allowed for solar development.
- Recognition and protection of valuable grazing and non-Class I/II agricultural lands.

Thank you for your attention to these concerns and for your ongoing commitment to balanced land use planning respectful of both Oregon's environmental goals and its agricultural heritage.

Sincerely,



Elin Miller, Chair
State Board of Agriculture

cc: Lisa Charpilloz Hanson, Director, Oregon Department of Agriculture

Davis Wright Tremaine LLP

Suite 700
560 SW Tenth Ave
Portland, OR 97205

Elaine Albrich
503-778-5423 tel
elainealbrich@dwt.com

April 30, 2025

VIA EMAIL Casaria.taylor@dlcd.oregon.gov

Land Conservation and Development Commission
635 Capitol St., Ste. 150
Salem, Oregon 97301

Re: Solar Siting RAC Member - Comment Letter

Dear Chair Hallová, Director Dr. Bateman, and Members of the Commission:

Thank you for the opportunity to provide comments for your consideration on the above-referenced rulemaking. As a member of the Rules Advisory Committee (RAC), I participated in 11 of the 13 RAC meetings, and participated in several ad-hoc work group committees. The RAC was tasked with a very difficult task of developing lower-conflict solar siting standards for siting solar photovoltaic generation on rural resource lands. The RAC members have contributed hundreds of hours to this rulemaking effort.

Despite good faith efforts, the proposed rules, in my opinion, do not go far enough to balance the protection of resources with facilitating lower conflict solar siting in Oregon. Ultimately, with the proposed rules, the State is choosing to protect cultivated agricultural land over rangeland that, often times, has greater ecological and cultural resource values than cultivated agriculture land. There remains a fundamental policy conflict embedded in the proposed rules but because we are nearing the end of this rulemaking effort, I keep my comments focused on the issues that I believe the Commission can resolve before adopting the final rule language.

OAR 660, Div. 23, Photovoltaic Solar Resource Areas

This division of the rules is programmatic, providing counties a new Goal 5 inventory process for solar resource areas. The proposed rules are too complicated, too burdensome, and most likely, will not be implemented because counties will not have the funding or the time to pursue a Goal 5 solar resource area inventory under these new rules. Given this reality, I focus my comments on OAR 660, Div. 33.

OAR 660, Div. 33, Photovoltaics Solar Resource Sites

It is crucial, given that counties are unlikely to implement the OAR 660, Div. 23 rules, that the Commission do what they can to make OAR 660, Div. 33 easier to work with. The proposed rules, in my opinion, do not go far enough to fulfil the Legislative directive of HB 3409 of

creating a more streamlined, lower conflict siting process for solar generation. I encourage the Commission to revise the proposed rules to incorporate the following suggested revisions. Attachment 1 includes a redline of the rules to implement these suggestions.

Suggested Revisions:

- Div. 33 acreage thresholds should be the same as Div. 23 acreage thresholds. Div. 33 is going to be the more viable pathway for lower conflict siting of solar on rural resource lands. The Div. 23 and Div. 33 require protection of the same resources and therefore should align with allowable project size.

  ➔ *See Attachment 1 redline for suggested language [-0130(45)(d)(A)-(C), (e)(K)].*

- Simplify Div. 33 standards. Div. 33 standards need to be simplified and easier to implement and should not simply implement Div 23 programmatic requirements on individual solar projects. Counites are familiar with ORS 215.446, which already implements EFSC standards for larger local projects. Div. 33 should look to ORS 215.446 for habitat and cultural resource protection. Div. 33 should be limited to (1) agricultural mitigation; (2) community benefits; and (3) compliance with ORS 215.446. An applicant under Div. 33 standards should not have to comply with Div. 23 requirements related to notice because such coordination is already addressed under ORS 215.446.

  ➔ *See Attachment 1 redline for suggested language [-0130(45)(d)(D)(viii), (e)(F), (g)].*

- Allow for flexibility and conservation in the management of water resources. As a matter of policy, property owners should have the right to choose what they want to do with their water when siting a solar project on their property. Transferring a right out of the solar project's footprint and maintaining irrigation use results in a no-net loss of irrigated land, while instream leasing has an ecological benefit and preserves the water rights for future agricultural use. Both are important policy goals in the management of water resources and agricultural land.

  ➔ *See attached redline for suggested language [-0130(45)(d)(D)(vii)].*

- Clean-up unclear language. As drafted, some of the rulemaking may be misapplied or misinterpreted. Minor revisions help clarify proper application and interpretation of Div. 33 requirements.

  ➔ *See attached redline for suggested language [-0130(45)(a)(C), (c)(A), (c)(B)].*

Thank you for your consideration.

Davis Wright Tremaine LLP

Elaine R. Albrich

Elaine Albrich

4932-4136-0444v.1 0050033-004836

OAR 660-033-0130 [Version 4.16.25 – ERA Comments]

(38) A proposal to site a photovoltaic solar power generation facility except for a photovoltaic solar power generation facility in Eastern Oregon subject to the provisions of subsections (45)(a)(B) and (C) shall be subject to the following definitions and provisions:

(45)(a) A county may review a proposed photovoltaic solar power generation facility on agricultural land in Eastern Oregon under one of the following three alternatives:

(A) A county may review a proposed photovoltaic solar power generation facility on agricultural land under the provisions of OAR 660-033-0130(38).

(B) If a county has not adopted a program under the provisions of OAR 660-023-0195, a county may review a proposed photovoltaic solar power generation facility on agricultural land located in Eastern Oregon under the provisions of subsections (b) through (l) of this section; or

(C) If a county has adopted a program under the provisions of OAR 660-023-0195, ~~A~~a county may review a proposed photovoltaic solar power generation facility on agricultural land located in Eastern Oregon under the provisions of OAR 660-023-0195.

Commented [AE1]: Clean up for clarity.

(b) A proposal to site a photovoltaic solar power generation facility under OAR 660-038-0130(45)(a)(B) shall be subject to the following definitions and provisions:

(A) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(B) "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 at ORS 195.300(10) unless otherwise stated.

(C) "Eastern Oregon" means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of the state and the western boundary of Wasco County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the state.

(D) "High-value farmland means land described in ORS 195.300(10), except ORS 195.300(10)(f)(C) which is excluded from the definition.

Commented [AE2]: Carves out Columbia Valley AVA from definition of high-value farmland. May still be considered high value farmland if irrigated or located within a place of use.

(E) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(F) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable 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.

(G) "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 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. 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 1320 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 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(c)(A) If an applicant files an ~~A county shall consider~~ application~~s~~ for a proposed photovoltaic solar power generation facility pursuant to OAR 660-033-0130(45)(a)(B), a county must process the application unless a county has either:

(i) Approved a program for significant solar photovoltaic resource areas under the provisions of OAR 660-023-0195; or

(ii) Taken action through the county elected body, either prior to, or after the effective date of this rule that declines to consider photovoltaic solar power generation facilities under OAR 660-033-0130(45)(a)(B).

~~(B) A county may choose to consider photovoltaic solar power generation facilities under OAR 660-033-0130(45)(a)(A) or (C).~~

(d) A county may approve a photovoltaic solar power generation facility under OAR 660-033-0130(45)(a)(B) as follows:

(A) On high-value farmland that qualifies for an exemption pursuant to the provisions of subsection (d)(D)(vii) of this section and that is not otherwise limited by the provisions of subsection (d)(D)(vi) of this section, the facility may not use, occupy, or cover more than 240~~160~~ acres not including lands devoted to temporary workforce housing.

(B) On arable land, the photovoltaic solar power generation facility may not use, occupy, or cover more than 2,560 ~~1,280~~ acres not including lands devoted to temporary workforce housing.

(C) On non-arable land, the photovoltaic solar power generation facility may not use, occupy, or cover more than 3,840~~1,920~~ acres not including lands devoted to temporary workforce housing.

(D) Notwithstanding subsections (45)(d)(A) through (C) of this section, a county may not approve a photovoltaic solar power generation facility under OAR 660-033-0130(45)(a)(B) on land that is:

(i) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6)(a) and (b). The exact location of Significant Sage-Grouse Habitat may be refined during consideration of a specific photovoltaic solar power generation facility but must be done in consultation with ODFW.

Commented [AE3]: Clean up for clarity.

Commented [AE4]: This language implies that a county could tell an applicant that it must use -0130(38) rather than -0130(45). The intent of this provision is to have the county opt out if it doesn't want to use -0130(45) to process applications.

Commented [AE5]: Put a cap on nonarable lands for sites. This goes towards trying to still push for lower conflict sites which may ultimately be on cultivated wheat because of habitat and cultural resource values on nonarable lands.

(ii) Priority Wildlife Connectivity Areas (PWCA's) as designated by the Oregon Department of Fish and Wildlife (ODFW) that do not qualify under section 660-023-0195(4)(d)(E).

(iii) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. The exact location of high use and very high use wildlife mitigation corridors may be refined during consideration of a specific photovoltaic solar power generation facility but must be done in consultation with ODFW.

(iv) Wildlife habitat characterized by ODFW as Category 1 based on field data provided by the applicant and developed in consultation with ODFW. The exact location and characterization of Category 1 wildlife habitat may be refined during consideration of a specific photovoltaic solar power generation facility but must be done in consultation with ODFW.

(v) On lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21.

(vi) Soils that are irrigated or not irrigated and classified prime, unique, Class I or Class II, as classified by the U.S. Natural Resources Conservation Service (NRCS), unless such soils make up no more than five percent of a proposed Photovoltaic Solar Site and are present in an irregular configuration or configurations that prevent them from being independently managed for farm use.

(vii) Agricultural lands protected under Goal 3 with an appurtenant water right on January 1, 2024. This subsection does not apply if ~~the ability to use~~ a) the appurtenant water right cannot be used to irrigate the subject property ~~becomes prohibited~~ due to a situation that is beyond the control of the water right holder including but not limited to: critical groundwater designations or other state regulatory action, reduced federal contract allocations, and other similar regulatory circumstances; b) ~~or~~ the owner of the water right was unable to put it the water to beneficial use because water was not available or the right was discontinued under an order of the commission under ORS 537.775; c) ~~. If retained,~~ the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes; or d) the appurtenant water right ~~, unless the appurtenant water right~~ is leased as an in-stream water right pursuant to ORS 537.348 for the life of the photovoltaic solar power generation facility.

(viii) Sites where the construction and operation of the photovoltaic solar power generation facility will result in significant adverse impacts to Historic, Cultural or Archaeological Resources that cannot be mitigated pursuant to the provisions of ORS 215.446(3)(b) ~~OAR 660-023-0195(6)~~.

(e) Approval of a proposed photovoltaic solar power generation facility under OAR 660-033-0130(45)(a)(B) is subject to the following requirements:

(A) The proposed photovoltaic solar power generation facility is located in an area with the following characteristics:

(i) Topography with a slope that is predominantly 15% or less;

(ii) An estimated Annual Solar Utility-Scale Capacity Factor of 19 percent or greater; and

Commented [AE6]: Includes other likely scenarios

Commented [AE7]: Allows for preservation of water right and beneficial in-stream use during the life of the project

Commented [AE8]: Rely on EFSC standard to protect resources, which the legislature wants to apply to larger solar projects. If potential impacts cannot be mitigated under that standard, site becomes a "no go" for the lower conflicts siting pathway.

(iii) Predominantly within 10 miles of a transmission line with a rating of 69 KV or above.

(B) For a proposed photovoltaic solar power generation facility on high-value farmland or arable land, a study area consisting of lands zoned for exclusive farm use located within two miles measured from the exterior boundary of the subject property shall be established and:

(i) If fewer than 320 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits wholly or partially within the study area, no further action is necessary.

(ii) When at least 320 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 as multiple facilities wholly of partially within the study area, the county 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(C) The proposed photovoltaic solar power generation facility shall take measures to mitigate agricultural impacts as set forth in OAR 660-023-0195(5)(b)(B) and (C).

(D) The proposed photovoltaic solar power generation facility shall take measures to provide community benefits as set forth in OAR 660-023-0195(7)(b).

(E) The proposed photovoltaic solar power generation facility shall mitigate potential impacts to fish and wildlife habitat pursuant to the requirements of ORS 215.446(3)(a).

(F) The proposed photovoltaic solar power generation facility shall mitigate potential impacts to historic, cultural, and archeological resources pursuant to the requirements of ORS 215.446(3)(b) ~~OAR 660-023-0195(6)~~. The application shall contain evidence that the applicant provided, under confidential cover pursuant to ORS 192.345(11), the cultural resources survey to SHPO and any Tribe that may be affected by the application at least 60 days prior to submitting the application to the county.

(G) (i) The application will ensure that considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an by an individual with qualifications determined to be acceptable by the county demonstrating that such temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved plan shall be attached to the decision as a condition of approval.

(ii) On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility 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.

(iii) 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

photovoltaic solar 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 of the project.

(H) The requirements of OAR 660-033-0130(38)(h)(A) through (D) have been satisfied for proposed photovoltaic solar power generation facilities on high-value farmland and arable land, and the requirements of OAR 660-033-0130(38)(h)(D) have been satisfied for proposed photovoltaic solar power generation facilities on nonarable land.

(I) A county may condition approval of a proposed photovoltaic solar power generation facility to address other issues, including but not limited to assuring that the design and operation of the facility will promote the prevention and mitigate the risk of wildfire.

(J) For a photovoltaic solar power generation facility located on arable or nonarable lands, the project is not located on arable soils unless it can be demonstrated that:

(i) Siting the facility on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(K) For a photovoltaic solar power generation facility located on nonarable lands no more than 2,560~~1,280~~ acres of the facility will be located on arable soils.

(L) A county that receives an application for a permit under this section shall, upon receipt of the application, provide notice as required by ORS 215.446(6) and (7).

(f) Notwithstanding any other rule in this division, a county may determine that ORS 215.296 and OAR 660-033-0130(5) for a proposed photovoltaic solar power generation facility are met when the applicable provisions of OAR 660-033-0130(45)(b) through (e) are found to be satisfied.

(g) A county shall satisfy the requirements of OAR 660-023-0195(9)(a)~~, (b), (c), (j) and (m), and (b)~~.

Commented [AE9]: Require coordination with DOD/Navy on MLRs only. Other provisions captured under notice requirements in ORS 215.446 and elsewhere.

(h) A permit approved for a photovoltaic solar power generation facility shall be valid until commencement of construction or for six years, whichever is less. A county may grant up to two extensions for a period of up to 24 months each when an applicant makes a written request for an extension of the development approval period that is submitted to the county prior to the expiration of the approval period.

(i) A county may grant a permit described in subsection (j) a third and final extension for period of up to 24 months if:

(A) An applicant makes a written request for an extension of the development approval period prior to the expiration of the second extension granted under subsection (f) of this section;

(B) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(C) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(j) In addition to other sources, a local government may rely on data from online mapping tools, such as that data included in the Oregon Renewable Energy Siting Assessment (ORESA), to inform determinations made under this rule.

(k) 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 as defined in ORS 30.930(2) and (4).

(l) 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.

660-033-0145
Agriculture/Forest Zones

(1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-0050;

(2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055; and

(3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-0057.

(4) A county in Eastern Oregon shall apply either OAR chapter 660, division 6 or 33 standards for siting a photovoltaic solar power generation facility in an agriculture/forest zone based on the predominant use of the tract on January 1, 2024.

April 30, 2025

Oregon Department of Land Conservation and Development
Oregon Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re: Eastern Oregon Solar Siting Possibilities Rulemaking Final Comments

Dear Director Brenda Ortigoza Bateman,

I had the pleasure of meeting you at the PáTu Wind office, a year or so ago. Although I have not been part of the RAC, I have tried to follow the proceedings. I want to emphasize the importance of expanding the amount of acreage that can be developed for solar before a Goal 3 Exception needs to be taken.

Our dryland wheat area, as we discussed on your visit, should never have been cultivated. The land would have been more productive to have been left in the native bunch grass vegetation and grazed. In north central Oregon, Sherman County, we do not have the possibility of irrigation, and our rainfall is only approximately 10 inches per annum – only enough moisture for one crop every two years. Our monoculture production coupled with heavy inorganic chemical and fertilizer application has stressed our soils and decreased the amount of soil organic matter. And in my opinion, this has caused a decrease in insect and small animal population. Every farmer in my area knows that if you are able to take advantage of the USDA Conservation Reserve Program and put your land into native bunch grasses for a 10-year period your soils and later production will improve. The same can happen with solar development on our land.

Solar will allow our farms to put these lands into long term natural grass lands as originally found by Lewis and Clark. And in later years if needed, these lands can go back into traditional agricultural production.

And finally, from an economic standpoint, our farmers need this option. Family farms are under extreme stress. Our wheat is grown for the Asian export market. But we no longer are the leaders in this market. We are seeing strong competition from Russia, India, and Brazil – and the recent tariff implementation will further depress our markets. Current wheat prices, Port of Portland are at break even or less for many of our farmers – we have few if any viable options.

Please do not impede our ability to help solve Oregon's energy challenge and improve our soils for future generations.

Regards

Ormand Hilderbrand
Hilderbrand Farm / PáTu Wind Farm
Wasco, Oregon

April 30, 2025

Oregon Department of Land Conservation and Development
635 Capitol Street NE Suite 150
Salem, OR 97301

RE: Rulemaking on Finding Opportunities and Reducing Conflict in Siting Photovoltaic Solar Power Generation

Dear Members of the Rules Advisory Committee (RAC) and Department of Land Conservation and Development (DLCD),

MN8 Energy LLC (MN8) develops, owns, and operates renewable energy generation facilities, battery energy storage facilities (BESS), and electric vehicle charging stations across the United States. Our current operating portfolio includes approximately 3.1 gigawatts of solar energy and BESS. Not only is Portland, Oregon home to our Western regional office; we have an expansive Oregon development pipeline, totaling over 900 megawatts of solar, wind, and BESS, as well as electric vehicle charging stations. MN8 is deeply committed to helping Oregon decarbonize and achieve its clean energy goals. We are members of Renewable Northwest (RNW) and the Oregon Solar and Storage Industries Association (OSSIA). While we are encouraged by the progress made by the Eastern Oregon Solar RAC to streamline the siting process, further improvements are necessary to enhance the proposed rules and ensure they achieve their statutory mandate. MN8 concurs with the comments authored by RNW, appreciates the opportunity to provide input, and submits the following recommendations.

Recommendation 1: Reevaluate or omit unreasonable and burdensome proposed requirements that would arbitrarily exclude developable land

1. The non-arable acreage threshold in Division 33 should be increased from 1,920 acres to 3,840 acres, which is consistent with the Oregon Energy Facility Siting Council (EFSC) and the DLCD's application of the thresholds across each soil classification. This will better streamline the permitting processes between EFSC and county jurisdiction for solar facilities on non-arable, unproductive land.
2. As written, the rules apply mitigation requirements for each soil classification—High-Value Farmland, Arable and Non-Arable—as defined in the rule. American Viticulture Area (AVA) soil designation should not be applied as a classification factor, at least within the Columbia Plateau. Applying the AVA designation on non-productive soils that lack water rights (e.g., dryland wheat areas) will unnecessarily further constrain development.
3. The slope (<15%) and capacity factor (>19%) requirements will be challenging to implement and convoluted to comply with, and ultimately, are not necessary. Developers will not use land that is difficult to build or has poor solar yields (capacity factors). This requirement adds unneeded process without benefiting or streamlining the permitting process.
4. Land designated as Priority Wildlife Connectivity Areas (PWCA's) are ineligible to seek Goal 3 compliance through this rule. The PWCA process and maps are currently unfinished and future stakeholder input and process may change the PWCAs referenced by the proposed rules. PWCAs and their management guidelines should be adopted by the Fish and Wildlife Commission before being incorporated into land use rules.

Recommendation 2: Reevaluate or omit unnecessary and cost-restrictive proposed agriculture mitigations

1. Currently, the rules establish when, and when not, an applicant must mitigate developed soils. As written, Class 6 soil must be mitigated if it can produce 300 pounds of herbaceous biomass per acre per year. Class 6 soil, defined by the U.S Department of Agriculture Natural Resources Conservation Service (USDA NRCS), has severe limitations that make them generally unsuited to cultivation[1]. Therefore, the rules should not apply mitigation requirements for Class 6 soil, irrespective of its productivity level. Instead, the productivity level test should be applied to Class 3 – 5 soils. Class 3 – 5 soils that do not produce 300 pounds of herbaceous biomass per acre per year should not have to be mitigated, as they are considered unproductive according to the RAC's definition.
2. The rules establish multiple mitigation payments and compensatory mitigation for potential environmental impacts. Between agricultural mitigation, wildlife mitigation, and community benefits, mitigation payments could become cost prohibitive, especially if multiple mitigation payments are needed for the same type of impact. For example, as currently written, the rules could result in separate mitigation payments for wildlife and agricultural on the same acre of land occupied by the solar project. The stacking of mitigation payments is cost-prohibitive and not in line with the current status quo. To streamline the application process, applicants should be required to provide mitigation for the primary use of the property and not be subjected to overlapping mitigation schemes.
3. To provide further certainty to the applicant and county, applicants should be allowed to either make a one-time agricultural mitigation compensatory payment, which the county must accept, or submit an alternative mitigation plan, subject to the county's discretionary approval, to satisfy the agricultural mitigation requirements.

Recommendation 3: Adopt reasonable and attainable community benefit requirements that allow for more flexibility when developing projects

1. Applicants seeking to obtain Goal 3 compliance under the proposed Division 23 and 33 rules are required to submit a community benefits plan, which will be reviewed and approved by the county. Instead of this process, the county has the option to impose one of the following requirements to address community benefits and needs: 1) conduct detailed public outreach activities in advance of submitting an application to property owners within 750 feet of the exterior of the project boundaries, 2) require the applicant submit a one-time payment in the amount of $1,000 per nameplate megawatt (MW) to an identified entity in the rules, 3) provide power to emergency service providers during a power outage through battery storage or some other method, or 4) develop a microgrid. A county's imposition of these requirements could be used to deny a project. If a county elects this community benefits compliance mechanism, instead of allowing a county to impose these arbitrary requirements, the applicant should be required to conduct public outreach, as described in point 1 above, and, at the applicant's discretion, comply with one of items 2, 3, or 4 above.

We appreciate the opportunity to submit comments and look forward to continued collaboration in streamlining the solar siting process and advancing Oregon's ambitious clean energy goals.

Sincerely,

Stephanie Williams
Director, Government & External Affairs

[1] U.S Land Use and Soil Classification, National Resource Conservation Service, U.S Department of Agriculture

cc: Chris Warner, Chief of Staff, Office of Governor Tina Kotek
Geoff Huntington, Senior Natural Resources Policy Advisor, Office of Governor Tina Kotek
Representative Ken Helm, Oregon House of Representatives

NewSun ENERGY

550 NW Franklin Ave., Suite 408
Bend, OR 97702

April 30, 2025

Land Conservation and Development Commission
635 Capitol St. NE, Suite 150
Salem, Oregon 97301

RE: Eastern Oregon Solar Siting Possibilities Rulemaking – RAC Member Letter

Dear Chair Hallová, Director Dr. Bateman, and Members of the Commission:

Thank you for considering these comments on the Eastern Oregon Solar Siting Possibilities Rulemaking (the "Rulemaking"). NewSun Energy is an energy facility development company headquartered in Bend, with significant photovoltaic solar development interests in Oregon. As a member of the Rulemaking Advisory Committee ("RAC"), I participated in all but two of the RAC meetings, numerous Technical Advisory Groups ("TACs"), and special work group meetings.

The legislative directive in HB 3409 is to adopt rules that streamline solar development in low conflict locations, which requires a rule that is practical and implementable. Despite the tremendous effort of the RAC members, DLCD staff, facilitators, and members of the public, the Rule needs to be simplified, clarified, and less restrictive to achieve the legislative directive. Therefore, I recommend the following:

- **Pathway**: Focus on crafting the best rule possible under Division 33, because that permitting pathway is much more likely to be used than Division 23.
- **Simplification/Flexibility**: Simplify the Division 33 Rule by requiring only: (1) agricultural mitigation; (2) community benefits; and (3) compliance with ORS 215.446, which requires appropriate avoidance, minimization, and mitigation of wildlife habitat and cultural, archaeological and historic resources.
- **Acreage Thresholds**: If not simplified, then increase the acreage thresholds for the Division 33 Rule to match the Division 23 / EFSC thresholds.
- **Agricultural Land**: If not simplified, increase the percentage of certain soil classes on a site that are allowed and provide additional flexibility for water-challenged properties.
- **Noticing**: Clarify noticing requirements in Division 33 to avoid potential conflict with more complicated noticing requirements in Division 23.
- **Avoid Additional Restrictions**: It is imperative to avoid additional restrictions (like UGB setbacks, more restrictive thresholds, or additional avoidance areas). Mappable constraints already show a narrow area that could be available for development, and there are many unmappable constraints that will further limit applicability of the Rule. When coupled with other legislative and regulatory actions on permitting, agricultural land, and historic, archaeological and cultural resources, the effectiveness of the Rule is unknown.

I. Policy Statement

The State of Oregon has lofty clean energy goals, power demand is rising significantly, and climate changes are disrupting transmission reliability. More energy facilities of all types are needed to counteract these factors and ensure power availability and grid resiliency. On the other hand, siting and permitting solar facilities in Oregon is hard. Energy development is not recognized as a valuable land use under the Statewide Land Use Planning Goals. Statutory and regulatory standards are multi-layered and complex. And permit issuances are subject to significant litigation. Furthermore, in Eastern Oregon, lands that are large enough for utility-scale solar development are either zoned Exclusive Farm Use ("EFU") or have cultural resources, wildlife habitat, or other important land uses. The legislature therefore handed a very difficult task to the RAC, DLCD, and the Commission: how do we balance competing land uses with the need to streamline solar facility development? Said differently, how do we provide appropriate protection of other valuable land uses while creating a rule that is permissive enough to allow for solar facility development?

The primary areas of RAC agreement were the value of agricultural mitigation and community benefits, the avoidance of cultural areas and good wildlife habitat, and the need for a Rule that will actually be used. The primary areas of disagreement were the portions of EFU-zoned lands that would be available for consideration and the permitting pathway (Division 23 versus Division 33). In my view, the draft Rule is too restrictive on agricultural land, at the expense of cultural areas and wildlife habitat. Expanding the permissiveness of the Rule is necessary to account for the unknown scope of implementation and uncertainty around other policy efforts. In addition, obtaining a solar permit is the keystone for further investment, but the majority of permitted facilities *do not get constructed.* Because agricultural, wildlife, and cultural mitigation, as well as community benefits, will be required, added flexibility will provide appropriate protections or mitigation while encouraging developers to seek the least conflict locations and addressing the need for significant additional energy resources.

II. Rule Summary and Comments

The draft Rule is bifurcated into two permitting pathways. First, **Division 23,** is a two-step programmatic review under Goal 5 pursuant to which a County would first need to undertake a solar inventory process to identify "solar resource areas" and then receive and consider applications for facilities within those areas. Many RAC members strongly contested the use of a Goal 5 process in Division 23. As drafted, the Division 23 portion of the Rule is unlikely to be used. The Division 23 Rule is long, complex, and requires extensive process to even establish solar resource areas. It is also very unclear *which* lands would be available for development under the Division 23 Rule due to mapping constraints. Put simply, the Division 23 Rule is a broad set of restrictions where solar facilities are *not allowed*, and a narrow class of lands where solar could be allowed after significant administrative process. Without additional funding, it is unlikely Counties will have capacity to implement the Goal 5 process. And the process may take so long that no facilities are able to be permitted under the Rule before the first 80% Clean Energy Target in 2024.

Second, **Division 33,** would provide a one-step pathway whereby a County may consider an application for a solar facility in certain, limited areas if the developer provides agricultural mitigation, community benefits, and wildlife and cultural avoidance, minimization, and

mitigation. The Division 33 Rule is much more likely to be utilized because it is more straightforward and requires less process, while retaining the portions of the rule with broad RAC agreement – agricultural, cultural, and wildlife mitigation and community benefits. However, Division 33 requires additional revision and analysis, as highlighted above.

III. Conclusion

The draft Rule is the culmination of many years of effort, stemming from large work group meetings that commenced in 2023, a legislative effort resulting in HB 3409, and approximately a year of RAC meetings. Yet still, the Land Conservation and Development Commission ("Commission") has the difficult task of both: (1) considering and adopting rules that need additional revision and; (2) balancing the legislative directive in HB 3409 to find locations to site solar energy facilities with all the other land use goals and values of the State of Oregon.

I urge the Commission to carefully consider the points of disagreement between the RAC, the RAC and DLCD staff, and commenters and to adopt changes that are necessary to ensure that the Rule achieves the legislative intent in HB 3409.

Thank you for considering these comments.

Sincerely,

Max M. Yoklic
In-House Counsel, Permitting & Real Estate
NEWSUN ENERGY

OREGON SOLAR + STORAGE INDUSTRIES ASSOCIATION

April 30, 2025

Oregon Department of Land Conservation and Development
Oregon Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re: Eastern Oregon Solar Siting Possibilities Rulemaking
Final Comment Letter

Dear Chair Hallová, Director Bateman, and Members of the Commission,

Oregon Solar + Storage Industries Association ("OSSIA") submits these final comments as a member of the Rulemaking Advisory Committee ("RAC") for the Eastern Oregon Solar Siting Rulemaking ("Rulemaking"). OSSIA is a trade association that promotes clean, renewable, solar and storage technologies and whose members include renewable energy businesses, non-profit groups, and other solar and storage industry stakeholders. OSSIA members include solar developers that have and continue to seek development of solar in Eastern Oregon. The Rulemaking will directly affect OSSIA's members.

We first would like to thank the Department of Land Conservation and Development ("DLCD") Staff for their work organizing members, administrating meetings, and drafting rule language. Additionally, we want to thank our fellow RAC members for their respectful contributions and perspectives. OSSIA has been a member of the RAC since its formation in early 2024. OSSIA and its representatives have been consistent and active participants throughout the RAC, with our representatives and members providing valuable input to RAC meetings and rule language. Additionally, we have submitted three comment letters throughout the length of the RAC and requested more RAC meetings when necessary. OSSIA and its members have continuously invested time and effort to this RAC, advocating for practical rulemaking solutions and coherent language. As our prior letters have documented, OSSIA has experienced procedural difficulties throughout the RAC. Despite these procedural challenges, OSSIA has continued to invest in the goals of the RAC and has continued to participate in meetings and work with other RAC members and DLCD Staff in subcommittees. This RAC has been a long and intensive process, and we write these final comments in hopes that the Land Conservation and Development Committee ("LCDC") will decide on fruitful rule changes that meet the legislative intent of the RAC: to encourage and streamline solar siting in Eastern Oregon. If such improvements are not made, OSSIA is concerned that the hard work of DLCD staff and stakeholders will prove too complicated to implement, or will get sent to the courts, or will require DLCD and the Commission to revisit these issues in the coming years.

I. Practicality

As we have detailed in prior comment letters, OSSIA has been concerned about the scope creep of this process which has resulted in a complex matrix of rules. Significant uncertainty remains around where the rules will apply due to mapping constraints and how other rules (Farm and Forest, Cultural Areas) will be implemented. If LCDC adopts rules that end up making solar siting in Eastern Oregon more difficult and complicated, the RAC will have failed to meet the legislative intent: to adopt rules that expedite solar permitting in low conflict areas and identify lands suitable for development. OSSIA remains concerned that the proposed changes to OAR 660, Division 23 are overly complicated. Additionally, counties do not have the funding to undertake post-acknowledgment plan amendments ("PAPAs") to implement the area rules and we are not aware of any counties that have outright committed to undertaking a Division 23 process.

OSSIA's greatest concerns regarding the draft rules continue to be about Division 33 changes. Division 33 still needs improvements to ensure solar siting is a straightforward and streamlined process. OSSIA has consistently advocated for minimal changes to Division 33, so we continue to advocate for scaling back changes to Division 33 to require only: (1) agricultural mitigation; (2) community benefits; (3) compliance with ORS 215.446. The Division 33 rules need to be simple to follow and easy to implement. Specifically, Division 33 should not be amended to implement Division 23 standards for individual solar projects. ORS 215.446 already has these standards and notice requirements, making any such Division 33 changes duplicative, making rules harder to understand and follow for local jurisdictions and solar developers alike.

II. Cultural Areas

OSSIA is concerned that the draft rules will result in cultivated agriculture lands being protected over lands that have greater ecological and cultural resource values. We encourage the State to rethink this policy choice when considering lower conflict siting for solar energy facilities. Dryland wheat lands actually are the lower conflict areas for siting solar because of years of disturbance and application of chemicals and pesticides. The State is undertaking an effort to adopt new cultural resource protection rules but at the same time, is making policy decisions that drive development to lands with higher cultural resource values. OSSIA encourages DLCD to ensure these solar siting rules do not end up more restrictive than the Cultural Areas proposed rules.

III. Urban Growth Boundaries ("UGBs")

OSSIA does not support a UGB setback because: (1) electrical infrastructure is often located near UGBs; (2) every city's and county's needs and development plan are different; (3) due to inadequate mapping, we do not know how large of an impact a standard setback would have on areas available for development; and (4) a UGB setback does not guarantee a benefit, it just restricts the land that could be available for solar, when a UGB expansion into that area is not guaranteed.

IV. Division 33 Acreage Thresholds

The Div. 33 acreage thresholds should match the Energy Facility Siting Council's ("EFSC") acreage thresholds. As currently proposed, the draft rule language for Div. 33 has differing acreage thresholds, which would result in an even more complicated administration of the rules.

Thank you for your consideration.

Respectfully Submitted,

/s/ Alyssa Forest

Alyssa Forest
Policy and Regulatory Affairs Director
Oregon Solar + Storage Industries Association
PO Box 14927
Portland, OR 97293
P: 916.960.8884
E: alyssa@orssia.org

OREGON WHEAT "The Voice of Oregon's Wheat Producers Since 1926"

OREGON WHEAT GROWERS LEAGUE
115 SE 8th Street Pendleton, OR 97801 541.276.7330 www.owgl.org

April 30, 2025

Oregon Department of Land Conservation and Development
Attn: Casaria Taylor, Rules Coordinator
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re: Eastern Oregon Solar Rulemaking

Dear DLCD,

Thank you for the opportunity to provide comments on the proposed rules developed through the Eastern Oregon solar rulemaking process. While we had a designee approved to participate in the Committee, the scheduling of meetings during critical harvest and seeding operations made it impossible to participate in most of those conversations. As such, we offer the following comments on a few key areas listed in the proposed rules:

Cumulative impacts: Expansion of the area in which the cumulative impacts are considered is important.

- It should reflect a larger area under the scope of the assessment and widen the range assessed. Eastern Oregon landscapes are vast and under greater threat from the scale of development occurring from combined solar development siting.
- The cumulative assessment should include projects that have been constructed or received land use approvals. Original language to the rulemaking committee appeared to be more limiting; only assessing those that have been constructed or received land use approvals and obtained building permits.

As the state steers towards revising regulations to increase industrial solar development, it should balance with preservation of agricultural land and mitigating impacts of development. That is best achieved in the comprehensive and cumulative look at the development under consideration. Changes from agricultural or rangelands to solar or any other industrial use is not a temporary change: it has a permanent impact on the land and not one for which there is an easy manner to reverse. The decisions made have impacts for generations.

Maintain and enhance parameters regarding soil health, wildfire, avoiding impacts to access/orphaned parcels, controlling runoff and weed management: Concerningly, we heard during the rulemaking process from those who would seek to remove or limit requirements for a project in relation to preservation of soil health, stating it was outside the scope of the rulemaking and would add additional burdens to developers. We disagree. If solar is to coexist in rural spaces that have prioritized sustainability and responsible land management, then it cannot

turn its back on those practices. Projects should meet minimum standards, and we support language that would encourage and enhance the abilities of counties to include conditions in the additional review standards and criteria that promote prevention and mitigate risk from wildfire, limit the development on arable lands under certain circumstances, address weed control, ensure access that does not disrupt neighboring ag operations, and limit impacts from runoff and erosion.

Time period before expiration of a permit: The Department lists this section as an area receiving agreement by the RAC during a meeting in Moro. The League RAC representative present at that meeting voiced concerns about the length of term considered, noting the need for a shorter term to reduce acreage held for speculative purposes and dormant approvals that would lock up land and drive up the costs to farmers. At six years, plus two automatic extensions upon request and a third extension with additional requirements, we see a total of twelve years a proposal could leave a community without a project under construction in which they are exposed to increased cost and risk to their operations. We certainly understand the desire for certainty and longevity sought by solar businesses. However, not at the risk to farmers and communities.

We appreciate the work of the committee and department in seeking to chart a pathway which provides communities and counties additional control to support protection of private property rights and the ability to enhance agricultural land, to the extent it remains compatible with neighboring uses and the ability for the wheat industry to remain viable.

Thank you for your consideration.

Sincerely,

Erin Hansell-Heideman
President

April 30, 2024

Land Conservation and Development Commission
635 Capitol St., Ste. 150
Salem, Oregon 97301

Dear Chair Hallová, Director Dr. Bateman, and Members of the Commission,

These comments are from myself, Dugan Marieb, on behalf of Pine Gate Renewables, a solar energy and storage developer active in the state of Oregon. I am the Sr. Associate for Regulatory Affairs for Pine Gate and a native Oregonian who is excited for the state's clean energy future. Pine Gate owns and operates several small utility-scale solar facilities throughout the state and has permitted the largest solar and storage project in the state, Sunstone Solar (1,200 MW), located in Morrow County. As someone who has worked on and off with solar siting in the state since 2018 and recently received a permit through the Energy Facility Siting Council (EFSC) for a very large solar site in eastern Oregon, I believe I am well versed in the issues surrounding this rulemaking. Furthermore, I am very grateful to have been recognized by DLCD and the LCDC to be a part of the legislatively mandated Eastern Oregon Solar Siting Rulemaking Advisory Committee (RAC) since its inception. At the outset, I want to thank DLCD staff and Kearns & West for their support through this process, especially their hospitality at the in-person events around the state.

The discussion on the RAC has been a valuable one and has brought to the fore many things we need to balance in the discussion about appropriate land use and finding these "lower conflict" sites around Eastern Oregon to site the energy resources the state needs. I believe there are some bright spots in the proposed language from DLCD, especially as it relates to the "project-level

pathway" to do a project-by-project analysis of a site that does not impact very high-value land uses but can be fast-tracked in permitting. It is good for the state of Oregon and the LCDC to recognize where "win-win" opportunities arise that our current land use rules prevent, or force projects to do the long and uncertain "Goal 3" exception processes. These opportunities are on sites with lower agricultural soil values and little access to water, which are perfect candidates for energy development and which landowners should have the right to make decisions on their own land given the lower agricultural opportunity there. I am also supportive of the proposals to utilize agricultural mitigation and community benefit investments as ways to allow solar development on lands that should require mitigation.

The rule as written now is still too restrictive on what lands can be mitigated. If we require a flexible form of mitigation to offset the small impacts these projects do have, that can address a lot of local concerns about conforming land use. This has worked very well on our Sunstone Solar project where Pine Gate has committed to a dollar per acre investment in the local agricultural economy for taking about 9,400 acres of dryland wheat out of production to allow for the solar farm. We worked with the county to set up a fund to manage that money and create a local advisory council to recommend projects the fund can support to help the wheat growing industry in Morrow County. While that is a large amount of land, we rightsized the mitigation investment to the impact and received support from the county, local agricultural groups, local landowners, and EFSC. These groups recognized that mitigation is a pathway to ensure the agricultural economy can thrive even if one landowner decides to temporarily transition their land to solar production.

It is unclear whether the rule as written will be implementable and impactful to solar siting, which was the intent of the legislation. This is regrettable as a lot of time has been put into this process, but unfortunately the drafting of these rules did not make many of the harder decisions that are needed to identify pathways to faster siting on lower conflict lands. The provisions in Division 23 have especially little future in actually impacting solar development, as I am not confident that a single Eastern Oregon county has the capacity to run a Goal 5 process of this scale to identify areas for solar development. In addition to the unlikeliness of this being implemented,

the rules are overly complicated, difficult to meet with an evidentiary standard, and exposing permit applications to subjective standards. There are tradeoffs in land use and we need our regulators and regulations to recognize that. Building solar requires the use of some agricultural land and the recognition when that land is not that profitable for agriculture, even if it falls in the overly broad definition of "high value agricultural lands." This is especially apparent in several parts of Northeastern Oregon: despite all the farming being dryland wheat due to a permanent lack of water resources, the land is designated as high value due to being in the American Viticultural Area (AVA).

Where do we go from here?

From my perspective, this rule does have a path forward. Division 33 can be simplified to focus on agricultural mitigation and requiring community benefit investments when individual projects are proposed. The limits on Division 33 mitigatable lands should be very constrained to the most high value lands with access to water, given mitigation has been recognized as a workable "win-win" solution in the RAC process. Projects should be able to move through this process if they meet ORS 215.446 and avoid the most valuable lands. While I know the scale of development could concern some land conservation advocates, I would stress the limited nature of solar development overall. If we encourage solar development on well-suited lands, only a limited number of projects (fewer than 100,000 acres total) will actually be developed, given other constraints outside of regulation (e.g., electric transmission capacity, land topology). The baseline of agricultural mitigation and community investment should show that these projects have met a higher bar and addressed their impacts by working with the community, and therefore should have a new route to getting a permit that is more certain. If we want more projects to have this positive impact, we need a real incentive to the development community.

The current acreage limits in Division 33 appear arbitrary. Insufficient explanation was given as to why we would set it as half of the limit for the “solar resource areas.” There does not appear to be any reason to limit these new beyond the current EFSC limits in law, given these

projects will still follow the rules as it relates to mitigation and investing in the communities they are building in.

Recognition of the Role of this Unique RAC

I do want to make a note for LCDC in these comments that this Rulemaking Advisory Committee is not an ordinary one and has special power and independence from DLCD given to it by the legislation that should be recognized. Throughout the process, I have made clear that the RAC and DLCD may have different opinions on the rules being written and that the RAC is entitled to its own voice as a separate party to speak to both the LCDC and the legislature. While I had a great working relationship with DLCD staff, I felt through the process DLCD staff consistently overstepped their role as an organizing agency, given we already had a third-party facilitator and the RAC was designated in the legislation as a more independent group. At several points, DLCD staff continued to inject their thoughts into the drafting of the rule even as large majorities of the RAC disagreed with staff. This happened frequently with the requirement to not locate within a certain distance from the urban growth boundary and the insistence on using solar capacity factor as one of the criterea for where solar would be prioritized. The RAC agreed that solar energy production is viable in every part of Eastern Oregon from a solar irradiance perspective. The persistence of this small part of the rule despite my and others' objections seemed to indicate that DLCD staff was not always writing the rule based on RAC input but rather based on their own perspective. I hope in their deliberations, the LCDC can recognize that DLCD staff come to this process with their own perspective, one which does not necessarily represent the thoughts of a majority of the RAC. While this may not be apparent in the report on the RAC, consensus was not always reached on several of these issues as RAC members had differing views, which is a healthy sign of a robust discussion. We need to leave some of the harder choices to our state elected and appointed representatives, and should ensure that the views of the RAC are seen as independent from the Department as they were intended to be.

Overall, regulation created by the LCDC should follow the intent of the law to get more needed solar development permitted in Eastern Oregon. I have concerns that the proposed

regulation does not fulfill that intent. Thank you for your consideration of my comments and for hearing the perspectives of this unique Rulemaking Advisory Committee.

Sincerely,

Dugan Marieb

Dugan Marieb
Sr. Associate, Regulatory Affairs
Pine Gate Renewables
duganmarieb@pgrenewables.com

April 30, 2025

To: Department of Land Conservation and Development

From: Emily Griffith, Oregon Policy Manager, Renewable Northwest

Re: RNW Comments on DLCD Eastern Oregon Solar Siting Rulemaking

Renewable Northwest ("RNW") is a regional, non-profit renewable energy advocacy organization based in Oregon, dedicated to decarbonizing the electricity grid by accelerating the use of renewable electricity resources. Our membership includes renewable energy and storage developers and manufacturers, renewable energy support businesses, environmental organizations, and consumer advocates. RNW was among the four groups that led the collaborative effort of "the Siting Table" that led to Section 35(2) of House Bill 3409 instructing DLCD to conduct this rulemaking. Thank you for the opportunity to provide comments on the Eastern Oregon Solar Siting Rulemaking.

Overall, we are pleased with the progress of the rulemaking and appreciate the added pathways to siting solar in Eastern Oregon that can offer flexibility for counties and developers. We also suggest areas below that could benefit from more detail or discussion prior to implementation and raise specific questions for consideration. Specifically, continued discussion is needed to ensure the rules *fully* meet the legislative intent of Section 35(2) of HB 3409 to identify areas at the county level best suited "to allow, encourage and incentivize photovoltaic solar power generation facilities."[1] This legislation was passed to support Oregon moving towards a secure energy future and meet its energy policies which require the development of more renewable energy. This necessitates making meaningful progress in identifying areas where that development can occur - with inputs from counties - which is what the original legislation aimed to accomplish.

The proposed rules do suggest pathways for identifying areas for solar development that would be permitted at the county level, and we offer specific comments below on those. We also appreciate the Goal 4 Forestland changes. However, RNW remains worried overall that the proposed rules resulting from this rulemaking are overly complicated, making their implementation more difficult and risks not achieving their purpose. We discuss this in more detail, especially how this will make the rules review important in assessing the effectiveness and implementation. Below, we offer some suggestions for DLCD's consideration on ways to make the rules review more effective. Equally, it is not clear how much potential acreage is able to be considered for development with these new rules - which also impacts how functional and effective the new rules are and the success of future implementation. We suggest more clearly noting the allowed deviation from the listed criteria, as needed, such as the slope (<15%) and capacity factor (>19%) as these can be overly restrictive, and less relevant as solar

[1] HB 3409 (2023) Section 35 (2)(b)

technology and installation approaches evolve. We also offer specific inputs on the agricultural mitigation and community benefits items.

Areas Approach and Division 23 Changes

The RAC had extensive deliberations about how to create a program that could streamline solar siting in Oregon. We admire the thoughtfulness that many folks contributed to these rules. However, RAC members and RNW members have commented that this program is extremely complex. This complexity imposes administrative and financial burdens on developers and counties, which further contributes to the shared perspective about the extreme difficulty of developing renewable energy in the state of Oregon - which is the ultimate problem that this rulemaking had a goal of alleviating. Because of this complexity, we provide comments and suggestions about how to alleviate burdens and ensure the intent of the legislation and rulemaking is realized.

Division 23 changes rely on county adoption, mapping and Goal 5 updates in comprehensive plans. Because of the considerable difficulty that can come with updating comprehensive plans in counties with limited staff or resources, we appreciate the inclusion of the “opt-out” choice, providing flexibility for counties. We also suggest DLCD consider offering support to counties - financial and/or technical - to update comprehensive plans incorporating these rules. Further, we understand the inclusion of temporary workforce housing. We ask that these rules align with how workforce housing is addressed in the wind rules to maintain consistency.

As flagged above, a significant remaining question about division 23 changes is how much area these new rules offer for development consideration. Given the complexity, will the work to implement the rules result in a meaningful area for potential development? It is unclear if counties will utilize the program to identify and map solar resource areas - both due to complexity and lack of resources to update comprehensive plans. We worry counties will not have the resources to adopt criteria under division 23 and encourage DLCD to make resources available or look for opportunities to secure resources as much as possible. We also suggest that counties be given flexibility in these criteria to allow for the creation of more areas for those best suited for development in that county.

Sites Approach and Division 33 Changes

We appreciate the inclusion of the Division 33 changes which broaden the applicability of the standards and criteria to sites. We have remaining questions and concerns on the effectiveness of these rules.

RNW appreciates the discussion during RAC meeting #12 investigating the need for the difference in acreage thresholds between Division 23 and 33 along with the discussion about how these rules will be implemented at EFSC. However, we suggest providing more clarity on this to offer more certainty to applicants and counties on what to expect with these different thresholds and implementation. As previously noted, these new rules are complex. Increasing the acreage threshold here was a step in the right direction, but the thresholds are not far off from the EFSC threshold and having them be different (but close) complicates things even further. A simple solution could be to increase the acrease threshold for non-arable soil from 1,920 acres to 2,560 acres, creating alignment with the EFSC threshold and reducing siting and process confusion.

Agricultural Mitigation Criteria and Community Benefits

The approach included in the draft rules for agricultural mitigation is new and did not benefit from as much discussion at the RAC as other items. It will be important during rule implementation and review to ensure that this program does not unintentionally create greater barriers to than benefits from solar development. The approach is novel in the state, and could provide an effective tool to counties in balancing their land uses; however, as it is a newer program, it will be important to capture data and inputs from counties. While we support mitigation practices and community benefits, we remain concerned with the "one-size fits all" approach proposed in the rules. These rules are less flexible than current practice which allows for community benefits to be negotiated between the county and developer and result in benefits that can be tailored to the specific needs of the community and project.

It is also worth noting that the various costs associated with these criteria can stack, which can add to the cost of the project and, ultimately, be passed onto ratepayers. Between agriculture mitigation, wildlife mitigation, and community benefits, it will be important to strike a balance on these programs. Having sufficient flexibility for county implementation will be essential - along with further discussions, as needed, to more fully understand the cost implications of these projects and potentially allowing counties to adopt cost caps on the criteria. Cost caps could help ensure that there is benefit to the county while creating certainty for the applicant on what costs to expect for development in that county. There are different approaches to this which counties could adopt, such as: applying a single mitigation payment across agriculture and wildlife categories - the greater of the two; allowing counties to accept a one-time "agricultural mitigation compensatory payment"; or allowing counties to adopt an alternative mitigation plan.

Specific suggestions to simplify and improve these approaches

We suggest simplifying the community benefits section. One simplification could be to include public outreach in 6(b), like in 6(a). Then, in 6(b) keep the other options as choices the applicant can choose between. This will provide optionality for the applicant and consistency between the two options.

Though soil classes were discussed throughout the RAC, we continue to request that further changes be made. Simply not requiring mitigation for class VII and VIII soils does not move the needle much. We suggest not requiring mitigation for soil classes 3-5 that do not meet a productivity threshold described in (4)(j)(i)(A) or for class 6 soils, irrespective of productivity level. We also suggest removing the American Viticulture Area ("AVA") designation as a factor for soil classifications (Arable, Non-Arable) in the Columbia Plateau region as this soil classification does not reflect soil quality or agricultural viability. This unnecessarily restricts solar regardless of actual land quality or public benefit. Lastly, we suggest omitting Priority Wildlife Connectivity Areas ("PWCAs") as thorough coordination with ODFW is already required for siting solar. Furthermore, in ODFW's Wildlife Corridor Action Plan, under "Use and Application of PWCAs," they explicitly state "PWCAs are not regulatory and do not dictate land use for any public or private entity."[2]

[2] Oregon Department of Fish and Wildlife - Oregon Wildlife Corridor Action Plan January 2024

Review of Progress

RNW appreciates the proposed review of the program after two years and then on a four year cycle. We suggest specific areas to consider when undertaking this review. In the draft rules, DLCD will report on (with coordination of the RAC) which counties have adopted solar resource areas and which counties have not. In addition to which counties have adopted the solar resource areas, we suggest investigating how cumbersome the adoption process was, and whether developers utilized the county's solar resource areas. We also request more details on how DLCD will determine if the intent of the rulemaking is accomplished. For example, how will this be measured or are there specific criteria DLCD will use? We suggest measuring how many projects are permitted and capturing the details of those projects such as the proposed MW nameplate capacity and its interconnection to the transmission system. These are a few items that RNW sees as important to understanding the success of the rules in supporting getting more renewable energy built and serving the grid.

We also appreciate that DLCD will recommend updates, if any, that the department identifies as necessary to better accomplish the intent of these rules. If the program does not result in additional projects being permitted, we recommend returning to the rulemaking to identify further solutions that will result in more meaningful progress towards efficient solar siting. Given that the rules have resulted in a new, complex approach, we hope that DLCD staff will conduct overview and explanatory sessions for both counties and developers to be able to attract more interest in the program.

Thank you for the opportunity to comment on DLCD's draft rules. RNW understands the challenges of siting renewable energy in Oregon and values the tremendous effort by DLCD Staff and the Kearns and West Team to take on this rulemaking. Specifically, we appreciate the addition of the "site" approach and the flexibility of the team and RAC to adjust when the rules were looking to have a narrow chance of achieving the desired outcome. Renewable energy siting in Oregon is difficult because Oregon has many valued resources to protect and our land use planning system has not been updated to include renewable energy to balance within land use decisions. Oregon has ambitious climate goals as well as increasing energy demand. Our policy and rules must be aligned in order to keep Oregon moving towards a more healthy and prosperous future with reliable and clean electricity. We hope these rules will move us closer to that outcome.

Thank you,

Emily Griffith
Oregon Policy Manager
Renewable Northwest

The Nature Conservancy
Protecting nature. Preserving life.™

The Nature Conservancy in Oregon
821 SE 14th Avenue
Portland, OR 97214-2537

tel 503 802-8100
fax 503 802-8199
nature.org/oregon

April 30, 2025

Land Conservation and Development Commission

Comments on the Eastern Oregon Solar Siting Possibilities

Submitted by Lauren Link, TNC OR State Policy Advisor

Chair Hallová, Vice Chair Lazo and members of the Commission:

Thank you for the opportunity to provide comments on the proposed rules for the Department of Land Conservation and Development (DLCD) Eastern Oregon Solar Siting Possibilities. As a conservation organization, The Nature Conservancy (TNC) is committed to addressing both climate change and biodiversity loss to create a future where people and nature thrive. We want to help the state meet its 100% clean energy goals with least impact to nature and communities.

TNC conducted our Power of Place West study[1], where we analyzed regional conservation and energy data and found that it **is** possible to meet clean energy goals across the region while protecting the most sensitive natural and working lands and waters. This is an exciting finding and one in which we wanted to explore more by leaning into conversations around the policies and programs that promote this type of low impact siting. We are appreciative of the opportunity to participate in both the solar siting rulemaking advisory committee (RAC) and the technical advisory committees (TAC), specifically engaging in the wildlife mitigation, agriculture, and forest TACs.

While not surprising, we found the process of identifying lower conflict areas, reducing barriers to permitting solar facilities in those areas, and providing an alternative pathway to be harder in practice than on paper. This work requires careful consideration and deliberate and consistent collaboration and compromise from all stakeholders, all while balancing the varying land uses and resources in Oregon. We have greatly appreciated both DLCD and RAC members' thoughtful approach and productive dialogue throughout this process.

TNC is broadly supportive of the proposed rules and the pathways identified, however, we do want to address a few concerns we have regarding the feasibility and capacity of counties regarding implementation of the rules and the need for continued dialogue on how best to streamline permitting processes while still upholding the state's habitat mitigation standards. There are several areas where we see opportunities to engage additional stakeholders and are committed to continuing this conversation.

Habitat Mitigation:

TNC supports the creation of the two pathways (Div. 23 and Div. 33) that allow for counties to site solar facilities without undertaking the Goal 3 exception process and are encouraged to see that both pathways apply ODFW's habitat mitigation hierarchy – avoid, minimize, mitigate – that is critical to reduce and offset development impacts. We commend the conservation stakeholders on the RAC who

[1] Power of Place - West

worked through a reasonable compromise to streamline mitigation requirements for lower priority habitats in recognition of the importance of increasing opportunities to provide low conflict areas for siting solar projects. We see the creation of an agriculture mitigation calculator as a significant step in identifying mitigation pathways for agriculture and is a similar mechanism as to what we have seen applied in habitat mitigation. We look forward to continued conversations on how best to mitigate the impacts of solar development on our natural and working lands.

Community Benefits:

We are encouraged to see the consideration of community benefits included when identifying a solar resource area and how the facility will impact the local community. While Community Benefit Agreements (CBAs) have the potential to support communities through a more equitable energy transition, they are not to be wielded as a tool to turn community opposition into support or as the only strategy utilized to conduct public outreach and engagement. The updated language in the proposed rules provides a flexible framework that identifies several different mechanisms counties, developers, and community members can utilize to address an impacted community's needs.

We are hopeful that these varied options will also provide opportunities for community members to express local priorities and negotiate effectively for agreements that meet their needs. However, we want to emphasize potential challenges that under-resourced counties and communities can still face when navigating this process. We are concerned about financial and staff capacity constraints for counties that may want to participate, but don't have the time, staff, or expertise to do so, and may simply opt out of the process all together. Additionally, we are cognizant that community members who may not have previously engaged with renewable energy developers may not know how to engage effectively; members may not have the capacity to engage in the traditional public engagement process; and that members may need additional legal and technical resources to engage effectively.

We encourage DLCD to explore innovative ways to assist counties in addressing the challenges identified above and to support a robust community engagement process. DLCD works across the state on varied landscapes and has technical staff that can provide staff time, resources, and expertise that county planning staff may not be available. Providing staff to help plan and conduct public outreach and engagement in partnership with county staff could be a way to boost capacity and provide additional resources for a project. As we see more solar projects permitted through counties, it would be great to see a compilation of examples and best practices for community engagement and CBAs for solar projects that could inform and assist other counties as they navigate through this process.

Need for Continued Conversation:

The RAC was a significant step in the ongoing conversation around reconciling the urgent need for renewable energy development with the many other land use interests in Oregon. We urge the state to continue conversations on the following topics:

- Broaden stakeholder engagement and continue conversations on water rights and irrigation districts language, particularly around consideration of water availability in agricultural criteria.
- Broaden stakeholder engagement and continue conversations on siting on forest lands.
- Broaden stakeholder engagement and continue conversations on agrivoltaics and dual land use on less productive agricultural and ranch lands.
- Explore the buildout of a robust state habitat mitigation program that includes proactive advanced mitigation credit creation in priority service areas. By targeting habitat restoration within these priority service areas, these projects will likely forecast needed offsets that have the potential to speed up the permitting and project development process.

Recommendations for Implementation and County Support:

While the RAC has worked diligently to identify areas in Eastern Oregon that can support solar development, we are less certain about the feasibility of counties to be able to implement the new pathways. Siting solar facilities is a complex process with many state agencies, local governments, and community members engaged and it can be difficult to know what siting pathway to choose, what steps are required, and how to effectively engage all stakeholders. We urge DLCD to come up with an outreach strategy for communicating these new rules to counties that both informs counties of the alternative pathways to siting solar projects, but also includes resources such as flow charts, checklists, decision trees, and other visuals that can assist counties in understanding the process and providing clarity on what benefits, incentives, and challenges come with each pathway as well as provide a crosswalk between the two pathways that clearly articulate process differences. We encourage DLCD to explore development of new tools or upgrades to existing tools, such as the Oregon Renewable Energy Siting Assessment (ORESA) and the Sage Grouse Development Siting tool, both online mapping tools that provide project area details, the mitigation hierarchy, and agency contact information.

We ask that DLCD continue their proactive outreach to counties in Eastern Oregon to better understand what counties need to implement the new rules effectively. It would be helpful to understand in greater detail the challenges counties face in siting solar facilities in their communities and whether these rules address some of the challenges and the potential barriers that still exist.

Thank you for the opportunity to provide comments and to participate in this process. TNC is committed to continuing the conversation on siting solar with least impact to nature and communities.

Department Response to Comments Received

Solar Rulemaking

May 30, 2025

1.0 Government to Government Comments

1.1 Confederated Tribes of Warm Springs	***Response***
1.1.1 The proposed rules put more decision-making authority in local governments instead of the State of Oregon. This is a concerning move away from sovereign-to-sovereign management to local control without formal tribal consultation, which is an abrogation of the state's responsibilities to Tribes.	*The department appreciates the Tribes' concerns about the loss of sovereign-to-sovereign relationships regarding these projects and their impacts on cultural and archaeological resources important to the Warm Springs Tribe. The Oregon Legislature has enacted statutes directing this approach, and the department and commission do not have the authority to override these statutes. The revised rules attempt to keep state oversight and direction at a level that obligates local governments and solar developers to proceed with appropriate deference to issues important to the Tribe.*
1.1.2 The rules focus new solar development on agricultural lands that are non-arable. These lands are typically in a currently undisturbed condition, and therefore it is on these lands where tribal natural, cultural and archeological resources are located and will be disproportionately impacted by solar development. Local governments have never considered these issues in the past.	*Staff appreciates this point – the rules focus potential solar development on lands more likely to contain cultural resources important to the Tribe. The cultural and archaeological resources sections of these rules prescribe a process of timely consultation with affected tribes and also prescribe serious and thorough consideration of tribal recommendations.*
1.1.3 The Tribe is not comfortable with local inventories of tribal cultural resources, is not comfortable with the procedures in the Cultural Areas rule relating to initiation and review of proposed inventory sites, and does not understand how local decision makers, alone, are qualified to evaluate and determine the significance of tribal resources particularly at the scale contemplated in the Solar Siting rules.	*The Oregon Statewide Planning Program puts responsibility for creating and maintaining inventories of archaeological and cultural resources on the local government, city or county, within that city or county's boundaries as set by the State of Oregon. Any proposal to remove that responsibility from counties and place it in the hands of another governmental entity would require action by the Oregon Legislature. The rules and requirements of Statewide Planning Goal 5 require local governments to follow appropriate procedures, and the policy decisions of such local governments are such to close review and potential appeal by the state, other individuals, and tribal governments.*

	These draft rules contain such provisions of oversight and accountability for local governments.
1.1.4 The Tribe objects to sensitive cultural resource reports being submitted to local governments that become a part of a local land use record. While we recognize the confidentiality language in the rule language, this is not sufficient. In the Tribe's experience, informational custody is necessary to protect this information from inadvertent disclosure and the unfortunate consequences of looting, destruction and/or desecration of sites.	*The department understands the Tribes' concerns about maintaining confidentiality. The draft rules reinforce existing state law provisions protecting confidentiality of sensitive cultural and archaeological resources. However, in order to make a decision on a specific land use project, the local government must be able to make a finding regarding the existence, significance, and potential mitigation of such resources on a specific site. In such situations there is a fine balance between enough specificity to make a land use decision, and enough confidentiality to comply with state law and protect important sites from being destroyed or impaired.*
1.1.5 Differing local jurisdiction processes, available information and approvals, instead of a centralized state authority and transparent information bank, shifts burdens onto tribes to track and manage applications and resulting programs established to mitigate/compensate for tribal resource impacts—these are capacity resources that tribes do not have.	*The department understands that this rule, along with LCDC's recently adopted cultural resources rules, place burdens upon tribes to participate and advocate for their interests in the land use process. The draft rules attempt to give tribal governments sufficient time to respond to development applications as they arise. The department will continue to advocate for additional resources to tribes to adequately address potential impacts arising from these and other local land use projects.*
1.2 Burns Paiute Tribe	***Response***
1.2.1 If it isn't already a consideration, an attempt to speak to tribal culture in a definition that is more tribal centric would be useful. One of the problems tribes encounter is that legislation is written from the values and ideology of contemporary western culture and doesn't fit well with tribal ontologies and epistemologies. The value of heritage across landscapes is different for many of our tribes than what archaeologists value.	*Staff appreciate this point and have suggested a change in definition of cultural areas be taken up on the Goal 5 Cultural Areas rulemaking as time allows.*
1.2.2 For the section about notification, we often have a problem with someone sending a letter, often to the wrong contact. I think there should	*Staff at the Legislative Commission on Indian Services have agreed to maintain the contact list.*

be more detail in what that notification should look like.”	

2.0 County Comments

2.1 Morrow County	***Response***
2.1.1 Sizes in Division 33, the direct application alternative, should be the same as Division 23, the comprehensive planning alternative.	*The department’s preference is to encourage and enable counties to plan for these large, land intensive facilities rather than simply react to individual proposals. Allowing larger project sizes under Division 23 provides an incentive for counties and developers to utilize this pathway. Taking this one step further, the planning process identified in Division 23 requires a robust level of community engagement. This is the most fundamental and important difference between the two approaches. The county can then use the outcomes of community engagement to inform local policy choices as the counties develop the elements of a local program. Counties that engage in these efforts afford their residents and communities the opportunity to think through issues regarding solar siting, to emphasize what they see as opportunities and to work through what they may have as concerns. Community engagement of this nature will simply not occur under Division 33 as drafted.* *The involvement of local interests should result in a greater level of ownership and support of the eventually adopted local program. The final results will be communities that are more informed about, comfortable with, and welcoming towards photovoltaic solar development. Applications made in this environment are more likely to enjoy a smooth review process and are less likely to suffer legal challenges.* *The department feels that the robust community engagement that comes with the Division 23 approach can allow for larger project sizes than the direct application approach of Division 33.*
2.1.2 Recommends that the soil classifications found in ORS 215. 710 also be applied to solar projects rather than creating two soil classifications, one unique to solar siting.	*The department believes the current draft language resolves this point.*

2.1.3 Request Opt-In rather than Opt-Out.	*The department appreciates this issue and has provided possible alternative language to the Division 33 draft for commission consideration.*
2.1.4. Support Ag Mitigation and want the Energy Facility Siting Council (EFSC) to have to concur with county findings.	*The draft includes agricultural mitigation standards, and options for counties to customize such standards as part of the Division 23 comprehensive planning alternative.* *LCDC does not have the authority to bind EFSC through its rules on this issue.*
2.1.5. Could a county adopt one or more of the three standards and allow a landowner or developer to choose the more desirable permitting path?	*The rules are written so that a local program adopted pursuant to Division 23 would control proposals for larger projects, and that the Division 33 "direct application" alternative would no longer be available in that county. However, the existing process identified in OAR 660-033-0130(38) remains intact and available.*
2.2 Association of Oregon County Planning Directors (AOCPD)	***Response***
2.2.1. Recommends Opt-In rather than Opt-Out.	*Department staff have provided possible alternative language to the Division 33 draft for commission consideration.*
2.3 Wasco County	***Response***
2.3.1. Recommends opt-in rather than opt-out. The opt-out provisions are costlier to implement and constitute an unfunded mandate on local governments.	*The department appreciates this issue and has provided possible alternative language to the Division 33 draft for commission consideration.*
2.3.2. Conflicts between EFSC & Local requirements created by OAR 660-023-0190.	***T****he department believes that new language drafted to revise OAR 660-023-0190 will help resolve this concern.*
2.3.3. Recommends updating Goal 13.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
2.4 Umatilla County	***Response***
2.4.1. Recommends Opt-In rather than Opt-Out.	*The department appreciates this issue and has provided possible alternative language to the Division 33 draft for commission consideration.*

2.4.2. Agricultural mitigation should be specific to agricultural loss.	*The department believes the existing draft language to be consistent with this comment.*
2.4.3. Require county to establish committee to determine how to spend community benefit funds.	*The rule language authorizes a county to establish a committee to determine how to spend community benefit funds.*
2.4.4. Language at (b)(C) “General Vicinity” not clear and objective.	***T**he department has revised the draft language to be consistent with this comment.*
2.4.5. How will battery storage be evaluated?	*Battery storage is considered a component of a “Photovoltaic Solar Power Generation Facility.” It is expected that it will be evaluated as part of the land use application process.*

3.0 Citizen Comments

3.1 Nicole Chaisson, Wasco County	***Response***
3.1.1. Fire concerns, particularly with all volunteers and difficulties of fighting solar panel and lithium fires.	*Instead of including a blanket requirement for solar projects to address wildlife issues in a unified way, the rules authorize counties to analyze this issue and require project modifications or conditions of approval that address specific issues ascertained by the county or raised by participants in the application review process during county review of each project.*
3.1.2. Need to mandate better protections from fire if projects sited in high-risk areas.	*See response to comment 3.1.1.*
3.1.3. Siting these projects closer than 1/2 mile of a residence is unsafe.	***T**he department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
3.1.4. These projects are being sited on good crop ground.	*The rules address this concern and specifically do not allow development of renewable solar facilities under these two options on the best farmland and require agricultural mitigation for other farmland and high-quality rangeland.*
3.1.5. We need a hold harmless clause against fire for normal farming practices.	*The rules require 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 as defined in ORS 30.930(2) and (4).* ***T**he department believes that reviewing ORS 30.930 or considering revisions to ORS 30.930 regarding*

	wildfire is a candidate for additional study, inclusion in the required report to the Legislature, or both.
3.1.6. Should require all new buildings and parking lots to have solar rather than developing farm ground.	***T**his policy approach was not part of the Legislature's directive to the commission. It is a matter for the Legislature to take up separately.*
3.1.7. Have you thought about the impact on people who will be surrounded by these solar farms?	*The draft rules are sensitive to the concerns of neighbors and nearby communities. Specifically, the largest possible projects are not eligible to be considered unless the county has completed the planning and robust community engagement called for in Division 23. The Community Benefits provision means to provide meaningful uplift to such areas.*
3.2 Kathy McCullough, Sherman County	***Response***
3.2.1. Fire concerns, particularly with all volunteers and difficulties of fighting solar panel and lithium fires.	*Instead of including a blanket requirement for solar projects to address wildlife issues in a unified way, the rules authorize counties to analyze this issue and require project modifications or conditions of approval that address specific issues ascertained by the county or raised by participants in the application review process during county review of each project.*
3.2.2. Need to mandate better protections from fire if projects sited in high-risk areas.	*See response to comment 3.2.1.*
3.2.3. Siting these projects closer than 1/2 mile of a residence is unsafe.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
3.2.4.These projects are being sited on good crop ground.	*The rules specifically do not allow development of renewable solar facilities under these two options on the best farmland and require agricultural mitigation for other farmland and high-quality rangeland.*
3.2.5. We need a hold harmless clause against fire for normal farming practices.	*The draft rules require 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 as defined in ORS 30.930(2) and (4).* *The department believes that reviewing ORS 30.930 or considering revisions to ORS 30.930 regarding wildfire is a candidate for additional study, inclusion in the required report to the Legislature, or both.*

3.3 Jennifer Gunter, Wasco County	***Response***
3.3.1. Fire concerns, particularly with all volunteers and difficulties of fighting solar panel and lithium fires.	*Instead of including a blanket requirement for solar projects to address wildlife issues in a unified way, the rules authorize counties to analyze this issue and require project modifications or conditions of approval that address specific issues ascertained by the county or raised by participants in the application review process during county review of each project.*
3.3.2. Solar panel fires and lithium battery runaways should demand two-mile buffers, or more.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
3.3.3. Decommissioning bonds are insufficient.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
3.3.4. These projects are being sited on good crop ground.	*The rules specifically do not allow development of renewable solar facilities under these two options on the best farmland and require agricultural mitigation for other farmland and high-quality rangeland.*
3.3.5. Decades of stewardship erased for urban profit is indefensible, rural economies suffer while developers thrive.	*The draft rules are sensitive to the concerns of neighbors and nearby communities. Specifically, the largest possible projects are not eligible to be considered unless the county has completed the planning and robust community engagement called for in Division 23. The Community Benefits provision is intended to provide meaningful uplift to such areas.*
3.3.6. We need a hold harmless clause against fire for normal farming practices.	*The draft rules require 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 as defined in ORS 30.930(2) and (4).* *The department believes that reviewing ORS 30.930 or considering revisions to ORS 30.930 regarding wildfire is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
3.3.7. These rules favor developers over rural equity - the eyesore, displacement risk, and economic devastation far outweigh ANY benefit.	*The draft rules are sensitive to the concerns of neighbors and nearby communities. Specifically, the largest possible projects are not eligible to be considered unless the county has completed the planning and robust community engagement called for in Division 23. The Community Benefits provision*

	is intended to provide meaningful uplift to such areas.
3.4 Ormand Hilderbrant	***Response***
3.4.1. Emphasize the importance of expanding the amount of acreage that can be developed for solar before a Goal 3 Exception needs to be taken.	*The draft rules dramatically increase the size of renewable solar energy projects in Eastern Oregon that do not require an exception, if they are proposed on lands with least conflicts or with mitigatable conflicts.*
3.5 Elizabeth Turner – Wasco County	***Response***
3.5.1. The state's leadership must stop this free for all, runaway energy billion-dollar disaster.	*The draft rules implement the direction of the 2023 Oregon State Legislature, through HB3409, which directed this rulemaking effort. Any change in state policy regarding renewable energy must also come from the Oregon State Legislature.*

4.0 Land Use Advocate Comments

4.1 Central Oregon Land Watch	***Response***
4.1.1. Prohibit solar development within 1 mile of a UGB.	*Upon careful review of GIS data, consideration of local knowledge provided by field staff, and receiving public testimony, the department is no longer concerned that solar development poses a genuine risk to city urbanization needs. The department does not recommend that the draft rules include a prohibition on solar development within proximity to urban growth boundaries. The draft rules require county coordination with cities when developing a program under the Division 23 alternative.*
4.1.2. Require solar development applications seeking Goal exceptions to maintain current zoning.	*The draft rules are consistent with this recommendation.*
4.1.3. Exclude the Metolius Area of Critical State Concern (ACSC) from any eligibility for solar energy development.	*Upon careful review of GIS data the department has determined that a limited amount of land in the eastern portion of the Metolius ACSC would qualify as "Potentially Eligible" for the new opportunity provided by the draft rules. Protecting wildlife habitat was one primary component for designating the Metolius Basin of an Area of Statewide Concern, which the department believes provides good cause*

	to exclude this area from eligibility for solar development under the new opportunity created by the draft rules. The draft rules would also exclude land within this region zoned for Forest Uses from the expanded 240 acre maximum facility size.
4.1.4. Goal exceptions should be required for projects larger than 3,840 acres on nonarable lands.	*Avoiding a goal exception when possible is a guiding principle reflected in the Legislative record of HB 3409 and the rulemaking Charge approved by the commission on November 2, 2023. The language in the draft rules does not require an exception for larger projects on areas with least conflicts that subject to EFSC jurisdiction, thereby providing further incentive to engage in the planning and community engagement activities identified in Division 23.*
4.1.5. Counties should defer to the expertise of Tribes when determining the value and/or appropriate mitigation for impacts to cultural resources.	*The draft rules ensure that communication between the applicant, affected Tribe(s), and the State Historic Preservation Office (SHPO) will occur early and often. Data provided by the applicant in conjunction with input from SHPO and the Tribe(s) should serve as the basis for a county determination regarding Historic, Cultural, and Archaeological Resources.*
4.1.6. The rules' maximum acreages on high-value farmland should be lower.	*The draft rules provide a very narrow window for a particular subcategory of high-value farmland. Only lands that have lost the ability to irrigate due to regulatory circumstances after 2024 but continue to be considered high-value farmland pursuant to the definition in ORS 195.300(10), are candidates for the new opportunity provided by the draft rules. These lands remain limited to projects of either 160-acres (Division 33) or 240-acres (Division 23 – this is also the maximum size on high-value farmland per ORS 215.446).*
4.1.7. ODFW concurrence should be required for all wildlife habitat determinations.	*The most valuable wildlife habitat is not available for consideration under the new opportunity provided by the draft rules. All other lands must be consistent with ODFW habitat mitigation program. While the final authority must necessarily rest with county decision makers, ODFW participation will remain instrumental to the local approval process.*
4.1.8. Agricultural lands with appurtenant water rights that have been leased for instream use should be ineligible for solar siting.	*The draft rules are consistent with this recommendation.*
4.1.9. Prioritize siting solar energy projects on nonarable lands versus arable lands.	*The draft rules are consistent with this recommendation.*

4.1.11. The rules should require an agricultural lands cumulative effects analysis.	*The draft rules require a cumulative effects analysis when a certain number of acres have been developed with solar or have received building permits within a study area measuring two miles from the exterior project boundary.*
4.1.12. The rules should require a cumulative effects analysis for wildlife habitat.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
4.1.12a. The rules should limit the quantity of lands over which counties have discretion to include or exclude from significant photovoltaic solar resource areas.	*While the department believes that, if lands that have the least impacts should not have an overall "cap" or limitation on development within a county, this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*

5.0 Agricultural Advocates Comments

5.1 Oregon Board of Agriculture	***Response***
5.1.1. Rules should include a more accurate and locally grounded formula for mitigation payments.	*This is the first time LCDC-adopted rules have included meaningful agricultural mitigation measures. The agricultural mitigation methodology expressed in these rules provides a "safe-harbor," meaning that if a county follows certain guidelines it is guaranteed to be in compliance with the law. This simplifies the approval process and guards against appeals. Safe-harbor provisions require a tangible, clear and objective basis to be successful. The draft rules rely on data from the National Agricultural Statistics Service (NASS). NASS provides a uniform and dependable source of information that is important to make this approach work.* *The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both because this is the commission's first effort regarding agricultural mitigation measures.*
5.1.2. Ongoing or tiered payment structures that reflect long-term losses.	*Ongoing or tiered payment structures would add a layer of complexity that would require time and resources to establish.* *The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
5.1.3. A maximum percentage cap on the amount of farmland allowed for solar development.	*While the department believes that, if lands that have the least impacts should not have an overall "cap" or limitation on development within a county, this issue*

	is a candidate for additional study, inclusion in the required report to the Legislature, or both.
5.1.4. Recognition and protection of valuable grazing and non-Class I/II agricultural lands.	*The draft rules address this. They avoid the best farmland and require mitigation for other farmland and high-quality rangeland. This is the first time the commission rules will have made a distinction in different levels of rangeland productivity.*
5.2 Mike McCarthy	***Response***
5.2.1. Protect High Value, irrigated and other productive farm land from solar arrays. Seek alternative sites.	*The draft rules are consistent with this recommendation.*
5.2.2. Protect water rights from loss by non-use when solar is installed on farms.	*The draft rules are consistent with this recommendation.*
5.2.3. Do not assume Agrivoltaics will be widely adopted. From my experience growing many crops and operating many kinds of equipment it will be difficult to raise crops uniformly, efficiently, productively and profitably under solar.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both. The department and the RAC analyzed this issue, but determined it was too complex for resolution as part of this process and requires additional work.*
5.2.4. solar on building, highway right of ways, parking lots. Include these sites in alternative analysis. These are already “at the grid”.	*This policy approach was not part of the Legislature’s directive to the commission.*
5.2.5. Do Cumulative Impact Analysis which will include the impact on Ag industries and “critical mass’ analysis.	*The draft rules require a cumulative effects analysis when a certain number of acres have been developed with solar or have received building permits within a study area measuring two miles from the exterior project boundary.*
5.2.6. Build into the process decommissioning so it is guaranteed that the farmer is not responsible.	*The draft rules authorize a county reviewing a renewable solar development application to impose conditions of approval requiring decommissioning of solar facilities by the developer once the project has completed its useful life as well as bonding for decommissioning to ensure the funds would be available.*
5.2.7. Ensure land is brought back to arable with no soil contamination left.	*Instead of including a blanket requirement for solar projects to address soil contamination issues, the rules authorize counties to analyze this issue and require project modifications or conditions of approval that address specific issues ascertained by the county or raised by participants in the application review process during county review of each project.*

5.2.8. Build in that the energy company will be responsible if the facility “melts down” from wildfire. This would include site and soil decontamination.	*Instead of including a blanket requirement for solar projects to address wildfire in a unified way, the rules authorize counties to analyze this issue and require project modifications or conditions of approval that address specific issues ascertained by the county or raised by participants in the application review process during county review of each project.*
5.2.9. Consider ground water impacts of the repeated herbicide use that will be required to control vegetation of the facility. C./E.	*Instead of including a blanket requirement for solar projects to address ground water impacts in a unified way, the rules authorize counties to analyze this issue and require project modifications or conditions of approval that address specific issues ascertained by the county or raised by participants in the application review process during county review of each project.*
5.3 Oregon Wheat Growers League	***Response***
5.3.1. Area subject to the cumulative impacts assessment should be increased.	*The draft rules require a cumulative effects analysis when a certain number of acres have been developed with solar or have received building permits within a study area measuring two-miles from the exterior project boundary. The draft rules significantly increase the size of the impact area currently found in existing renewable solar energy rules on farmland found in OAR 660-033-0130(38).*
5.3.2. The cumulative assessment should include projects that have been constructed or received land use approvals.	*The draft rules require a cumulative effects analysis when a certain number of acres have been developed with solar or have received building permits within a study area measuring two miles from the exterior project boundary. The problem with the proposed approach is that many solar development projects approved by counties in past years have not been developed by the applicant because of other issues not related to the land use approval process.*
5.3.3. Maintain and enhance parameters regarding soil health, wildfire, avoiding impacts to access/orphaned parcels, controlling runoff and weed management.	*Existing rules include standards related to items such as soil erosion, soil compaction, and weed abatement that extend to the new draft rules.* *Instead of including a blanket requirement for solar projects to address additional requirements or concerns on these issues in a unified way, the rules authorize counties to analyze this issue and require project modifications or conditions of approval that address specific issues ascertained by the county or*

	raised by participants in the application review process during county review of each project.
5.3.4. Time period before expiration of a permit: The League RAC representative present at that meeting voiced concerns about the length of term considered, noting the need for a shorter term to reduce acreage held for speculative purposes and dormant approvals that would lock up land and drive up the costs to farmers.	*While the department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both, the RAC discussed this issue extensively at its meeting in Moro and came to the conclusion that the time periods proposed in the rules balance the extended time period solar developers often need to bring their projects to fruition with the concerns raised in this comment..*
5.4 Oregon Association of Conservation Districts (OACD) – December 1, 2024	***Response***
5.4.1 OACD provided comments generally agreeing with the division of potentially significant solar development sites into three categories: minimal impacts, areas with mitigation required, and areas where other resources have primacy.	*This OACD letter supported the department's draft rules creating three categories of lands: 1) minimal impacts and no mitigation required; 2) some impacts that could be made acceptable with mitigation measures; and 3) significant competing resources that preclude expedited renewable solar energy development.*
5.5 Oregon Association of Conservation Districts (OACD) – January 16, 2025	***Response***
5.5.1 OACD provided comments at this point in the rulemaking process expressing general agreement with the concepts presented to date, although concerned about the complicated nature of the proposal. OACD also expressed concern about some concepts in the rules that ended up not moving forward in subsequent meetings.	*The department appreciated the constructive input OACD provided in this letter and worked to make the proposal more streamlined and understandable. While still complicated, the revised draft rules achieved greater buy-in from RAC members, even those who still have significant concerns about the draft rules.*
5.6 Oregon Association of Conservation Districts (OACD) – March 24, 2025	***Response***
5.5.1 OACD expressed support for the rules as drafted.	*The department appreciates OACD's support of the draft rules.*
6.0 Solar Advocates Comments	
6.1 Elaine Albright	***Response***

6.1.1. The proposed Division 23 rules are too complicated, too burdensome.	*The department appreciates that issues arising out of renewable solar development in Eastern Oregon are complicated, particularly when attempting to balance multiple, often competing resources or values.* *The draft Division 23 rules provide counties with a straight-forward process that provides relief from the most complicated and controversial items of a typical Goal 5 program: determination of significance, identification of conflicting uses, an analysis of the Economic, Social, Environmental, Consequences (ESEE) consequences of fully allowing, partially allowing, or fully prohibiting conflicting uses, as well as, the program to protect the resource. Relief on these items and "safe-harbor" opportunities regarding some mitigation requirements eliminate or substantially reduce the natural complexities inherent in most Goal 5 work.* *What remains is the robust public process and community engagement that will inform the counties' policy decisions. The department sees these obligations as an asset for local planning efforts, not a liability. Please see the response to comment 2.1.1. for additional discussion on the benefits of neighborhood and community conversations in a local planning process.* *In response to concerns raised by the solar development community as part of the RAC process, the department developed an alternative "direct application" approach, found in the Division 33 language, should counties choose not to undergo the comprehensive planning required in the Division 23 process, or decide to process applications under this approach while they are developing a comprehensive program under Division 23. The "direct application" approach would allow counties to review and approve somewhat smaller projects, but still many times larger than allowed by the current rules without approval of an exception to Statewide Planning Goal 3. This alternative does not require counties to do the comprehensive planning required under the Division 23 process.*
6.1.2. Div. 33 acreage thresholds should be the same as Div. 23 acreage thresholds.	*The department respectfully disagrees. Please see response to comment 2.1.1. on Page 1.*
6.1.3. Simplify Div. 33 standards. Div. 33 should be limited to (1) agricultural mitigation; (2)	*The department is concerned that reducing protective measures for what remain very large projects would be inconsistent with the text and*

community benefits; and (3) compliance with ORS 215.446.	*context of HB 3409 and the rulemaking Charge approved by the commission. The rules strike a careful balance between competing resources, and that balance should apply to review of individual renewable solar energy projects in Eastern Oregon whether a county uses the Division 23 comprehensive planning method or the Division 33 direct application method.*
6.1.4. An applicant under Div. 33 standards should not have to comply with Div. 23 requirements related to notice because such coordination is already addressed under ORS 215.446.	*The department appreciates that notice is required under ORS 215.446. However, the department respectfully observes that relying solely on the statute would not result in the early and often communication facilitated by the draft rules. Projects subject to early and often communication are more likely to enjoy better coordination and stand to resolve potential issues before an applicant submits its application to a county.*
6.1.5. Allow for flexibility and conservation in the management of water resources. Modify the provisions for allowance of solar projects on unirrigated higher value soils under certain conditions, partly to clarify the rules and partly to allow more consideration of use on lands that are unirrigated and do not have water rights.	*The department appreciates that water related issues are complicated. The changes proposed by Ms. Albrich in her comments have some merit, but could lead to unintended consequences regarding transfer of irrigation rights among farm properties.* *The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both. This is also an area the department and commission should revisit as part of the two-year review of the rules in 2027.*
6.2 MN8	***Response***
6.2.1. The non-arable acreage threshold in Division 33 should be increased from 1,920 acres to 3,840 acres.	*The department respectfully disagrees. Please see response to comment 2.1.1. on Page 1.*
6.2.2. American Viticulture Area (AVA) soil designation should not be applied as a classification factor, at least within the Columbia Plateau.	*The department appreciates that many lands with an AVA are neither irrigated, nor planted to grapes.* *The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
6.2.3. The slope (<15%) and capacity factor (>19%) requirements will be challenging to implement and convoluted to comply with, and ultimately, are not necessary.	*The rules include slope and capacity factor for two reasons. First, these features are consistent with the text and context of HB 3409 and the rulemaking Charge approved by the commission, which specifically identifies that the rules will consider capacity factor as one piece to determine significance. Second, both slope and capacity factor*

	are easily mappable with data readily available from the Oregon Renewable Energy Siting Assessment (ORESA) on-line mapping tool.
6.2.4. PWCAs and their management guidelines should be adopted by the Fish and Wildlife Commission before being incorporated into land use rules.	*The department understands that ODFW has published and made this data available to the public. They are a key wildlife habitat resource, and so the rules include consideration of them even if not formally adopted as of yet by the Fish and Wildlife Commission.*
6.2.5. The rules should not apply mitigation requirements for Class 6 soil, irrespective of its productivity level. Instead, the productivity level test should be applied to Class 3 – 5 soils.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
6.2.6. The rules establish multiple mitigation payments and compensatory mitigation for potential environmental impacts. Between agricultural mitigation, wildlife mitigation, and community benefits, mitigation payments could become cost prohibitive.	*The department appreciates that mitigation can be expensive. One way to reduce mitigation expenses would be to select sites that require reduced levels of mitigation. It is not given that all three requirements will be applicable at every site.* *The department also understands that large solar projects, such as those contemplated in the draft rules will require a budget of tens, or more likely, hundreds of millions of dollars to develop. The worst-case mitigation example is not likely to exceed 3.5% of the overall budget, which is expected to be within the ability for a project to absorb. The department has even heard anecdotal examples of companies already budgeting for these types of expenses.*
6.2.7. Applicants should be allowed to either make a one-time agricultural mitigation compensatory payment, which the county must accept, or submit an alternative mitigation plan, subject to the county's discretionary approval, to satisfy the agricultural mitigation requirements.	*The Draft Division 23 rules include this arrangement. An applicant may choose between two options. The first option is the safe-harbor opportunity, which presents no risk. The second option is an alternative approach that allows flexibility but does present additional risk.* *The draft Division 33 rules provide only the safe-harbor option, because these rules are intended to be more clear and objective where possible.*
6.2.8. Adopt reasonable and attainable community benefit requirements that allow for more flexibility when developing projects.	*The Draft Division 23 rules include this arrangement. An applicant may choose between two options. The first option is the safe-harbor opportunity, which presents no risk. The second option is an alternative approach that allows flexibility but does present additional risk.*

	The draft Division 33 rules provide only the safe-harbor option, because these rules are intended to be more clear and objective where possible.
6.3 NewSun Energy – January 22, 2025	***Response***
The NewSun Energy comment letter dated January 22, 2025 raised concerns about the RAC process to date and also included an outline of an alternate proposal to directly apply the proposed rules to renewable solar energy projects in Eastern Oregon.	***B***ased upon NewSun's proposal, the department drafted what has become the "direct application" alternative included OAR 660-033-0130 ("Division 33"). While NewSun and other solar energy developers continue to have strong concerns over the content of the rules, they expressed satisfaction about the revised draft which included the "direct application" alternative pathway.
6.3 NewSun Energy	***Response***
6.3.1. Many RAC members strongly contested the use of a Goal 5 process in Division 23.	*Both the Legislative record and the rulemaking Charge approved by the commission unambiguously directed the department to focus on Division 23 as the centerpiece of the rulemaking.* *Even if this were not the case, Solar energy is an "energy source," which is a Goal 5 resource and the proper place to forge statewide policy for a Goal 5 resource is the Goal 5 rule at OAR chapter 660, Division 23.* *Conversely, the purpose of Goal 3, as stated in OAR 660-015-0000(3) is "To preserve and maintain agricultural lands." The text of the Goal goes on to say, "[a]gricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700." Neither Goal 3, Division 33, or the Exclusive Farm Use zoning district implemented by counties are intended to facilitate nonfarm uses. Put another way, Goal 3 and its implementing rule is not the appropriate location to forge state policy for a Goal 5 resource.* *However, to accommodate the viewpoint represented by this comment, these rules do include an alternative "direct application" of the reduced solar conflict siting in Division 33. This alternative allows counties and developers to begin processing applications in lieu of, or while developing, a*

	comprehensive program for solar development energy sources under Goal 5. This alternative allows reduced acreage sizes for the reasons discussed in Comment 2.1.1., and removes subjective provisions related to agricultural mitigation and community benefits. However, the department strongly believes that a "direct application" approach should not be a way to rebalance the decisions as to how the state can reduce conflicts between solar development and agriculture, wildlife habitat, and cultural/archaeological resources.
6.3.2. The Division 23 portion of the Rule is unlikely to be used because it is long, complex, and requires extensive process to even establish solar resource areas.	*The department appreciates that land use planning is complicated, particularly when attempting to balance multiple, often competing resources or values.* *Please see the response to comment 6.1.1. for additional discussion.*
6.3.3. It is also very unclear *which* lands would be available for development under the Division 23 Rule due to mapping constraints.	*The draft division 23 rule provides clear guidance regarding what lands are eligible and what are not. Some of these lands are easily mapped while others will require an applicant to furnish additional data and conduct additional research. No county is required or expected to produce original data, which substantially reduces the burden on local governments to establish a local program. The result is that a county will determine eligibility based on data provided by an applicant that has been coordinated with the respective agencies.*
6.3.4. Simplify the Division 33 Rule by requiring only: (1) agricultural mitigation; (2) community benefits; and (3) compliance with ORS 215.446.	*The department is concerned that reducing protective measures for what remain very large projects would be inconsistent with the text and context of HB 3409 and the rulemaking Charge approved by the commission. The rules strike a careful balance between competing resources, and that balance should apply to review of individual renewable solar energy projects in Eastern Oregon whether a county uses the Division 23 comprehensive planning method or the Division 33 direct application method.*
6.3.5. If not simplified, then increase the acreage thresholds for the Division 33 Rule to match the Division 23 / EFSC thresholds.	*The department respectfully disagrees. Please see response to comment 2.1.1.*
6.3.6. Agricultural Land: If not simplified, increase the percentage of certain soil classes on a site that are allowed and provide additional flexibility for water-challenged properties.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*

6.3.7. Noticing: Clarify noticing requirements in Division 33 to avoid potential conflict with more complicated noticing requirements in Division 23.	*The department appreciates that notice is required under ORS 215.446. However, the department respectfully observes that relying solely on the statute would not result in the early and often communication facilitated by the draft rules. Projects subject to early and often communication are more likely to enjoy better coordination and stand to resolve potential issues before an applicant submits an application.*
6.3.8. It is imperative to avoid additional restrictions (like UGB setbacks, more restrictive thresholds, or additional avoidance areas).	*The department is not recommending UGB setbacks. The department is recommending including the Metolius Area of Critical State Concern to the list of areas to be avoided – see response to comment 4.1.3. However, the department's analysis shows that the other characteristics of this area mean that it provided little opportunity for renewable solar development under the draft rules.*
6.4 Oregon Solar and Storage Industries Association (OSSIA) – November 4, 2024	***Response***
OSSIA's comment letter on November 4, 2024 raised a number of concerns during the middle of the rulemaking process regarding substance and process.	***T***he department acknowledged OSSIA's concerns and altered its approach to the rulemaking to some extent. The department presumes that OSSIA expresses its remaining concerns in its subsequent comment letter.
6.5 OSSIA	***Response***
6.5.1. The proposed changes to OAR 660, Division 23 are overly complicated.	*The department appreciates that land use planning is complicated, particularly when attempting to balance multiple, often competing resources or values.* *Please see the response to comment 6.1.1. for additional discussion.*
6.5.2. OSSIA is concerned that the draft rules will result in cultivated agriculture lands being protected over lands that have greater ecological and cultural resource values.	*The department appreciates that finding the appropriate balance between promoting renewable solar energy development in Eastern Oregon and the primary competing resources – agriculture, wildlife, and cultural, is a difficult undertaking. The rules as drafted do strongly protect cultivated agricultural lands, but also allow significant solar development on other agricultural lands, such as grazing lands. The department received significant input from state agencies, interest groups, and Tribal governments on appropriate protection measures for lands with*

	ecological and cultural resource values and the rules reflect this input.
6.5.3. We continue to advocate for scaling back changes to Division 33 to require only: (1) agricultural mitigation; (2) community benefits; (3) compliance with ORS 215.446. The Division 33 rules need to be simple to follow and easy to implement.	*The department is concerned that reducing protective measures for what remain very large projects would be inconsistent with the text and context of HB 3409 and the rulemaking Charge approved by the commission. The rules strike a careful balance between competing resources, and that balance should apply to review of individual renewable solar energy projects in Eastern Oregon whether a county uses the Division 23 comprehensive planning method or the Division 33 direct application method.*
6.5.4. OSSIA encourages DLCD to ensure these solar siting rules do not end up more restrictive than the Cultural Areas proposed rules.	*The draft rules relating the cultural areas are more detailed than the proposed cultural areas rules in the department's other rulemaking effort. But the department believes that they are not more restrictive. Because of the state's need to "catch up" generally with protection cultural resources in the state with updated rulemaking, this is an area the department will continue to monitor and determine, upon review of the rules' effectiveness in 2027, whether OSSIA's concerns are borne out.*
6.5.5. Dryland wheat lands actually are the lower conflict areas for siting solar because of years of disturbance and application of chemicals and pesticides.	*The department believes we understand the basis of this statement. We would encourage OSSIA to discuss this notion with the Oregon Wheat Growers League.*
6.5.6. OSSIA does not support a UGB setback for multiple reasons.	*The department is not recommending a UGB setback. Please see the response to comment 4.1.2.*
6.5.7. The Div. 33 acreage thresholds should match the Energy Facility Siting Council's ("EFSC") acreage thresholds.	*The department respectfully disagrees. Please see response to comment 2.1.1. on Page 1.*
6.6 Pine Gate Renewables (Dugan Marieb)	***Response***
6.6.1. Support opportunities are on sites with lower agricultural soil values and little access to water.	*The rules generally allow more renewable solar development on lands with lower agricultural soil values, and access to water is a factor in this determination.*
6.6.2. Also supportive of the proposals to utilize agricultural mitigation and community benefit investments as ways to allow solar development on lands that should require mitigation.	*The rules are consistent with this comment.*

6.6.3. The rule as written now is still too restrictive on what lands can be mitigated. Should allow for flexible mitigation.	*The draft rules have been specifically designed to avoid the best farmland and require mitigation for other farmland and high-quality rangeland. The division 23 rules allow for flexible agricultural mitigation measures suited to an individual county's needs and determination. The division 33 "direct application: rules are less flexible in this regard to reduce the number of subjective standards that could complicate review of such projects.*
6.6.4. Division 23 rules are overly complicated, difficult to meet with an evidentiary standard, and exposing permit applications to subjective standards.	*The department appreciates that land use planning is complicated, particularly when attempting to balance multiple, often competing resources or values.* *Please see the response to comment 6.1.1. for additional discussion.*
6.6.5. High-Value Farmland categories too broad – shouldn't include dry lands in AVA.	*The department appreciates that many lands with an AVA are neither irrigated, nor planted to grapes.* *The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
6.6.6. Divisions 33 projects should be able to move through this process if they meet ORS 215.446 and avoid the most valuable lands.	*The department is concerned that reducing protective measures for what remain very large projects would be inconsistent with the text and context of HB 3409 and the rulemaking Charge approved by the commission. The rules strike a careful balance between competing resources, and that balance should apply to review of individual renewable solar energy projects in Eastern Oregon whether a county uses the Division 23 comprehensive planning method or the Division 33 direct application method.*
6.6.7. The current acreage limits in Division 33 appear arbitrary. Insufficient explanation was given as to why we would set it as half of the limit for the "solar resource areas."	***T****he department respectfully disagrees. Please see response to comment 2.1.1. on Page 1. This reasoning was offered to the RAC on many occasions.*
6.6.8. DLCD staff consistently overstepped their role as an organizing agency: distance from UGB, using solar capacity factor….	*The department is not inclined to see itself as a simple "organizing" agency. Instead, we serve as Oregon's land use planning agency and staff for Oregon's Land Conservation and Development Commission. In this capacity, the department felt it had a duty to abide by the text and context of HB 3409, the Legislative record, and the clear direction included in the rulemaking charge approved by the commission.*

	As previously mentioned, using solar capacity factor as an indicator of significance was expressed as one of many direct expectations in the rulemaking charge adopted by the commission, and the RAC extensively discussed this issue. As a practical matter, most lands in Eastern Oregon satisfy the solar capacity factor set forth in the draft rules. *The department notes that, based upon additional research on the topic, we agree with Mr. Marieb and other RAC members that a one mile "buffer" around UGBs where counties could not approve renewable solar projects under either Division 23 or 33 is not necessary.* *The department also notes we enjoyed working with Mr. Marieb and his colleagues at Pine Gate Renewables, just as we enjoyed working with all of the solar development interests and other members of the RAC.*
6.7 Renewable Northwest	***Response***
6.7.1 The proposed rules resulting from this rulemaking are overly complicated, making their implementation more difficult and risks not achieving their purpose.	*The department appreciates that land use planning is complicated, particularly when attempting to balance multiple, often competing resources or values.* *Please see the response to comment 6.1.1. for additional discussion.*
6.7.2. Increase acreage thresholds for Division 33.	*The department respectfully disagrees. Please see response to comment 2.1.1. on Page 1.*
6.7.3. We suggest not requiring mitigation for soil classes 3-5 that do not meet a productivity threshold described in (4)(j)(i)(A) or for class 6 soils, irrespective of productivity level.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
6.7.4. We also suggest removing the American Viticulture Area ("AVA") designation as a factor for soil classifications (Arable, Non-Arable) in the Columbia Plateau region.	*The department appreciates that many lands with an AVA are neither irrigated, nor planted to grapes.* *The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*

6.7.5. We suggest omitting Priority Wildlife Connectivity Areas ("PWCAs") as thorough coordination with ODFW is already required for siting solar.	*The department appreciates the solid and ongoing coordination between solar project developers and ODFW. At this point, the department recommends retaining the use of Priority Wildlife Connectivity Areas (PWCA's).*
6.7.6. How will DLCD determine if the intent of the rulemaking is accomplished?	***A**s part of the scheduled review required under OAR 660-023-0195(12) the department intends to interview representatives of entities that served on the RAC, as well as, coordinate with local government partners. This feedback will help us understand whether the intent of the rulemaking is being accomplished. The department will draft a report reflecting our understanding for commission consideration. The report will be presented at an open public meeting, which will include the opportunity for testimony.*

7.0 Wildlife Advocates /State Agency Comments

7.1 The Nature Conservancy (TNC)	***Response***
7.1.1. Supports the creation of the two pathways (Div. 23 and Div. 33) that allow for counties to site solar facilities without undertaking the Goal 3 exception process.	*Duly noted.*
7.1.2. Encouraged to see that both pathways apply ODFW's habitat mitigation hierarchy – avoid, minimize, mitigate – that is critical to reduce and offset development impacts.	*Duly noted.*
7.1.3. We see the creation of an agriculture mitigation calculator as a significant step in identifying mitigation pathways for agriculture.	*Duly noted.*
7.1.4. We are encouraged to see the consideration of community benefits included when identifying a solar resource area and how the facility will impact the local community.	*Duly noted.*
7.1.5. We want to emphasize potential challenges that under-resourced counties and communities can still face when navigating this process.	*Duly noted.*

7.1.6. It would be great to see a compilation of examples and best practices for community engagement and CBAs for solar projects that could inform and assist other counties as they navigate through this process.	*Duly noted.*
7.1.7. Broaden stakeholder engagement and continue conversations on water rights and irrigation districts language, particularly around consideration of water availability in agricultural criteria.	*The department believes this issue is a candidate for additional study and inclusion in the required report to the Legislature, or both.*
7.1.8. Broaden stakeholder engagement and continue conversations on siting on forest lands.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both. The RAC determined that it did not have membership with expertise in issues related to renewable solar development on forest lands to delve into these issues. However, the draft rules do increase the size of projects on forest lands that counties can approve without also approving an exception to Statewide Planning Goal 4 (Forest Lands) from 10 acres to 240 acres. All members of the RAC were in general agreement with this change.*
7.1.9. Broaden stakeholder engagement and continue conversations on agrivoltaics and dual land use on less productive agricultural and ranch lands.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both. The department and the RAC analyzed this issue, but determined it was too complex for resolution as part of this process and requires additional work.*
7.1.10. Explore the buildout of a robust state habitat mitigation program that includes proactive advanced mitigation credit creation in priority service areas.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
7.1.11 We urge DLCD to come up with an outreach strategy for communicating these new rules to counties that both informs counties of the alternative pathways to siting solar projects, but also includes additional resources.	***T****he department intends to engage in such a strategy. Furthermore, we would appreciate it if groups represented on this RAC and others might be willing to join us in these endeavors.*
7.1.12 We encourage DLCD to explore development of new tools or upgrades to existing tools, on-line and otherwise.	*The department believes this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*
7.1.12a We ask that DLCD continue their proactive outreach to counties in Eastern	*Duly noted.*

Oregon to better understand what counties need to implement the new rules effectively.	
7.2 ODFW	***Response***
7.2.1. The balance created within the current draft should provide protection for species and an additional pathway to meeting Oregon's renewable energy goals.	*Duly noted.*
7.3 Friends of the Metolius	***Response***
7.3.1 Areas of Critical State Concern as defined in state law should be excluded from solar development under these rules.	***T**he department agrees with this comment and has incorporated an exclusion for the Metolius Area of Critical State Concern from consideration of renewable solar energy projects under Divisions 23 and 33, and also excluded areas within this region zoned for Forest Uses from the expanded 240 acre maximum facility size.*

8.0 Comments on the Historic, Cultural, and Archaeological Resources Section of the Rules

8.1 John Pouley – State Historic Preservation Office	***Response***
8.1.1 John marked up the February rule draft with a number of comments on details of the historic, cultural, and archaeological section of the rules.	***T**he department appreciates John Pouley's review and suggested edits and has included several of his items as clarifications to the draft rules.*
8.2 Ed Sullivan	***Response***
8.2.1 The rules defer review for cultural and archaeological resources to the site review process associated with an application.	*This is correct – the need for confidentiality regarding cultural and archaeological sites precludes a general inventory in advance of specific project review.*
8.2.2 If the conflicts over cultural resources of a proposed array cannot be avoided or mitigated, the only remaining conflict resolution measure is paying money (presumably to a tribe in the event of possible destruction of a cultural resource). It is not at all clear how this subsection is consistent with subsection 660-023-0195(13)(d), the Program to Achieve the Goal, which states that the application for an array application accepted by the county	*The rules do allow the possibility that an application cannot mitigate impacts to an identified cultural or archaeological resource found as part of a site review. In this case, the county would not be able to approve an application.*

demonstrates “that the construction and operation of the renewable energy facility, taking into account mitigation, will not result in significant adverse impacts to historic, cultural and archaeological resources.” These are the very resources that are sought to be protected under the proposed cultural resources rule.	

9.0 Other RAC Members Comments

9.1 Michael Eng	***Response***
9.1.1 Include a clear community benefits requirement, which includes microgrids as an option.	*The draft rules include a community benefit requirement for all projects under both the Division 23 and the Division 33 alternatives, with a microgrid option.*
9.1.2 Community benefits payments are better left to negotiation between an applicant and the county and other parties rather than a one-time payment.	*The department respectfully disagrees with this recommendation. A clear and objective payment option is necessary for counties and applicants to avoid potential legal disputes and delays. However, counties may, under the Division 23 alternative, craft more individualized community benefit mechanisms.*
9.1.3 DLCD’s final report to the Legislature should highlight the need for more work on agrivoltaics.	***T****he department agrees that this issue is a candidate for additional study, inclusion in the required report to the Legislature, or both.*

OFFICE OF THE SECRETARY OF STATE
LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 660
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FILED
10/31/2024 2:21 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Eastern Oregon Solar Siting Possibilities

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/18/2024 11:55 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Casaria Taylor
971-600-7699
casaria.taylor@dlcd.oregon.gov

635 Capitol St. NE
Ste. 150
Salem,OR 97301

Filed By:
Casaria Taylor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/03/2024
TIME: 5:30 PM
OFFICER: Jon Jinings/Adam Tate

IN-PERSON HEARING DETAILS
ADDRESS: Crook County Library, Broughton Room, 175 NE Meadow Lakes Drive, Prineville, OR 97754

DATE: 12/06/2024
TIME: 8:00 AM
OFFICER: LCDC

IN-PERSON HEARING DETAILS
ADDRESS: Department of Land Conservation and Development, Basement Hearing Room, 635 Capitol St. NE, Salem, OR 97301
SPECIAL INSTRUCTIONS:
Sign-up to testify in advance of the meeting https://www.oregon.gov/lcd/Commission/Pages/Public-Comment.aspx

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 1-253-205-0468
CONFERENCE ID: 81457612050
SPECIAL INSTRUCTIONS:
Passcode: 226955

Sign-up to testify in advance of the meeting https://www.oregon.gov/lcd/Commission/Pages/Public-Comment.aspx

NEED FOR THE RULE(S)

The rules are needed to carry out a legislative mandate. HB 3409 (2023) requires the Land Conservation and Development Commission to adopt administrative rules for the purposes of "Finding Opportunities and Reducing Conflicts in Siting Photovoltaic Solar Power Generation Facilities."

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Documents relied upon include OAR chapter 660, divisions 4, 6, 23, and 33. These documents are available at: https://www.oregon.gov/lcd/LAR/Pages/OARs.aspx

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The State of Oregon requires that a rulemaking notice include "[a] statement identifying how adoption of the rule will affect racial equity in this state[.]" ORS 183.335(2)(b)(F). For the purposes of this statement, racial equity has been defined as treating people of all races fairly, justly, and without bias. The agency is required to attempt to determine the racial groups that will be affected by the proposed rule, and how the rule will increase or decrease disparities currently experienced by those groups. In this context, a disparate treatment of racial groups may be supportable if it addresses current disparities.

The proposed new rule is not expected to negatively impact racial equity and equitable outcomes. The rules provide guidance on siting criteria for photovoltaic power generation facilities and are expected to increase the number of facilities constructed and operated in eastern Oregon through clarification of rules and standards, as well as by providing an alternative process for application.

The expected benefits and costs associated with the new rules are not expected to have an impact on disparities between racial groups. Federally recognized tribes would retain protection for historical, cultural or archeological resources through Goal 5, as well as the new alternative process for eastern Oregon.

The proposed rules clarify existing rules and establish a new process for designating photovoltaic solar resource areas or establishing a photovoltaic solar resource site. The rule would at a minimum maintain the status quo on racial equity, with the potential to advance racial equity through improved economic opportunity and conditions for all.

FISCAL AND ECONOMIC IMPACT:

As part of the rulemaking process, pursuant to ORS 183.335(2)(b)(E), a Fiscal Impact Statement is required to assess the expected degree to which "state agencies, units of local government and the public that may be economically affected by the adoption, amendment or repeal of the rule" and must estimate the economic impact on those entities. In determining economic impact, the agency shall "project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected." Id.

The new rules being evaluated in this report impact OAR chapter 660, division 4 (Goal 2 Exception Process), division 6 (Goal 4 Forest Lands), division 23 (Procedures and requirements for complying with Goal 5), and division 33 (Agricultural Land). The primary focus of the new rules is on division 23, outlining how photovoltaic solar resources are handled within Goal 5. Rule changes in the other divisions are largely for consistency.

The photovoltaic solar generation industry is still emerging, and technological advances and industry practices will likely require an ongoing monitoring and updating of programs and rules. This will be further impacted by the significant linkage between the industry and public policy.

The new rules clarify some emerging concepts such as Agrivoltaics. This was previously addressed in the rules as “dual-use development.” The rules also recognize the potential need for temporary workforce housing.

The identification of significant potential photovoltaic solar resource areas or sites under this rule could place some burden on local governments. The resultant Goal 5 protection of these resources could impact the outcome of future land use decisions. The primary impacts expected from the proposed rule include:
Compliance costs, both monetary and time-related, for local governments in eastern Oregon should they choose to amend their comprehensive plans to designate photovoltaic solar resource areas or establish a photovoltaic solar resource area or sites under the current Goal 5 process (OAR 660-023-0030 to 660-023-0050).
An alternative path is also offered in the new language (OAR 660-023-0195(5) to (14)). The new language provides significant clarity on site requirements. The primary advantage of the new procedure is the ability to not be required to complete a full Economic, Social, Environmental and Energy (ESEE) analysis if conflicting uses on nearby or surrounding lands are not limited or prohibited.
The new language requires all applications for a photovoltaic solar power energy generation facility to include an assessment of how the facility is addressing community needs and benefits. This would likely include some type of fiscal and economic impact analysis for each project. A county is also allowed an alternative involving significant public outreach, as well as a range of outlined mitigation measures.

The following is a summary of areas in which the proposed administrative rule may have fiscal and economic impacts, including:
The new rules will apply either when a local jurisdiction is considering an application for this type of development, or when it is proactively designating photovoltaic solar resource areas or sites(s). The rules provide an alternative approach for designation and consideration of these resource lands in eastern Oregon, which is expected to require less time and cost.
The protections for other recognized Goal 5 resources under the alternative process are extensive, and we would expect no net loss of capacity or function for these resources under the new rules.
The new language requires that any application for a photovoltaic facility address community needs and benefits pursuant to OAR 660-023-0195(13)(a). This subsection allows for a range of mitigation measures, including financial contributions. This would be expected to ensure that any costs incurred by local jurisdiction are offset by the proposed development.
The proposed rules include a substantial clarification of site requirements for these types of facilities for a determination of significance. These include outlining which areas would require mitigation and which are not eligible for a determination of significance. DLCD expects these amendments to reduce uncertainty in the process, which would be valuable to local jurisdictions as well as applicants.
The incremental cost of identifying and inventorying areas or sites of significance would be borne during a local government-initiated update to the comprehensive plan or in response to an application. Local governments have the option to do this work prior to any application or in response to an application.

The clarification of existing rules and proposed alternative approval path would be expected to reduce time frames and cost associated with siting photovoltaic solar power generation facilities, which would increase the likelihood of new facilities being sited in eastern Oregon.

COST OF COMPLIANCE:
(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Small and Large Businesses

The proposed rules are not expected to have any substantive impact on most businesses. More specifically, the proposed rules are not expected to increase the cost of compliance for small businesses. If the new rule increases the number of photovoltaic facilities sited in eastern Oregon, DLCD expects positive impacts on businesses that are involved in the construction and operation of these facilities. These would include large and small businesses such as contractors, suppliers, and service providers during the construction phase, as well as ongoing service providers and suppliers during ongoing operations.

Increased tax revenues accruing to the local jurisdictions can improve the level of services and potentially reduce property tax burdens on local debt issuances. The increase level of business activity may also expand available resources for other businesses as well as amenities in the area.

The impact on the local agricultural and resource industries may include higher land values for sites with locational characteristics consistent with potential photovoltaic resource areas or sites. The new rules preclude a determination of significance for significant wildlife habitat and connectivity areas, high-value farmland, and high-value forest land. The rules clearly favor locations with less impact on alternative resource lands, which should reduce the risk of land price escalation impacting agricultural or timber production.

Local Government Costs

For local governments, fiscal costs are related to the cost of inventorying significant photovoltaic solar energy resources, or in responding to an application to site a facility. These are both monetary and time-related costs associated with:
If a local government chooses to amend their acknowledged comprehensive plans to designate photovoltaic solar resource areas or establish a photovoltaic site or sites;
Responding to an application for designation as a resource site(s);
Reviewing and negotiating mitigation agreements with applicants if required;
Amending local development regulations; and
Coordinating with DLCD during review.

Addressing the entitlement of photovoltaic solar power generation facilities is expected to result in a marginal increase in cost whether or not the new rules are adopted. The new rules largely supplement existing rules by providing an optional alternative path. Provision of the alternative paths included in the new rules provides a process that is expected to be less costly in terms of analysis and time for projects that meet the proscribed requirements. This is presumed to reduce the cost for local jurisdictions that choose to follow this process. Jurisdictions will also be able to negotiate an effective mitigation plan that includes financial reimbursement for impacts.

The fiscal impact of the proposed rules is expected to be negligible at worst for local jurisdictions and is more likely to be positive after mitigation requirements as well as fiscal contributions from the construction and operation of photovoltaic solar power generation facilities. The fiscal profile of these facilities is expected to be more favorable for local jurisdictions, particularly as the siting criteria will minimize the impact on other resource lands.

State Agency Costs

The proposed rule is expected to have a limited fiscal impact primarily on state agencies. The rules cite the Oregon Renewable Energy Siting Assessment (ORESA) as a resource to assist in identifying sites. This database was generated

by the Oregon Department of Energy (ODOE), DLCD, and Oregon State University under a grant from the Department of Defense Office of Economic Adjustment. There may be ongoing costs to maintain the ORESA, but they are expected to be limited. These costs are likely to be borne by ODOE, and ongoing federal grant revenues to offset costs are not assured.

DLCD staff will be required to review and possibly comment on any submittals under these rules, requiring staff time. The level of effort is unlikely to be high as the new rules are largely intended to clarify standards for the establishment of photovoltaic solar resource areas and sites, but there may be some additional time required to review community benefits studies. In addition, a reassessment of the program has been included in the new rules that will require additional staff time.

Additionally, there is the potential for DLCD to incur Department of Justice legal fees in situations where DLCD files, or is a party to, an appeal of a local government's actions that are not consistent with this administrative rule to the Land Use Board of Appeals (LUBA) or is brought to intervene in a LUBA case between two other parties regarding an appeal. DLCD also maintains authority to enact an enforcement order, wherein DLCD would incur legal fees and demand a modest increase in staff effort to review and compile agency records.
The fiscal impact to DLCD and other state agencies is expected to be negligible as this process will be handled at the local level with DLCD review, and no additional staffing is expected to be required. DLCD staff will be required to review documents related to this rule in a wide range of geographic contexts. The agency may provide technical assistance to the local governments applying the proposed rules, but parties investing in the siting of these facilities are likely to be able to assist in funding local efforts.
Public

The public is not anticipated to experience a significant fiscal impact from the new rule, although enhanced tax revenues for local jurisdictions can reduce some tax burdens or increase services available. If photovoltaic solar generation facilities are constructed and operated, they may be perceived by some as having a negative impact on less quantifiable variables such as scenic vistas. Conversely, an increase in solar power generation capacity is expected to further the state's targeted greenhouse gas reduction goals, which is considered a public benefit. Households within one mile of development are also included in a mitigation provision at OAR 660-023-0195(13)(b)(D).

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were involved in the development of these rules through representation on the Rules Advisory Committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

HOUSING IMPACT STATEMENT:

ORS 183.335(2)(b)(E) and ORS 183.530 require that rules adopted by the LCDC include a Housing Impact Statement, which is an "estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single-family dwelling on that parcel." ORS 183.534.

The new rules are not expected to impact the supply of available housing land. The siting of new photovoltaic solar power generation facilities could increase the amount of economic activity in an area, both during construction and ongoing operations. As these locations are expected to largely be in rural locations with limited if any proximate housing availability, there is the potential for increased demand for workforce housing to place pressure on local housing prices. Construction employment typically pays wages well above the median in most rural counties. The inclusion of

temporary workforce housing facilities during construction as a minor amendment and requiring a workforce housing plan as part of a submittal in the new rules is expected to mitigate some of this potential impact.

Assuming an increase in demand for construction services locally associated with construction and operation of solar generation facilities, it is possible that construction costs could increase on the margin. As a result, the cost of constructing a 1,200 square foot detached single-family dwelling on a 6,000 square foot parcel is likely to increase somewhat. Local incomes would also be expected to increase on the margin, which may offset any impact on affordability.

The new rules preclude a determination of significance for lands within one mile of the urban growth boundary of a city with a population of 10,000 or greater. This should protect cities from determinations that impact their land supply, but smaller jurisdictions may see some findings of significance near their urban growth boundaries. This could impact any future expansion based on the findings of a Housing Needs Analysis, as resource lands are a consideration in a Goal 14 process. If the marginal change in any UGB expansion results in land that is more expensive to develop or has higher infrastructure costs, those costs could translate into higher development costs. This outcome is expected to be unusual but possible in limited circumstances. The ability of the homebuilder to shift those higher costs to buyers would be limited though, and the net impact is more likely to be a reduction in underlying land value as opposed to higher home prices for buyers.

In summary, the rule could have a modest impact on home pricing for a 1,200 square foot home on a 6,000 square foot lot in communities proximate to a new photovoltaic solar power generation facility. This would largely be attributable to an increase in demand for construction and related services, which could increase the demand for housing as well as local wage levels. This is not expected to represent a large impact, as most of the construction is expected to be completed by traveling crews in specialized trades, who are not expected to stay permanently in a community. The proposed rules likely reduce this potential impact relative to the current rules through the inclusion of workforce housing in recognized requirements.

RULES PROPOSED:
660-004-0022, 660-006-0025, 660-006-0033, 660-006-0050, 660-023-0190, 660-023-0195, 660-033-0120, 660-033-0130, 660-033-0145

AMEND: 660-004-0022

RULE SUMMARY: The proposed rulemaking modifies 004-0022 to provide clarity for the zoning and regulations of county lands for photovoltaic solar power generation facilities.

CHANGES TO RULE:

660-004-0022
Reasons Necessary to Justify an Exception Under Goal 2, Part II(c) ¶

An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule. Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060. Reasons that may allow transportation facilities and improvements that do not meet the requirements of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify the establishment of new urban development on undeveloped rural land are provided in OAR 660-014-0040. Reasons that may justify the establishment of temporary natural disaster related housing on undeveloped rural lands are provided in OAR 660-014-0090.¶

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following: There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either:¶
(a) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or¶
(b) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.¶
(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned that require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.¶
(3) Rural Industrial Development: A local government may consider a photovoltaic solar power generation facility as defined in OAR 660-033-0130(38)(f) to be a rural industrial use. For the siting of rural industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:¶
(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;¶
(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or¶
(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.¶
(4) A site that a county determines is justified for a photovoltaic solar power generation facility under OAR 660-004-0022(3) and satisfies the provisions of OAR 660-004-0020 shall remain zoned for exclusive farm use, forest use or mixed farm and forest; whichever is applicable. A county shall also continue to apply the relevant approval criteria included at OAR 660-033-0130(38), OAR 660-033-0130(45), or OAR 660-006-0025(4)(k).¶
(5) Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community defined under OAR 660-022-0010(10) the requirements of subsections (a) through (c) of this section apply:¶
(a) Appropriate reasons and facts may include findings that there is a demonstrated need for additional land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration that either:¶
(A) The use requires a location near a resource located on rural land; or¶
(B) The use has special features necessitating its location in an expanded area of an existing unincorporated community, including:¶
(i) For industrial use, it would have a significant comparative advantage due to its location such as, for example, that it must be near a rural energy facility, or near products available from other activities only in the surrounding area, or that it is reliant on an existing work force in an existing unincorporated community;¶
(ii) For residential use, the additional land is necessary to satisfy the need for additional housing in the community generated by existing industrial, commercial, or other economic activity in the surrounding area. The plan must include an economic analysis showing why the type and density of planned housing cannot be accommodated in an existing exception area or urban growth boundary, and is most appropriate at the particular proposed location. The reasons cannot be based on market demand for housing, nor on a projected continuation of past rural population distributions.¶
(b) The findings of need must be coordinated and consistent with the comprehensive plan for other exception areas, unincorporated communities, and urban growth boundaries in the area. For purposes of this subsection, "area" includes those communities, exception areas, and urban growth boundaries that may be affected by an expansion of a community boundary, taking into account market, economic, and other relevant factors.¶
(c) Expansion of the unincorporated community boundary requires a demonstrated ability to serve both the expanded area and any remaining infill development potential in the community, at the time of development, with

the level of facilities determined to be appropriate for the existing unincorporated community.¶
(~~5~~6) Expansion of Urban Unincorporated Communities: In addition to the requirements of section (4) of this rule, the expansion of an urban unincorporated community defined under OAR 660-022-0010(9) shall comply with OAR 660-022-0040.¶
(~~6~~7) Willamette Greenway: Within an urban area designated on the approved Willamette Greenway Boundary maps, the siting of uses that are neither water-dependent nor water-related within the setback line required by section C.3.k of Goal 15 may be approved where reasons demonstrate the following:¶
(a) The use will not have a significant adverse effect on the greenway values of the site under consideration or on adjacent land or water areas;¶
(b) The use will not significantly reduce the sites available for water-dependent or water-related uses within the jurisdiction;¶
(c) The use will provide a significant public benefit; and¶
(d) The use is consistent with the legislative findings and policy in ORS 390.314 and the Willamette Greenway Plan approved by the commission under ORS 390.322.¶
(~~7~~8) Goal 16 - Water-Dependent Development: To allow water-dependent industrial, commercial, or recreational uses that require an exception in development and conservation estuaries, an economic analysis must show that there is a reasonable probability that the proposed use will locate in the planning area during the planning period, considering the following:¶
(a) Goal 9 or, for recreational uses, the Goal 8 Recreation Planning provisions;¶
(b) The generally predicted level of market demand for the proposed use;¶
(c) The siting and operational requirements of the proposed use including land needs, and as applicable, moorage, water frontage, draft, or similar requirements;¶
(d) Whether the site and surrounding area are able to provide for the siting and operational requirements of the proposed use; and¶
(e) The economic analysis must be based on the Goal 9 element of the County Comprehensive Plan and must consider and respond to all economic needs information available or supplied to the jurisdiction. The scope of this analysis will depend on the type of use proposed, the regional extent of the market and the ability of other areas to provide for the proposed use.¶
(~~8~~9) Goal 16 - Other Alterations or Uses: An exception to the requirement limiting dredge and fill or other reductions or degradations of natural values to water-dependent uses or to the natural and conservation management unit requirements limiting alterations and uses is justified, where consistent with ORS chapter 196, in any of the circumstances specified in subsections (a) through (e) or (g), of this section:¶
(a) Dredging to obtain fill for maintenance of an existing functioning dike where an analysis of alternatives demonstrates that other sources of fill material, including adjacent upland soils or stockpiling of material from approved dredging projects, cannot reasonably be utilized for the proposed project or that land access by necessary construction machinery is not feasible;¶
(b) Dredging to maintain adequate depth to permit continuation of the present level of navigation in the area to be dredged;¶
(c) Fill or other alteration for a new navigational structure where both the structure and the alteration are shown to be necessary for the continued functioning of an existing federally authorized navigation project such as a jetty or a channel;¶
(d) An exception to allow minor fill, dredging, or other minor alteration of a natural management unit for a boat ramp or to allow piling and shoreline stabilization for a public fishing pier;¶
(e) Dredge or fill or other alteration for expansion of an existing public non-water-dependent use or a nonsubstantial fill for a private non-water-dependent use (as provided for in ORS 196.825) where:¶
(A) A Countywide Economic Analysis based on Goal 9 demonstrates that additional land is required to accommodate the proposed use;¶
(B) An analysis of the operational characteristics of the existing use and proposed expansion demonstrates that the entire operation or the proposed expansion cannot be reasonably relocated; and¶
(C) The size and design of the proposed use and the extent of the proposed activity are the minimum amount necessary to provide for the use.¶
(f) In each of the situations set forth in subsections (a) to (e) or (g), of this section, the exception must demonstrate that the proposed use and alteration (including, where applicable, disposal of dredged materials) will be carried out in a manner that minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats.¶
(g) For deep draft navigational channel improvements, an exception to Goal 16 may be taken as provided in section 2, chapter 544, Oregon Laws 2023.¶
(~~9~~10) Goal 17 - Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to allow certain uses in Coastal Shoreland areas consistent with subsections (a) through (e) of this section, where applicable:¶
(a) For purposes of this section, "Coastal Shoreland Areas" include:¶

(A) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources and historic and archaeological sites;¶
(B) Shorelands in urban and urbanizable areas, in rural areas built upon or irrevocably committed to non-resource use and shorelands in unincorporated communities pursuant to OAR chapter 660, division 22 (Unincorporated Communities) that are suitable for water-dependent uses;¶
(C) Designated dredged material disposal sites; and¶
(D) Designated mitigation sites.¶
(b) To allow a use that is incompatible with Goal 17 requirements for coastal shoreland areas listed in subsection (9)(a) of this rule, the exception must demonstrate:¶
(A) A need, based on Goal 9, for additional land to accommodate the proposed use;¶
(B) Why the proposed use or activity needs to be located on the protected site, considering the unique characteristics of the use or the site that require use of the protected site; and¶
(C) That the project cannot be reduced in size or redesigned to be consistent with protection of the site and, where applicable, consistent with protection of natural values.¶
(c) Exceptions to convert a dredged material disposal site or mitigation site to another use must also either not reduce the inventory of designated and protected sites in the affected area below the level identified in the estuary plan or be replaced through designation and protection of a site with comparable capacity in the same area.¶
(d) Uses that would convert a portion of a major marsh, coastal headland, significant wildlife habitat, exceptional aesthetic resource, or historic or archaeological site must use as little of the site as possible and be designed and located and, where appropriate, buffered to protect natural values of the remainder of the site.¶
(e) Exceptions to designate and protect, for water-dependent uses, an amount of shorelands less than that amount required by Goal 17 Coastal Shoreland Uses Requirement 2 must demonstrate that:¶
(A) Based on the Recreation Planning requirements of Goal 8 and the requirements of Goal 9, there is no need during the next 20-year period for the amount of water-dependent shorelands required by Goal 17 Coastal Shoreland Uses Requirement 2 for all cities and the county in the estuary. The Goal 8 and Goal 9 analyses must be conducted for the entire estuary and its shorelands, and must consider the water-dependent use needs of all local government jurisdictions along the estuary, including the port authority, if any, and be consistent with the Goal 8 Recreation Planning elements and Goal 9 elements of the comprehensive plans of those jurisdictions; and¶
(B) There is a demonstrated need for additional land to accommodate the proposed use(s), based on one or more of the requirements of Goals 3 to 18.¶
(1~~0~~1) Goal 18 - Foredune Breaching: A foredune may be breached when the exception demonstrates that an existing dwelling located on the foredune is experiencing sand inundation and the sand grading or removal:¶
(a) Does not remove any sand below the grade of the dwelling;¶
(b) Is limited to the immediate area in which the dwelling is located;¶
(c) Retains all graded or removed sand within the dune system by placing it on the beach in front of the dwelling; and¶
(d) Is consistent with the requirements of Goal 18 "Beaches and Dunes" implementation requirement 1.¶
(1~~1~~2) Goal 18 - Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", implementation requirement 2. Reasons that justify why this state policy embodied in Goal 18 should not apply shall demonstrate that:¶
(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or the use is of minimal value;¶
(b) The use is designed to minimize adverse environmental effects; and¶
(c) The exceptions requirements of OAR 660-004-0020 are met.¶
(1~~2~~3) Goal 18 - Beachfront Protective Structures: An exception may be taken to the requirements of Goal 18, implementation requirement 5 to permit beachfront protective structures for the primary purpose of protecting and stabilizing ocean-fronting public roads and highways that were developed on January 1, 1977. As used in this section, "public roads and highways" mean roadways that are owned, operated, maintained, or any combination thereof by federal, tribal, state, county, or city government or a special district as defined in ORS 197.015(19). Roads that dead end at the ocean shore as defined in ORS 390.605(2) or otherwise generally run perpendicular to the ocean shore are not eligible for this exception. Uses such as parking lots, waysides, and campgrounds are not roads and are not eligible for this exception. Only a public body that owns, operates, or maintains the public roadway may apply for an exception under this section. Reasons that justify why the requirements of Goal 18, implementation requirement 5 should not apply shall include the following:¶
(a) Justification that the beachfront protective structure will provide a significant public benefit by protecting and stabilizing the ocean-fronting public road or highway;¶
(b) Feasibility Assessment: Evaluation of alternatives to a beachfront protective structure that would not require an exception and that shows there are no reasonable alternatives to the proposed activity or project modifications

that would better protect public rights, reduce or eliminate the detrimental effects on the ocean shore, or avoid long-term costs to the public. This feasibility assessment shall describe why alternatives are not achievable, or if tried, why they were not successful. Relevant factors may include topographic limitations, environmental constraints, limits of area for relocation, or cost. If, and only if, the feasibility assessment does not identify a viable option that would not require an exception, then the assessment shall also include a description and justification of the preferred erosion mitigation technique that does require an exception. This feasibility assessment shall evaluate, at a minimum, the following alternatives:¶
(A) Hazard avoidance options, including removing, moving, or relocating the road or highway;¶
(B) Non-structural stabilization methods (e.g., foredune enhancement, beach nourishment, vegetation plantings, cobble berms);¶
(C) Site modifications for the control of erosion such as vegetation management, drainage controls, slope regrading, and structure reinforcements; and¶
(D) Bioengineering techniques (e.g., clay burritos and vegetated terraces).¶
(c) Demonstration that the proposed beachfront protective structure will:¶
(A) Minimize visual impacts;¶
(B) Maintain access to and along the ocean shore, including access to the Oregon Coast Trail;¶
(C) Minimize negative impacts on adjacent property;¶
(D) Minimize adverse impacts on water currents, erosion, and accretion patterns;¶
(E) Account for the impacts of local sea level rise and climate change for the design life of the structure; and¶
(F) Avoid or mitigate long-term and recurring costs to the public. As used in this subsection, "mitigate" means the reduction of adverse effects of a proposed beachfront protective structure on beach habitats and beach access by evaluating, in the following order:¶
(i) Avoiding the effect altogether by not taking a certain action or parts of an action;¶
(ii) Minimizing the effect by limiting the degree or magnitude of the action and its implementation;¶
(iii) Rectifying the effect by repairing, rehabilitating, or restoring the affected ocean shore area;¶
(iv) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;¶
(v) Compensating for the effect by creating, restoring, enhancing, or preserving beach habitat, beach access to and along the ocean shore, or both, and within the same general vicinity of the proposed beachfront protective structure. Compensation should consider the Oregon Parks and Recreation Department's Ocean Shore Management Strategy.¶
(d) Assessment of how the exception requirements of OAR 660-004-0020 are met.
Statutory/Other Authority: ORS 197.040
Statutes/Other Implemented: ORS 195.012, ORS 197.040, ORS 197.712, ORS 197.717, ORS 197.732

AMEND: 660-006-0025

RULE SUMMARY: The Proposed rulemaking revises 006-0025 to create a specific category for commercial photovoltaic solar power generation facilities in the forest zone.

CHANGES TO RULE:

660-006-0025
Uses Authorized in Forest Zones ¶

(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:¶
(a) Uses related to and in support of forest operations;¶
(b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;¶
(c) Locationally-dependent uses, such as communication towers, mineral and aggregate resources, etc;¶
(d) Dwellings authorized by ORS 215.705 to 215.757 (ORS 215.757); and¶
(e) Other dwellings under prescribed conditions.¶
(2) The following uses pursuant to the Forest Practices Act (ORS chapter 527) and Goal 4 shall be allowed in forest zones:¶
(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;¶
(b) Temporary on-site structures that are auxiliary to and used during the term of a particular forest operation;¶
(c) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities; and¶
(d) For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.¶
(3) The following uses may be allowed outright on forest lands:¶
(a) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;¶
(b) Farm use as defined in ORS 215.203;¶
(c) Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups;¶
(d) Temporary portable facility for the primary processing of forest products;¶
(e) Exploration for mineral and aggregate resources as defined in ORS chapter 517;¶
(f) Private hunting and fishing operations without any lodging accommodations;¶
(g) Towers and fire stations for forest fire protection;¶
(h) Widening of roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans and public road and highway projects as described in ORS 215.213(1) and 215.283(1);¶
(i) Water intake facilities, canals and distribution lines for farm irrigation and ponds;¶
(j) Caretaker residences for public parks and public fish hatcheries;¶
(k) Uninhabitable structures accessory to fish and wildlife enhancement;¶
(l) Temporary forest labor camps;¶
(m) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head;¶
(n) Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.467 and Goal 8;¶
(o) Alteration, restoration or replacement of a lawfully established dwelling that:¶
(A) Has intact exterior walls and roof structures;¶
(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;¶
(C) Has interior wiring for interior lights;¶
(D) Has a heating system; and¶

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling;¶
(p) A lawfully established dwelling that is destroyed by wildfire may be replaced within 60 months when the county finds, based on substantial evidence, that the dwelling to be replaced contained those items listed at subsection (o)(A) through (E). For purposes of this subsection, substantial evidence includes, but is not limited to, county assessor data. The property owner of record at the time of the wildfire may reside on the subject property in an existing building, tent, travel trailer, yurt, recreational vehicle, or similar accommodation until replacement has been completed or the time for replacement has expired.¶
(q) An outdoor mass gathering as defined in ORS 433.735, subject to the provisions of ORS 433.735 to 433.770;¶
(r) Dump truck parking as provided in ORS 215.311; and¶
(s) An agricultural building, as defined in ORS 455.315, customarily provided in conjunction with farm use or forest use. A person may not convert an agricultural building authorized by this section to another use.¶
(t) Temporary storage site for nonhazardous debris resulting from recovery efforts associated with damage caused by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 subject to Department of Environmental Quality requirements and all other applicable provisions of law.¶
(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:¶
(a) Permanent facility for the primary processing of forest products that is:¶
(A) Located in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or a proportionate combination of indoor and outdoor areas; and¶
(B) Adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the governing body;¶
(b) Permanent logging equipment repair and storage;¶
(c) Log scaling and weigh stations;¶
(d) Disposal site for solid waste approved by the governing body of a city or county or both and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;¶
(e) Private parks and campgrounds. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.¶
(A) Vacation or recreational purposes. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds devoted to vacation or recreational purposes shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Campgrounds approved under this subsection must be found to be established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground and designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.¶
(i) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by paragraph (4)(e)(C) of this rule.¶
(ii) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.¶
(B) Emergency purposes. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because permanent housing units replacing those lost to the natural hazard event are not available in sufficient quantities. A county must process applications filed pursuant to this section in the manner identified at ORS 215.416(11).¶
(i) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.¶

(ii) Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.¶
(iii) A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (4)(e)(B) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this subparagraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.¶
(C) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.¶
(D) For applications submitted under paragraph (B) of this rule, the county may find the criteria of section (5) to be satisfied when:¶
(i) The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.¶
(ii) The number of proposed campsites does not exceed 12; or¶
(iii) The number of proposed campsites does not exceed 36; and¶
(iv) Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.¶
(f) Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable;¶
(g) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS chapter 517;¶
(h) Television, microwave and radio communication facilities and transmission towers;¶
(ih) Fire stations for rural fire protection;¶
(j) Commercial utility facilities for the purpose of generating power. A power generation facility, not including photovoltaic solar power generation facilities in eastern Oregon. A power generation facility considered under this subsection shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4;¶
(k) Commercial utility facilities for the purpose of generating power as a photovoltaic solar power generation facility in eastern Oregon.¶
(l) Aids to navigation and aviation;¶
(lm) Water intake facilities, related treatment facilities, pumping stations, and distribution lines;¶
(mn) Reservoirs and water impoundments;¶
(no) Firearms training facility as provided in ORS 197.770(2);¶
(op) Cemeteries;¶
(pq) Private seasonal accommodations for fee hunting operations may be allowed subject to section (5) of this rule, OAR 660-006-0029, and 660-006-0035 and the following requirements:¶
(A) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;¶
(B) Only minor incidental and accessory retail sales are permitted;¶
(C) Accommodations are occupied temporarily for the purpose of hunting during either or both game bird or big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and¶
(D) A governing body may impose other appropriate conditions.¶
(qr) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width;¶
(rs) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;¶
(st) Home occupations as defined in ORS 215.448;¶
(ut) Temporary hardship residence in conjunction with an existing dwelling. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons experienced by the existing resident or relative as defined in ORS chapter 215. "Hardship" also includes situations where a natural hazard event has destroyed homes, caused residential evacuations, or both, and resulted in an Executive Order

issued by the Governor declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p).¶
(A) For a medical hardship or hardship for the care of an aged or infirm person or persons experienced by the existing resident or relative as defined in ORS chapter 215 the temporary residence may include a manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building. A manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. Department of Environmental Quality review and removal requirements also apply.¶
(B) For hardships based on a natural hazard event described in this subsection, the temporary residence may include a recreational vehicle or the temporary residential use of an existing building. Governing bodies shall review the permit authorizing such temporary residences every two years. Within three months of the temporary residence no longer being necessary, the recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. Department of Environmental Quality review and removal requirements also apply.-¶
(C) For applications submitted under paragraph (B), the county may find that the criteria of section (5) are satisfied when:¶
(i) The temporary residence is established within an existing building or, if a recreational vehicle, is located within 100 feet of the primary residence; or¶
(ii) The temporary residence is located further than 250 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.-¶
(u) Expansion of existing airports;¶
(v) Public road and highway projects as described in ORS 215.213(2)(p) through (r) and (10) and 215.283(2)(q) through (s) and (3);¶
(w) Private accommodations for fishing occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035 and the following requirements:¶
(A) Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;¶
(B) Only minor incidental and accessory retail sales are permitted;¶
(C) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;¶
(D) Accommodations must be located within 1/4 mile of fish-bearing Class I waters; and¶
(E) A governing body may impose other appropriate conditions.¶
(x) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations; and¶
(y) An outdoor mass gathering:¶
(A) Of more than 3,000 persons, any part of which is held outdoors and which continues or can reasonably be expected to continue for a period exceeding that allowable for an outdoor mass gathering as defined in ORS 433.735. In addition to the review standards in section (5) of this rule, the county must make findings required by ORS 433.763(l)(c).¶
(B) As defined by ORS 433.735, for which a county decides that a land use permit is required. In addition to findings required by ORS 433.763(1), a county may, when determining review standards, include all, some, or none of the review standards in section (5) of this rule.¶
(z) Storage structures for emergency supplies to serve communities and households that are located in tsunami inundation zones, if:¶
(A) Areas within an urban growth boundary cannot reasonably accommodate the structures;¶
(B) The structures are located outside tsunami inundation zones and consistent with evacuation maps prepared by Department of Geology and Mineral Industries (DOGAMI) or the local jurisdiction;¶
(C) Sites where the structures could be co-located with an existing use approved under this section are given preference for consideration;¶
(D) The structures are of a number and size no greater than necessary to accommodate the anticipated emergency needs of the population to be served;¶
(E) The structures are managed by a local government entity for the single purpose of providing for the temporary emergency support needs of the public; and¶
(F) Written notification has been provided to the County Office of Emergency Management of the application for

the storage structures.¶
(5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:¶
(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;¶
(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and¶
(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (nm), (ts), (ut) and (xw) of this rule.¶
(6) Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.
Statutory/Other Authority: ORS 197.040, ORS 197.230, ORS 197.245
Statutes/Other Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780, 1993 Oregon Laws Ch. 792

ADOPT: 660-006-0033

RULE SUMMARY: The Proposed rulemaking is a new section of 006, dedicated to new standards for siting photovoltaic solar energy generation facilities on forest land in eastern Oregon.

CHANGES TO RULE:

660-006-0033
Photovoltaic Solar Energy Generation Facilities in Eastern Oregon
The following standards apply to photovoltaic solar energy generation facilities described at OAR 660-006-0025(4)(k):¶
(1) "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 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 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 660-006-0025(5) and shall have no effect on the original approval. 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 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.¶
(2) A photovoltaic solar power generation facility in eastern Oregon that is not subject to the provisions of sections (3) or (4) shall not use, occupy, or cover more than 240 acres.¶
(3) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195(7) and a county has identified photovoltaic solar resource areas as defined at OAR 660-023-0195(2)(c) a photovoltaic solar power generation facility shall not use, occupy, or cover more than 3,840 acres.¶
(4) For lands that a county determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195(7) but where the county has not identified photovoltaic solar resource areas as defined at OAR 660-023-0195(2)(c) and is instead limited to considering applications for individual photovoltaic solar resource sites a photovoltaic solar power generation facility shall not use, occupy, or cover more than 1,920 acres.¶
(5) In addition to the requirements of OAR 660-006-0025(5), OAR 660-006-0029, OAR 660-006-0030, and other applicable provisions of law, a county must determine that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility in eastern Oregon.¶
(a) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on forest 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 manage for forest uses, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted forest practices;¶
(b) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit forest 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. The approved plan shall be attached to the decision as a condition of approval;¶
(c) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for the production of merchantable tree species. 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;¶
(d)Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds

and other undesirable weed 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;¶
(e) The presence of a photovoltaic solar power generation facility will not result in unnecessary risks to soil health on subject property that could compromise its ability to function as a vital living ecosystem. This provision may be satisfied by the submittal and county approval of a vegetation management plan prepared by an adequately qualified individual, showing how a healthy vegetative cover will be established and maintained and how a bare earth situation and continuous chemical application will not occur. The approved plan shall be attached to the decision as a condition of approval;¶
(f) That considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an adequately qualified individual, that demonstrates how temporary workforce housing resulting in a benefit to the local community will be accommodated or that such temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved plan shall be attached to the decision as a condition of approval.¶
(6) A permit approved for a photovoltaic solar power generation facility shall be valid for six years. A county shall grant up to two extensions for a period of up to 24 months each when an applicant submits to the county a written request for an extension of the development approval period prior to the expiration of the approval period.¶
(7) A county may grant a permit described at section (6) a third and final extension for a period of up to 24 months if:¶
(a) An applicant makes a written request for an extension of the development approval period;¶
(b) The request is submitted to the county prior to the expiration of the approval period;¶
(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and¶
(d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
Statutory/Other Authority: ORS 197.040
Statutes/Other Implemented: ORS 197.040

AMEND: 660-006-0050

RULE SUMMARY: The proposed rulemaking provides clarity on how counties will apply standards for siting photovoltaic solar power generation facilities in agricultural and forest zones.

CHANGES TO RULE:

660-006-0050
Uses Authorized in Agriculture/Forest Zones ¶

(1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR chapter 660, divisions 6 and 33.¶
(2) Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominant use of the tract on January 1, 1993.¶
(3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035.¶
(4) The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a photovoltaic solar power generation facility in an agriculture/forest zone based on the predominant use of the tract on January 1, 2024.
Statutory/Other Authority: ORS 197.040, ORS 197.230, ORS 197.245
Statutes/Other Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.213, ORS 215.283, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 &, Ch. 792, 1993 OL

AMEND: 660-023-0190

RULE SUMMARY: The proposed rulemaking revises this section to identify that photovoltaic solar energy resources in eastern Oregon now be governed by the new OAR 660-023-0195.

CHANGES TO RULE:

660-023-0190
Energy Sources ¶

(1) For purposes of this rule:¶
(a) "Energy source" includes naturally occurring locations, accumulations, or deposits of one or more of the following resources used for the generation of energy: natural gas, surface water (i.e., dam sites), geothermal, solar, and wind areas. Energy sources applied for or approved through the Oregon Energy Facility Siting Council (EFSC) or the Federal Energy Regulatory Commission (FERC) shall be deemed significant energy sources for purposes of Goal 5.¶
(b) "Protect," for energy sources, means to adopt plan and land use regulations for a significant energy source that limit new conflicting uses within the impact area of the site and authorize the present or future development or use of the energy source at the site.¶
(2) The provisions of this rule do not apply to photovoltaic solar energy resources in eastern Oregon as defined in OAR 660-023-0195(2)(b). Instead, consideration of photovoltaic solar energy resources in eastern Oregon shall be governed by OAR 660-023-0195.¶
(3) In accordance with OAR 660-023-0250(5), local governments shall amend their acknowledged comprehensive plans to address energy sources using the standards and procedures in OAR 660-023-0030 through 660-023-0050. Where EFSC or FERC regulate a local site or an energy facility that relies on a site specific energy source, that source shall be considered a significant energy source under OAR 660-023-0030. Alternatively, local governments may adopt a program to evaluate conflicts and develop a protection program on a case-by-case basis, i.e., upon application to develop an individual energy source, as follows:¶
(a) For proposals involving energy sources under the jurisdiction of EFSC or FERC, the local government shall comply with Goal 5 by amending its comprehensive plan and land use regulations to implement the EFSC or FERC decision on the proposal as per ORS 469.504; and¶
(b) For proposals involving energy sources not under the jurisdiction of EFSC or FERC, the local government shall follow the standards and procedures of OAR 660-023-0030 through 660-023-0050.¶
(~~3~~4) Local governments shall coordinate planning activities for energy sources with the Oregon Department of Energy.
Statutory/Other Authority: ORS 183, ORS 197
Statutes/Other Implemented: ORS 197.040, ORS 197.225 - 197.245

ADOPT: 660-023-0195

RULE SUMMARY: The proposed rulemaking includes this new section dedicated entirely to the siting of photovoltaic solar energy resources in eastern Oregon.

CHANGES TO RULE:

660-023-0195
Photovoltaic Solar Energy Resources in Eastern Oregon
(1) Introduction and Intent. The requirements of this rule modify, supplement, or supersede the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050 as identified in sections (5) through (15). Furthermore, this rule is designed to assist counties s in eastern Oregon to identify opportunities and reduce conflicts for the development of photovoltaic solar power energy generation facilities and provide appropriate, responsible levels of regulatory relief for projects that are proposed to be sited in areas determined to be significant. The provisions included herein are intended to help achieve the successful development of photovoltaic solar energy generation in eastern Oregon that:¶
(a) Makes meaningful contributions to meeting the state's clean energy goals;¶
(b) Increases potential for local governments and local residents to distinctly share in the benefits of said development; and ¶
(c) Suitably accounts for conflicts with the variety of values and resources identified for consideration pursuant to Oregon Laws 2023, chapter 442, section 35(2) compiled as a note after ORS 197.732 (2023) and this rule.¶
(2) Definitions. For purposes of this rule the definitions in ORS 197.015, OAR 660-006-0005, OAR 660-023-0010, OAR 660-033-0020 and OAR 660-033-0130(38) apply. In addition, the following definitions apply:¶
(a) "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon. (b) "Military Special Use Airspace" is airspace of defined dimensions identified by an area on the surface of the earth wherein activities must be confined because of their nature, or wherein limitations may be imposed upon aircraft operations that are not a part of those activities. Military special use airspace includes any associated underlying surface and subsurface training areas.¶
(b) "Military Special Use Airspace" is airspace of defined dimensions identified by an area on the surface of the earth wherein activities must be confined because of their nature, or wherein limitations may be imposed upon aircraft operations that are not a part of those activities. Military special use airspace includes any associated underlying surface and subsurface training areas.¶
(c) "Military Training Route (MTR)" means airspace of defined vertical and lateral dimensions for the conduct of military flight training at indicated airspeeds in excess of 250 knots. Created by the US Department of Defense (DOD) and the Federal Administration Association (FAA), the MTR program was jointly developed solely for military use.¶
(d) "Oregon Renewable Energy Siting Assessment (ORESA)" is a project funded by a U.S. Department of Defense Office of Local Defense Community Cooperation grant awarded to the Oregon Department of Energy, working with the Department of Land Conservation and Development and Oregon State University's Institute for Natural Resources. ORESA collected data and information through assessments to develop a report and mapping tool that provide an understanding of the opportunities and constraints that come with renewable energy and transmission development in Oregon. The ORESA mapping tool is housed on Oregon Explorer.¶
(e) "Photovoltaic solar resource areas" are lands typically comprised of multiple ownerships that are particularly well suited for the siting of photovoltaic solar power generation facilities because they have been determined by the applicable county to be significant pursuant to section (7) of this rule. Multiple photovoltaic solar energy generation facilities may be located within a photovoltaic solar resource area.¶
(f) "Photovoltaic solar resource site" is a property specific location that is particularly well suited for the siting of a photovoltaic solar power generation facility because the applicable county has determined it to be significant pursuant to section (7) of this rule. Photovoltaic solar resource sites include a single approval for photovoltaic solar energy development residing outside of a photovoltaic solar resource area. ¶
(g) "Significant photovoltaic solar resource" means lands that have the necessary characteristics to support successful photovoltaic solar energy generation while also avoiding, minimizing or providing compensatory mitigation for conflicts with the variety of other important resources as identified at subsection (7). A significant photovoltaic solar resource may be identified as a photovoltaic solar resource area or considered as a photovoltaic solar resource site.¶
(h) "Transmission Line" as provided in ORS 758.012(1)(b), means a linear utility facility by which a utility provider transmits or transfers electricity from a point of origin or generation or between transfer stations.¶
(3) Counties s may amend their acknowledged comprehensive plans to designate photovoltaic solar resource

areas or establish a photovoltaic solar resource site or sites using the standards and procedures in OAR 660-023-0030 through 660-023-0050. ¶
(4) Rather than using the standard process described at section (3) above, counties in eastern Oregon may instead choose the process provided in sections (5) through (14) to designate photovoltaic solar resource areas or establish a photovoltaic solar resource site or sites.¶
(5) In addition to other sources, a county may use data from online mapping tools, such as that included in the Oregon Renewable Energy Siting Assessment (ORESA), to inform determinations made under sections (6) and (7).¶
(6) Quality, Quantity, and Location. In order to be considered significant pursuant to section (7), a county must first determine that any land under consideration as a potential photovoltaic solar resource area or a photovoltaic resource site has adequate site characteristics, resource potential, and proximity to current and future transmission access and locations for potential interconnects necessary to support successful photovoltaic solar development. A county may base a determination under this section on either substantial evidence in the record or the presence of all the following characteristics, which will be considered to comply with the requirements of this rule:¶
(a) Topography with a slope that is predominantly 15 percent or less.¶
(b) An estimated Annual Solar Utility-Scale Capacity Factor of 19-21 percent or greater.¶
(c) Are located:¶
(A) Within two miles of a Transmission Line with a rating of up to 69 KV; or¶
(B) Within five miles of a Transmission Line with a rating between 70 KV and 115 KV; or¶
(C) Within 10 miles of a Transmission Line with a rating over 115 KV.¶
(7) Determination of Significance. For purposes of this rule, lands under consideration as a potential photovoltaic solar resource area or a photovoltaic resource site determined by the applicable county to satisfy section (6) shall be considered significant photovoltaic solar resources when they are found to be consistent with:¶
(a) Areas including the following characteristics are eligible for a determination of significance without the need for mitigation.¶
(A) Agricultural lands protected under Goal 3 that are comprised of soils with an agricultural capability class VII and VIII;¶
(B) Agricultural lands protected under Goal 3 that are comprised of soils with an agricultural capability class VI and do not have the ability to produce 300 pounds of forage per acre per year;¶
(C) Forest lands protected under Goal 4 that are capable of producing 0 to 20 cubic feet per acre per year of wood fiber;¶
(E) Lands of poor to no value as wildlife habitat that the Oregon Department of Fish and Wildlife (ODFW) Habitat Mitigation Policy characterized as Category 5 or 6, or other areas with little or no restoration potential.¶
(F) Sites that do not include Historic, Cultural or Archeological Resources. In the absence of easily obtainable data, a determination regarding the location of historic, cultural or archeological resources may be deferred to a property specific assessment but must be done in consultation with the Oregon State Historic Preservation Office (SHPO) and any federally recognized Indian Tribes that may be affected by the application.¶
(b) The following areas are eligible for a determination of significance when subject to the mitigation hierarchy described at section (11) and, if applicable, the compensatory mitigation requirements of section (12).¶
(A) Wildlife habitat that ODFW has identified as Category 2 and that is not otherwise limited by subsection (c). Typical Category 2 wildlife habitat includes, but is not limited to, Eastern Oregon Deer Winter Range, Eastern Oregon Elk Winter Range, Big Horn Sheep Habitat, and Pronghorn Essential and Limited Habitat as identified by the ORESA on-line mapping and reporting tool. The exact location of wildlife habitat may be refined during consideration of a specific project but must be done in consultation with ODFW. In the absence of easily obtainable data, a determination regarding wildlife habitat under this paragraph may be deferred to a property specific assessment but must be done in consultation with ODFW;¶
(B) Wildlife habitat that ODFW has identified as Category 3 or 4, including but not limited to, big game summer range. In the absence of easily obtainable data, a determination regarding wildlife habitat under this paragraph may be deferred to a property specific assessment but must be done in consultation with ODFW;¶
(C) Agricultural lands protected under Goal 3 that are comprised of soils with an agricultural capability class VI and have the ability to produce greater than 300 pounds of forage per acre per year;¶
(D) Agricultural lands protected under Goal 3 that are comprised of soils with an agricultural capability class III, IV, or V, and that were not receiving water for purposes of irrigation on or after January 1, 2024;¶
(E) Forest lands protected under Goal 4 with a capability of producing from 21-85 cubic feet wood fiber/acre/year.¶
(F) Sites that are less than 50 percent comprised of Historic, Cultural or Archeological Resources. In the absence of easily obtainable data, a determination regarding the location of historic, cultural or archeological resources may be deferred to a property specific assessment but must be done in consultation with SHPO and any federally

recognized Indian Tribes that may be affected by the application.¶
(c) The following areas are not eligible for a determination of significance.¶
(A) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6). The exact location of wildlife habitat may be refined during consideration of a specific project but must be done in consultation with ODFW.¶
(B) ODFW designated Priority Wildlife Connectivity Areas. The exact location of wildlife habitat may be refined during consideration of a specific project but must be done in consultation with ODFW.¶
(C) ODFW designated High Use and Very High Use Wildlife Migration Corridors. The exact location of wildlife habitat may be refined during consideration of a specific project but must be done in consultation with ODFW.¶
(D) Wildlife habitat that ODFW has identified as Category 1. The exact location of wildlife habitat may be refined during consideration of a specific project but must be done in consultation with ODFW.¶
(E) High-Value Farmland Soils as described at OAR 660-033-0020(8)(a).¶
(F) High-Value Farmland as defined at ORS 195.300(10) except as provided under subsection (b)(F).¶
(G) Agricultural lands protected under Goal 3 that were receiving water for purposes of irrigation on January 1, 2024.¶
(H) Forest lands protected under Goal 4 with a capability of producing greater than 85 cubic feet wood fiber/acre/year.¶
(I) Sites that are at least 50 percent comprised of Historic, Cultural or Archeological Resources. In the absence of easily obtainable data, a determination regarding the location of historic, cultural or archeological resources may be deferred to a property specific assessment but must be done in consultation with SHPO and any federally recognized Indian Tribes that may be affected by the application.¶
(J) Lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21; or¶
(K) Lands within one mile of the urban growth boundary of a city with a population of 10,000 or greater; and¶
(L) Other areas, if any, determined by a county.¶
(8) Conflicting uses. A county may choose not to identify conflicting uses as would otherwise be required by the standard process. In the alternative, a county may choose to conduct a more detailed analysis that may lead to the identification of conflicting uses. ¶
(9) Economic, Social, Environmental and Energy (ESEE) consequences. A county may choose not to limit or prohibit conflicting uses on nearby or surrounding lands without further analysis. In the alternative, a county may choose to conduct a more detailed analysis that could lead to a decision to limit or prohibit conflicting uses within a photovoltaic solar resource area for photovoltaic solar power generation facilities or on lands nearby a photovoltaic solar resource site.¶
(10) If a local government chooses to conduct an additional analysis regarding sections (8), (9), or both, it must follow the provisions of OAR 660-023-0040. ¶
(11) Mitigation hierarchy is an approach used by decision makers to consider development proposals and is comprised of a three-step process:¶
(a) "Avoidance" is the first step in the mitigation hierarchy and is accomplished by not taking a certain development action or parts of that action. For purposes of this rule, avoidance is accomplished by implementing the eligibility limitations identified at subsection (7)(c).¶
(b) "Minimization" is the second step in the mitigation hierarchy and is accomplished by limiting the degree or magnitude of the development action and its implementation.¶
(c) "Compensatory mitigation" is the third step in the mitigation hierarchy and means the replacement or enhancement of the impacted resource in greater amounts than predicted to be impacted by a development.¶
(12) Approved compensatory mitigation measures shall be of suitable durability and proximity.¶
(a) Necessary compensatory mitigation for wildlife habitat will be consistent with the ODFW Habitat Mitigation Policy¶
(b) Necessary compensatory mitigation for agricultural lands protected under Goal 3 will include one of the following options:¶
(A) Placement of a conservation easement or similar instrument on other agricultural lands protected under Goal 3 located within the county in the following amounts to be in place until the project site is restored to its original condition:¶
(i) Lands comprised of Class VI Soils a conservation ratio of 1:1.¶
(ii) Lands comprised of Class V Soils a conservation ratio of 1:1.25.¶
(iii) Lands comprised of Class IV Soils a conservation ratio of 1:1.5.¶
(iv)Lands comprised of Class III Soils a conservation ratio of 1:2.¶
(v) Lands comprised of high-value farmland soils included in a project pursuant to paragraph (7)(c)(E) a conservation ration of 1:3.¶
(vi) Lands with a lower agricultural capability class may be used as compensatory mitigation for lands with higher agricultural capability class. For each descending numeric value in soil class the ratio assigned to the soils being mitigated shall be doubled. For example, three acres of class V soils may be used as compensatory mitigation for

one acre of class IV soil while 16 acres of class VI soil may be used as compensatory mitigation for one acre of class III soil. ¶
(B) Returning an equivalent amount of land to the type and level of farm use as the lands to be developed with a photovoltaic solar power generation facility.¶
(C) Establishing the project subject to an approved Agrivoltaics Development Plan. ¶
(D) A one-time compensatory mitigation payment established pursuant to the calculator included as Attachment A. The identified funds may be received by a committee established by the county, a Community Benefits Organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to provide uplift opportunities for the applicable agricultural sector.¶
(c) Necessary compensatory mitigation for forest lands protected under Goal 4 will include one of the following options:¶
(A) Placement of a conservation easement or similar instrument on other forest lands protected under Goal 4 with a capability of producing from 21-85 cubic feet wood fiber/acre/year located within the county with a conservation ratio of 1:1.5.¶
(B) A one-time compensatory mitigation payment in the amount of $200 per acre. The identified funds may be received by a committee established by the county, a Community Benefits Organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to assist in implementing community wildfire protection plans or otherwise providing uplift to the local forest sector.¶
(d) Necessary compensatory mitigation for Historic, Cultural or Archeological Resources will provide a monetary amount sufficient to off-set the loss. The county shall approve the monetary amount based on coordination with representatives from the entities for which the resources are traditionally important, including but not limited to Federally recognized Indian tribes, as well as the county, the applicant and applicable state and federal agencies.¶
(13) Program to achieve the goal. A county may approve a photovoltaic solar power generation facility proposed within a photovoltaic solar resource area, or photovoltaic solar resource site by determining that the following items have been satisfied:¶
(a) An application for a photovoltaic solar power energy generation facility shall identify whether the proposed site is within a Military Special Use Airspace or a Military Training Route as shown by the ORESA mapping tool. Any application for a proposed site located beneath or within a Military Special Use Airspace or a Military Training Route with a proposed floor elevation of 500 feet above ground level (AGL) or less shall include a glint and glare analysis for the applicable utilized military airspace. Any measures necessary to avoid possible conflicts with low flying aircraft identified in the glint and glare analysis will be developed in coordination with the United States Department of Defense, described in the application materials, and attached as conditions of approval to the local decision.¶
(b) Community Needs and Benefits. All applications for a photovoltaic solar power energy generation facility shall address community needs and benefits by identifying how the project will make contributions, financial and otherwise, that serve to help improve a community's social health, well-being, and functioning. The contributions will be in addition to property tax revenues and shall be both meaningful and reasonable. A county may approve a method or methods proposed by the applicant when substantial evidence in the record demonstrates that the criteria of this subsection has been satisfied. In the alternative, a county may rely on the following items, which will be considered in all instances to comply with the criteria of this subsection:¶
(A) The applicant has conducted detailed public outreach activities in advance of submitting a complete application; and¶
(B) The applicant commits to contributing to a local fund or funding mechanism in an amount that is reasonably estimated to represent 0.0025 percent of the project budget. The necessary contribution shall be made prior to the acquisition of building permits;¶
(C) The applicant contributes to a local fund or funding mechanism in an amount that is reasonably estimated to represent 20 percent of the savings in time value and direct costs of not going through the state process. The necessary contribution shall be made prior to the county granting final approval;¶
(D) The county has established a Strategic Investment Program (SIP) or Payment in Lieu of Taxes (PILOT) strategy that dedicates one percent of county revenues generated in lieu of property taxes to be provided to households within one-mile of the development; or¶
(E) The applicant commits to guaranteeing emergency service providers a source of electricity during a power outage event through providing battery storage or some other method.¶
(c) The applicant has contacted and sought comments from the entities listed at paragraph (14)(d) at least 90 days prior to submitting a land use application.¶
(d) The complete application accepted by the county demonstrates that the construction and operation of the renewable energy facility, taking into account mitigation, will not result in significant adverse impacts to historic, cultural and archaeological resources that are:¶
(A) Listed on the National Register of Historic Places under the National Historic Preservation Act (P.L. 89-665, 54

U.S.C. 300101 et seq.);¶
(B) Inventoried in a local comprehensive plan; or¶
(C) Evaluated as a significant or important archaeological object or archaeological site, as those terms are defined in ORS 358.905.¶
(e) All mitigation required pursuant to sections (11) and (12), including mitigation for Historic, Cultural or Archeological Resources, is identified and attached as a condition of approval.¶
(f) The applicable provisions of OAR 660-033-0130(38) and OAR 660-006-0025(4)(k) have been satisfied.¶
(g) Any applicable local provisions have been satisfied.¶
(14) Voluntary Implementation. Counties may implement this rule for the purposes of considering photovoltaic resources sites, to establish photovoltaic solar resource areas, or both. ¶
(a) Photovoltaic solar sites are established through direct application of this rule. A county shall process applications for photovoltaic solar sites as an individual land use applications and reviewed against the provisions of sections (6), (7), and (13) as well as all other applicable provisions of law without the need for an individual Post Acknowledgement Plan Amendment (PAPA).¶
(A) To implement this rule for the purposes of considering photovoltaic solar resource sites, a county shall follow the PAPA process pursuant to ORS 197.610 and provide notice as described at subsection (14)(d). ¶
(B) The county or any other applicant may initiate the PAPA process. ¶
(b) Photovoltaic solar resource areas are established through the adoption of a local program that includes an overlay zone and other ordinance provisions found to be consistent with the provisions of this rule that set forth applicable review procedures and criteria. A county may rely on project specific assessments when information regarding features and resource categories are readily available. ¶
(c) To implement this rule for the purposes of establishing photovoltaic solar resource areas a county shall follow the PAPA process pursuant to ORS 197.610 and provide notice as described at subsection (d). The adopted ordinance shall specify if the local government has elected to exercise any or all of the discretions offered with regard to excluded areas pursuant to paragraph (7)(c)(L), conflicting uses, ESEE analysis or other items.¶
(A) The county or any other applicant may initiate the PAPA process. ¶
(B) Prior to conducting a hearing to consider an ordinance establishing a photovoltaic solar resource area or areas a county will hold one or more public meetings to solicit input from county residents. The public meeting(s) must occur in areas of the county that include lands under consideration as l significant photovoltaic solar resources. The county must provide mailed notice of the meeting(s) to property owners in the general vicinity of such areas. The county must also provide mailed notice to any physical address assigned to property in the general vicinity of such areas as shown in county assessor records that are not the same as the property owner address. The meetings shall include a quorum of the county planning commission and at least one member of the county elected officials. ¶
(C) Prior to making a decision regarding an ordinance, a county will hold two more public hearings before the county planning commission and one or more public hearings before the county elected officials.¶
(d) In addition to submitting the proposed change to the department as required by ORS 197.610(1), the county will also provide notice to:¶
(A) The State Department of Fish and Wildlife;¶
(B) The State Department of Energy;¶
(C) The State Historic Preservation Officer;¶
(D) The Oregon Department of Agriculture.¶
(E) The Oregon Department of Forestry.¶
(F) The Oregon Department of Aviation;¶
(G) The United States Department of Defense; and¶
(H) Federally recognized Indian tribes that may be affected by the application.¶
(15) Scheduled Review. On or before June 30, 2030, the department will provide a report to the Land Conservation and Development Commission that:¶
(a) Is informed by coordination with parties consistent with those interests represented on the Rules Advisory Committee established pursuant to Oregon Laws 2023, chapter 442, section 37.¶
(b) Identifies those counties who have chosen to voluntarily implement the rule.¶
(c) Describes how well the intent of this rule as stated in section (1) is being accomplished. ¶
(d) Includes recommended amendments, if any, that the department identifies as being necessary to better accomplish the intent of this rule as stated in section (1).¶
(e) Makes recommendations to the commission as to whether the need for renewable solar energy production to achieve Oregon's renewable energy goals compared to the number of counties voluntarily implementing the provisions of this rule results in a need to make implementation of these rules directly applicable to counties in Eastern Oregon.
Statutory/Other Authority: ORS 197.040

Statutes/Other Implemented: ORS 197.225-ORS 197.245

AMEND: 660-033-0120

RULE SUMMARY: Amending the table/attachment

CHANGES TO RULE:

660-033-0120
Uses Authorized on Agricultural Lands ¶

The specific development and uses listed in the following table are allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the table shall have the following meanings:¶
(1) "A" Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130 and 660-033-0135. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.¶
(2) "R" Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.¶
(3) "*" - The use is not allowed.¶
(4) "#" - Numerical references for specific uses shown in the table refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use in the table, this rule does not establish criteria for the use.
Statutory/Other Authority: ORS 197.040, ORS 197.245
Statutes/Other Implemented: ORS 197.245, ORS 215.203, ORS 215.243, ORS 215.283, ORS 215.700 - 215.710, ORS 215.780, ORS 197.230, ORS 197.015, ORS 197.040

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Land Conservation and Development Department

Oregon Administrative Rules

Chapter 660, Division 033, Rule 0120, Table

Uses Authorized on Agricultural Lands

OAR 660-033-0120 The specific development and uses listed in the following table are allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the table shall have the following meanings:

A Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.

R Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

***** Use not allowed.

Numerical references for specific uses shown on the table refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the table, this rule does not establish criteria for the use.

HV Farmland	All Other	Uses
		Farm/Forest Resource
A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R5,6	R5,6	A facility for the primary processing of forest products.
A28	A28	A facility for the processing of farm products with a processing area of less than 2,500 square feet.

R28	R28	A facility for the processing of farm products with a processing area of at least 2,500 square feet but less than 10,000 square feet.
		Natural Resource
A	A	Creation of, restoration of, or enhancement of wetlands.
R5,27	R5,27	The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species.
		Residential
A1,30	A1,30	Dwelling customarily provided in conjunction with farm use as provided in OAR 660-033-0135.
R9,30	R9,30	A relative farm help dwelling.
A24,30	A24,30	Accessory Farm Dwellings for year-round and seasonal farm workers.
A3,30	A3,30	One single-family dwelling on a lawfully created lot or parcel.
R5,10,30	R5,10,30	One manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.
R4,30	R4,30	Single-family residential dwelling, not provided in conjunction with farm use.
R5,30	R5,30	Residential home as defined in ORS 197.660, in existing dwellings.
R5,30	R5,30	Room and board arrangements for a maximum of five unrelated persons in existing residences.

R12,30	R12,30	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480
A8,30	A8,30	Alteration, restoration, or replacement of a lawfully established dwelling.
		Commercial Uses

R5	R5	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or ORS 215.213(1)(u) and 215.283(1)(r), but excluding activities in conjunction with a marijuana crop.
R5,14	R5,14	Home occupations as provided in ORS 215.448.
A39	A39	Dog training classes or testing trials.
R5	R5	Commercial dog boarding kennels or dog training classes or testing trials that cannot be established under ORS 215.213(1)(z) or 215.283(1)(x).
R5,35	R5,35	An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks.
*18(a)	R5	Destination resort which is approved consistent with the requirements of Goal 8.
A	A	A winery as described in ORS 215.452 or 215.453, and 215.237.
R5	R5	A restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.
A	A	A cider business as provided in ORS 215.451
R or R5	R or R5	Agri-tourism and other commercial events or activities that are related to and supportive of agriculture, as described in ORS 215.213(11) or 215.283(4).
A23	A23	Farm stands.

R5	R5	A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
R5	R5	Guest ranch in eastern Oregon as provided in chapter 84 Oregon Laws 2010.
A	A	Log truck parking as provided in ORS 215.311.
A	A	A farm brewery as described in ORS 215.449.
		Mineral, Aggregate, Oil, and Gas Uses
A	A	Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
A	A	Operations for the exploration for minerals as defined by ORS 517.750.
R5	R5	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under this rule.
R5	R5	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
R5,15	R5,15	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
R5	R5	Processing of other mineral resources and other subsurface resources.
R5, 41	R5, 41	Equine and equine-affiliated therapeutic and counseling activities.
		Transportation
R5,7	R5,7	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.
A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.

R5	R5	Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.
A	A	Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way but not resulting in the creation of new land parcels.
R5	R5	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public- owned property utilized to support the operation and maintenance of public roads and highways.
R5	R5	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
R13	R13	Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
R	R	Transportation improvements on rural lands allowed by OAR 660-012- 0065
		Utility/Solid Waste Disposal Facilities
R,16(a) or (b)	R,16(a) or (b)	Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300 and wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet high.
R5	R5	Transmission towers over 200 feet in height.
A	A	Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

A32	A32	Utility facility service lines.
R5,17	R5,22	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities or photovoltaic solar power generation facilities.
R5,37	R5,37	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
R5,38	R5,38	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale **in western Oregon**.
R5, 42	**R5, 42**	**Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale in eastern Oregon**.
*18(a)	R5	A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environ mental Quality together with equipment, facilities or buildings necessary for its operation.
*18(a), 29(a)	A or R5,29(b)	Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-093-0050 and 340-096-0060.
		Parks/Public/Quasi-Public
18	R5,40	Youth camps in Eastern Oregon on land that is composed predominantly of class VI, VII or VIII soils.
*18(a) or R,18(b)	R5, 18(b)	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.
2,*18(a)	R2	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
2,*18(a)	R2,5,19	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.
R2,5,31	R2,5,31	Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
A	A	Fire service facilities providing rural fire protection services.
R2,5,36	R2,5,36	Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.

R2,*18(a) or R2, 18(d)	R2,5,20	Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

R2,5,21	R2,5,21	Living history museum
R2	R2	Firearms training facility as provided in ORS 197.770.
R2,25	R2,25	Armed forces reserve center as provided for in ORS 215.213(1)(s).
A	A	Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.
R5	R5	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.
A26	A26	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary
R5	R5	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
R5	R5	Operations for the extraction of bottling water.
A11	A11	Land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids.
R5	R5	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(1).
A33	A33	An outdoor mass gathering as described in ORS 433.735.
R34	R34	An outdoor mass gathering of more than 3,000 persons any part of which is held outdoors and which continues or can reasonably be expected to continue for a period exceeding that allowable for an outdoor mass gathering as defined in ORS 433.735.

AMEND: 660-033-0130

RULE SUMMARY: The proposed rulemaking modifies this section to account for agrivoltaics development and regulations regarding solar photovoltaic energy generation in eastern Oregon.

CHANGES TO RULE:

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.¶
(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.¶
(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.¶
(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.¶
(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.¶
(3)(a) A dwelling may be approved on a pre-existing lot or parcel if:¶
(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:¶
(i) Since prior to January 1, 1985; or¶
(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.¶
(B) The tract on which the dwelling will be sited does not include a dwelling;¶
(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;¶
(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;¶
(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule; and¶
(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.¶
(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;¶
(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:¶
(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;¶
(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);¶
(C) A hearings officer of a county determines that:¶
(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrates that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together

with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;¶
(ii) The dwelling will comply with the provisions of ORS 215.296(1); and¶
(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and¶
(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the Oregon Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.¶
(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:¶
(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;¶
(B) The tract on which the dwelling will be sited is:¶
(i) Identified in OAR 660-033-0020(8)(c) or (d);¶
(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and¶
(iii) Twenty-one acres or less in size; and¶
(C) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or¶
(D) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or¶
(E) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:¶
(i) "Flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.¶
(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.¶
(e) If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;¶
(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:¶
(A) Exceed the facilities and service capabilities of the area;¶
(B) Materially alter the stability of the overall land use pattern of the area; or¶
(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.¶
(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;¶
(h) The county assessor shall be notified that the governing body intends to allow the dwelling.¶
(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.¶
(4) A single-family residential dwelling not provided in conjunction with farm use requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:¶
(a) In the Willamette Valley, the use may be approved if:¶
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;¶
(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;¶

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;¶
(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:¶
(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;¶
(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsection (3)(a) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4), ORS 215.263(5), and ORS 215.284(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph; and¶
(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and¶
(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.¶
(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(7), the use may be approved if:¶
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;¶
(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and¶
(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.¶
(c) In counties located outside the Willamette Valley require findings that:¶
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;¶
(B)(i) The dwelling, including essential or accessory improvements or structures, is situated upon a lot or parcel, or, in the case of an existing lot or parcel, upon a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and¶
(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or¶
(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under

forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;¶
(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and¶
(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.¶
(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;¶
(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) through 215.213(8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.¶
(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:¶
(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and¶
(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.¶
(6) A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.¶
(7) A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities allowed under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be allowed subject to any applicable rules of the Oregon Department of Aviation.¶
(8)(a) A lawfully established dwelling may be altered, restored or replaced under ORS 215.213(1)(q) or 215.283(1)(p) if, when an application for a permit is submitted, the county finds to its satisfaction, based on substantial evidence that the dwelling to be altered, restored or replaced has, or formerly had:¶
(A) Intact exterior walls and roof structure;¶
(B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;¶
(C) Interior wiring for interior lights; and¶
(D) A heating system;¶
(b) In addition to the provisions of subsection (a), the dwelling to be replaced meets one of the following conditions;¶
(A) If the dwelling was removed, destroyed or demolished;¶
(i) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and¶
(ii) Any removal, destruction, or demolition occurred on or after January 1, 1973.¶
(B) If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or¶
(C) A dwelling not described paragraph (A) or (B) of this subsection was assessed as a dwelling for the purposes of ad valorem taxation:¶
(i) For the previous five property tax years; or¶
(ii) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.¶
(c) For replacement of a lawfully established dwelling under ORS 215.213(1)(q) or 215.283(1)(p):¶

(A) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:¶
(i) Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or¶
(ii) If the dwelling to be replaced is, in the discretion of the county, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the county that is not less than 90 days after the replacement permit is issued; and¶
(iii) If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.¶
(B) The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.¶
(C) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2019 Oregon Laws, chapter 440, section 1 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.¶
(D) The county planning director, or the director's designee, shall maintain a record of:¶
(i) The lots and parcels for which dwellings to be replaced have been removed, demolished or converted; and¶
(ii) The lots and parcels that do not qualify for the siting of a new dwelling under subsection (c) of this section, including a copy of the deed restrictions filed under paragraph (C) of this subsection.¶
(d)(A) A replacement dwelling under ORS 215.213(1)(q) or 215.283(1)(p) must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.¶
(B) The replacement dwelling must be sited on the same lot or parcel:¶
(i) Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and¶
(ii) If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.¶
(e) A replacement dwelling permit that is issued under ORS 215.213(1)(q) or 215.283(1)(p):¶
(A) Is a land use decision as defined in ORS 197.015 where the dwelling to be replaced:¶
(i) Formerly had the features described in paragraph (a)(A) of this section; or¶
(ii) Is eligible for replacement under paragraph (b)(B) of this section; and¶
(B) Is not subject to the time to act limits of ORS 215.417.¶
(9)(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.¶
(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.¶
(c) For the purpose of subsection (a), "relative" means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse.¶
(d) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under 215.780, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.¶
(e) For the purpose of subsection (d), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).¶
(10) Temporary residence for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons. "Hardship" also includes a natural hazard event that has destroyed homes, caused residential evacuations, or both, and resulted in an Executive Order issued by the Governor declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p).¶

(a) For a medical hardship or hardship for the care of an aged or infirm person or persons the temporary residence may include a manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building. A manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished, or, in the case of an existing building, the building shall be removed, demolished, or returned to an allowed nonresidential use. Department of Environmental Quality review and removal requirements also apply.¶
(b) For hardships based on a natural hazard event described in this section, the temporary residence may include a recreational vehicle or the temporary residential use of an existing building. Governing bodies shall review the permit authorizing such temporary residences every two years. Within three months of the end of the hardship, the recreational vehicle shall be removed or demolished, or, in the case of an existing building, the building shall be removed, demolished, or returned to an allowed nonresidential use. Department of Environmental Quality review and removal requirements also apply.¶
(c) For applications submitted under subsection (b) of this section, the county may find that the criteria of section (5) are satisfied when:¶
(A) The temporary residence is established within an existing building or, if a recreational vehicle, is located within 100 feet of the primary residence; or¶
(B) The temporary residence is located further than 250 feet from adjacent lands planned and zoned for resource use under Goal 3, Goal 4, or both.¶
(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under 468B.095, and with the requirements of 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division is allowed. For the purposes of this section, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.¶
(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.¶
(13) Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.¶
(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.¶
(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.¶
(16)(a) A utility facility established under ORS 215.213(1)(c) or 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:¶
(A) Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:¶
(i) Technical and engineering feasibility;¶
(ii) The proposed facility is locationally-dependent. A utility facility is locationally-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;¶
(iii) Lack of available urban and nonresource lands;¶
(iv) Availability of existing rights of way;¶
(v) Public health and safety; and¶
(vi) Other requirements of state and federal agencies.¶
(B) Costs associated with any of the factors listed in paragraph (A) of this subsection may be considered, but cost

alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.¶
(C) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this paragraph shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.¶
(D) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.¶
(E) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility 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. Off-site facilities allowed under this paragraph are subject to 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.¶
(F) In addition to the provisions of paragraphs (A) to (D) of this subsection, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.¶
(G) The provisions of paragraphs (A) to (D) of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.¶
(b) An associated transmission line is necessary for public service and shall be approved by the governing body of a county or its designee if an applicant for approval under ORS 215.213(1)(c) or 215.283(1)(c) demonstrates to the governing body of a county or its designee that the associated transmission line meets either the requirements of paragraph (A) of this subsection or the requirements of paragraph (B) of this subsection.¶
(A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:¶
(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;¶
(ii) The associated transmission line is co-located with an existing transmission line;¶
(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or¶
(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.¶
(B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:¶
(i) Technical and engineering feasibility;¶
(ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;¶
(iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;¶
(iv) Public health and safety; or¶
(v) Other requirements of state or federal agencies.¶
(C) As pertains to paragraph (B), the applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm pratices or a significant increase in the cost of farm practices on the surrounding farmland.¶
(D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.¶
(17) Permanent features of a power generation facility shall not use, occupy, or cover more than 12 acres unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a 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. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.¶
(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.¶
(b) Notwithstanding ORS 215.130, 215.213, 215.283, or any local zoning ordinance or regulation, a public or private school, including all buildings essential to the operation of a school, formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, may be expanded provided:¶
(A) The expansion complies with ORS 215.296;¶
(B) The school was established on or before January 1, 2009;¶
(c) Subject to the requirements of sections (5) and (20) of this rule, a golf course may be established on land determined to be high-value farmland as defined in ORS 195.300(10)(c) if the land:¶
(A) Is not otherwise high-value farmland as defined in ORS 195.300(10);¶
(B) Is surrounded on all sides by an approved golf course; and¶
(C) Is west of U.S. Highway 101.¶
(19)(a) A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.¶
(b) Vacation or recreational purposes. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds devoted to vacation or recreational purposes shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Campgrounds approved under this provision must be found to be established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground and designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(d) of this rule.¶
(c) Emergency purposes. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because adequate amounts of permanent housing is not reasonably available. A county must process applications filed pursuant to this section in the manner identified at ORS 215.416(11).¶
(A) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.¶
(B) Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.¶
~~(C) A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (19)(c) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this paragraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.¶~~
~~(d) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.¶~~
~~(e) For applications submitted under subsection (c) of this section, the criteria of section (5) can be found to be~~

satisfied when:¶
(A) The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.¶
(B) The subject property is not irrigated.¶
(C) The subject property is not high-value farmland.¶
(D) The number of proposed campsites does not exceed 12; or¶
(E) The number of proposed campsites does not exceed 36: and¶
(F) Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goal 3, Goal 4, or both.¶
(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.¶
(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.¶
(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.¶
(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:¶
(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;¶
(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;¶
(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;¶
(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:¶
(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;¶
(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and¶
(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be

designed for or include structures for banquets, public gatherings or public entertainment.¶
(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.¶
(22) Permanent features of a power generation facility shall not use, occupy or cover more than 20 acres unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a 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. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.¶
(23) A farm stand may be approved if:¶
(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and¶
(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.¶
(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.¶
(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.¶
(e) A farm stand may not be used for the sale, or to promote the sale, of marijuana products or extracts.¶
(24) Accessory farm dwellings as defined by subsection (e) of this section may be considered customarily provided in conjunction with farm use if:¶
(a) Each accessory farm dwelling meets all the following requirements:¶
(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;¶
(B) The accessory farm dwelling will be located:¶
(i) On the same lot or parcel as the primary farm dwelling;¶
(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract;¶
(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules;¶
(iv) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. "Farmworker housing" shall have the meaning set forth in ORS 215.278 and not the meaning in ORS 315.163; or¶
(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable;

and¶
(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.¶
(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:¶
(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years or in an average of three of the last five years, the farm operator earned the lower of the following:¶
(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or¶
(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;¶
(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;¶
(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or paragraph (A) of this subsection; or¶
(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and¶
(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm;¶
(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and¶
(iii) A Producer License for the sale of dairy products under ORS 621.072.¶
(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in 660-033-0100.¶
(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.¶
(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code.¶
(f) Farming of a marijuana crop shall not be used to demonstrate compliance with the approval criteria for an accessory farm dwelling.¶
(g) Accessory farm dwellings destroyed by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 may be replaced. The temporary use of modular structures, manufactured housing, fabric structures, tents and similar accommodations is allowed until replacement under this subsection occurs.¶
(25) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center is allowed, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.¶
(26) Buildings and facilities associated with a site for the takeoff and landing of model aircraft shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.¶
(27) Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to

the Oregon Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.¶
(28)(a) A facility for the processing of farm products is a permitted use under ORS 215.213 (1)(u) and ORS 215.283 (1)(r) on land zoned for exclusive farm use, only if the facility:¶
(A) Uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. A county may not apply siting standards in a manner that prohibits the siting of a facility for the processing of farm products; or¶
(B) Notwithstanding any applicable siting standard, uses less than 2,500 square feet for its processing area. However, a local government shall apply applicable standards and criteria pertaining to floodplains, geologic hazards, beach and dune hazards, airport safety, tsunami hazards and fire siting standards.¶
(b) A county may not approve any division of a lot or parcel that separates a facility for the processing of farm products from the farm operation on which it is located.¶
(c) As used in this section, the following definitions apply:¶
(A) "Facility for the processing of farm products" means a facility for:¶
(i) Processing farm crops, including the production of biofuel as defined in ORS 315.141, if at least one-quarter of the farm crops come from the farm operation containing the facility; or¶
(ii) Slaughtering, processing or selling poultry or poultry products from the farm operation containing the facility and consistent with the licensing exemption for a person under ORS 603.038(2).¶
(B) "Processing area" means the floor area of a building dedicated to farm product processing. "Processing area" does not include the floor area designated for preparation, storage or other farm use.¶
(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.¶
(b) Composting operations and facilities allowed on land not defined as high-value farmland shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Composting operations that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract are allowed uses, while other composting operations are subject to the review standards of ORS 215.296. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.¶
(30) The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner'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.¶
(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.¶
(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:¶
(a) A public right of way;¶
(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or¶
(c) The property to be served by the utility.¶
(33) An outdoor mass gathering as defined in ORS 433.735, subject to the provisions of ORS 433.735 to 433.770. A county may not require an outdoor mass gathering permit under ORS 433.750 for agri-tourism and other commercial events or activities permitted under ORS 215.213(11), 215.283(4), 215.451, 215.452, and ORS 215.449.¶
(34) An outdoor mass gathering of more than 3,000 persons any part of which is held outdoors and which continues or can reasonably be expected to continue for a period exceeding that allowable for an outdoor mass gathering as defined in ORS 433.735 is subject to review under the provisions of ORS 433.763.¶
(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and¶
(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be

altered, restored or replaced pursuant to 215.130(5), (6) and (9).¶
(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.¶
(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down 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 wind 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. A proposal for a wind power generation facility shall be subject to the following provisions:¶
(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:¶
(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:¶
(i) Technical and engineering feasibility;¶
(ii) Availability of existing rights of way; and¶
(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under paragraph (B);¶
(B) The long-term environmental, economic, social and energy consequences resulting from the wind 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;¶
(C) Costs associated with any of the factors listed in paragraph (A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary;¶
(D) The owner of a wind power generation facility approved under subsection (a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and¶
(E) The criteria of subsection (b) are satisfied.¶
(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:¶
(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. 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 wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;¶
(B) The presence of a proposed wind power 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;¶
(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¶

(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.¶
(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.¶
(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of 660-033-0130(37)(b) shall apply to the entire project.¶
(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:¶
(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.¶
(b) "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 at ORS 195.300(10) unless otherwise stated.¶
(c) "Dual-use development" means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.¶
(d) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.¶
(e) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V-VIII and no history of irrigation shall be considered nonarable 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.¶
(f) "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 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. 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 1320 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 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.¶
(g) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless:¶
(A) The provisions of paragraph (h)(H) are satisfied; or¶
(B) A county adopts, and an applicant satisfies, land use provisions authorizing projects subject to a dual-use development plan. Land use provisions adopted by a county pursuant to this paragraph may not allow a project in excess of 20 acres. Land use provisions adopted by the county must require sufficient assurances that the farm use element of the dual-use development plan is established and maintained so long as the photovoltaic solar power generation facility is operational or components of the facility remain on site. The provisions of this subsection are repealed on January 1, 2022.¶
(h) The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10).¶
(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;¶
(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. The approved plan shall be attached to the decision as a

condition of approval;¶
(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;¶
(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed 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;¶
(E) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(F) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Non high-value farmland soils are not available on the subject tract;¶
(ii) 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¶
(iii) 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 non high-value farmland soils; and¶
(G) 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:¶
(i) 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.¶
(ii) 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 as 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.¶
(H) A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:¶
(i) Is not located within the boundaries of an irrigation district;¶
(ii) Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;¶
(iii) Is located within the service area of an electric utility described in ORS 469A.052(2);¶
(iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and¶
(v) Does not qualify as high-value farmland under any other provision of law; or¶
(i) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 20 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Nonarable soils are not available on the subject tract;¶
(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(iii) 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;¶
(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);¶
(D) 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:¶

(i) 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.¶
(ii) 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 as 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and¶
(E) The requirements of OAR 660-033-0130(38)(h)(A), (B), (C) and (D) are satisfied.¶
(j) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(c) or arable soils unless it can be demonstrated that:¶
(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;¶
(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);¶
(D) No more than 20 acres of the project will be sited on arable soils;¶
(E) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;¶
(F) 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¶
(G) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or 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 habitats are anticipated. Based on the 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 habitats as 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 the 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.¶
(k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.¶
(l) 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 as defined in ORS 30.930(2) and (4).¶
(m) 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.¶
(n) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (g), (i) and (j) of this section.¶

(39) Dog training classes or testing trials conducted outdoors or in farm buildings that existed on January 1, 2019, when:¶
(a) The number of dogs participating in training does not exceed 10 per training class and the number of training classes to be held on-site does not exceed six per day; and¶
(b) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site does not exceed four per calendar year.¶
(40) A youth camp may be established on agricultural land under the requirements of this section. The purpose of this section is to allow for the establishment of youth camps that are generally self-contained and located on a lawfully established unit of land of suitable size and location to limit potential impacts on nearby land and to ensure compatibility with surrounding farm uses.¶
(a) Definitions: In addition to the definitions provided for this division in OAR 660-033-0020 and ORS 92.010, for purposes of this section the following definitions apply:¶
(A)"Low impact recreational facilities" means facilities that have a limited amount of permanent disturbance on the landscape and are likely to create no, or only minimal impacts on adjacent private lands. Low impact recreational facilities include, but are not limited to, open areas, ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding areas, swimming pools and zip lines. Low impact recreational facilities are designed and developed in a manner consistent with the lawfully established unit of land's natural environment.¶
(B) "Youth camp" means a facility that is either owned or leased, and is operated by a state or local government or a nonprofit corporation as defined under ORS 65.001 and is established for the purpose of providing an outdoor recreational and educational experience primarily for the benefit of persons 21 years of age and younger. Youth camps do not include a juvenile detention center or juvenile detention facility or similar use.¶
(C) "Youth camp participants" means persons directly involved with providing or receiving youth camp services, including but not limited to, campers, group leaders, volunteers or youth camp staff.¶
(b) Location: A youth camp may be located only on a lawfully established unit of land suitable to ensure an outdoor experience in a private setting without dependence on the characteristics of adjacent and nearby public and private land. In determining the suitability of a lawfully established unit of land for a youth camp the county shall consider its size, topography, geographic features and other characteristics, the proposed number of overnight participants and the type and number of proposed facilities. A youth camp may be located only on a lawfully established unit of land that is:¶
(A) At least 1,000 acres;¶
(B) In eastern Oregon;¶
(C) Composed predominantly of class VI, VII or VIII soils;¶
(D) Not within an irrigation district;¶
(E) Not within three miles of an urban growth boundary;¶
(F) Not in conjunction with an existing golf course;¶
(G) Suitable for the provision of protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands and uses. Such buffers shall consist of natural vegetation, topographic or other natural features and shall be implemented through the requirement of setbacks from adjacent public and private lands, public roads, roads serving other ownerships and riparian areas. Setbacks from riparian areas shall be consistent with OAR 660-023-0090. Setbacks from adjacent public and private lands, public roads and roads serving other ownerships shall be 250 feet unless the county establishes on a case-by-case basis a different setback distance sufficient to:¶
(i) Prevent significant conflicts with commercial resource management practices;¶
(ii) Prevent a significant increase in safety hazards associated with vehicular traffic on public roads and roads serving other ownerships; and¶
(iii) Minimize conflicts with resource uses on nearby resource lands;¶
(H) At least 1320 feet from any other lawfully established unit of land containing a youth camp approved pursuant to this section; and¶
(I) Suitable to allow for youth camp development that will not interfere with the exercise of legally established water rights on nearby properties.¶
(c) Overnight Youth Camp Participants: The maximum number of overnight youth camp participants is 350 participants unless the county finds that a lower number of youth camp participants is necessary to avoid conflicts with surrounding uses based on consideration of the size, topography, geographic features and other characteristics of the lawfully established unit of land proposed for the youth camp. Notwithstanding the preceding sentence, a county may approve a youth camp for more than 350 overnight youth camp participants consistent with this subsection if resource lands not otherwise needed for the youth camp that are located in the same county or adjacent counties that are in addition to, or part of, the lawfully established unit of land approved for the youth camp are permanently protected by restrictive covenant as provided in subsection (d) and subject to

the following provisions:¶
(A) For each 160 acres of agricultural lands predominantly composed of class I-V soils that are permanently protected from development, an additional 50 overnight youth camp participants may be allowed;¶
(B) For each 160 acres of wildlife habitat that is either included on an acknowledged inventory in the local comprehensive plan or identified with the assistance and support of Oregon Department of Fish and Wildlife, regardless of soil types and resource land designation that are permanently protected from development, an additional 50 overnight youth camp participants may be allowed;¶
(C) For each 160 acres of agricultural lands predominantly composed of class VI-VIII soils that are permanently protected from development, an additional 25 overnight youth camp participants may be allowed; or¶
(D) A youth camp may have 351 to 600 overnight youth camp participants when:¶
(i) The tract on which the youth camp will be located includes at least 1,920 acres; and¶
(ii) At least 920 acres is permanently protected from development. The county may require a larger area to be protected from development when it finds a larger area necessary to avoid conflicts with surrounding uses.¶
(E) Under no circumstances shall more than 600 overnight youth camp participants be allowed.¶
(d) The county shall require, as a condition of approval of an increased number of overnight youth camp participants authorized by paragraphs (c)(A), (B), (C) or (D) of this section requiring other lands to be permanently protected from development, that the land owner of the other lands to be protected sign and record in the deed records for the county or counties where such other lands are located a document that protects the lands as provided herein, which for purposes of this section shall be referred to as a restrictive covenant.¶
(A) A restrictive covenant shall be sufficient if it is in a form substantially the same as the form attached hereto as Exhibit B.¶
(B) The county condition of approval shall require that the land owner record a restrictive covenant under this subsection:¶
(i) Within 90 days of the final land use decision if there is no appeal, or¶
(ii) Within 90 days after an appellate judgment affirming the final land use decision on appeal.¶
(C) The restrictive covenant is irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the land subject to the restrictive covenant is located.¶
(D) Enforcement of the restrictive covenant may be undertaken by the department or by the county or counties where the land subject to the restrictive covenant is located.¶
(E) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the restrictive covenant required by this subsection.¶
(F) The county planning director shall maintain a copy of the restrictive covenant filed in the county deed records pursuant to this section and a map or other record depicting the tracts, or portions of tracts, subject to the restrictive covenant filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.¶
(e) In addition, the county may allow:¶
(A) Up to eight nights during the calendar year during which the number of overnight youth camp participants may exceed the total number of overnight youth camp participants allowed under subsection (c) of this section.¶
(B) Overnight stays at a youth camp for participants of adult programs that are intended primarily for individuals over 21 years of age, not including staff, for up to 30 days in any one calendar year.¶
(f) Facilities: A youth camp may provide only the facilities described in paragraphs (A) through (I) of this subsection:¶
(A) Low impact recreational facilities. Intensive developed facilities such as water parks and golf courses are not allowed;¶
(B) Cooking and eating facilities, provided they are within a building that accommodates youth camp activities but not in a building that includes sleeping quarters. Food services shall be limited to those provided in conjunction with the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants;¶
(C) Bathing and laundry facilities;¶
(D) Up to three camp activity buildings, not including a building for primary cooking and eating facilities.¶
(E) Sleeping quarters, including cabins, tents or other structures, for youth camp participants only, consistent with subsection (c) of this section. Sleeping quarters intended as overnight accommodations for persons not participating in activities allowed under this section or as individual rentals are not allowed. Sleeping quarters may include restroom facilities and, except for the caretaker's dwelling, may provide only one shower for every five beds. Sleeping quarters may not include kitchen facilities.¶
(F) Covered areas that are not fully enclosed for uses allowed in this section;¶
(G) Administrative, maintenance and storage buildings including permanent structures for administrative services, first aid, equipment and supply storage, and a gift shop available to youth camp participants but not open to the

general public;¶
(H) An infirmary, which may provide sleeping quarters for medical care providers (e.g., a doctor, registered nurse, or emergency medical technician);¶
(I) A caretaker's residence, provided no other dwelling is on the lawfully established unit of land on which the youth camp is located.¶
(g) A campground as described in ORS 215.283(2)(c), OAR 660-033-0120, and section (19) of this rule may not be established in conjunction with a youth camp.¶
(h) Conditions of Approval: In approving a youth camp application, a county must include conditions of approval as necessary to achieve the requirements of this section.¶
(A) With the exception of trails, paths and ordinary farm and ranch practices not requiring land use approval, youth camp facilities shall be clustered on a single development envelope of no greater than 40 acres.¶
(B) A youth camp shall adhere to standards for the protection of archaeological objects, archaeological sites, burials, funerary objects, human remains, objects of cultural patrimony and sacred objects, as provided in ORS 97.740 to 97.750 and 358.905 to 358.961, as follows:¶
(i) If a particular area of the lawfully established unit of land proposed for the youth camp is proposed to be excavated, and if that area contains or is reasonably believed to contain resources protected by ORS 97.740 to 97.750 and 358.905 to 358.961, the application shall include evidence that there has been coordination among the appropriate Native American Tribe, the State Historic Preservation Office (SHPO) and a qualified archaeologist, as described in ORS 390.235(6)(b).¶
(ii) The applicant shall obtain a permit required by ORS 390.235 before any excavation of an identified archeological site begins.¶
(iii) The applicant shall monitor construction during the ground disturbance phase(s) of development if such monitoring is recommended by SHPO or the appropriate Native American Tribe.¶
(C) A fire safety protection plan shall be adopted for each youth camp that includes the following:¶
(i) Fire prevention measures;¶
(ii) On site pre-suppression and suppression measures; and¶
(iii) The establishment and maintenance of fire-safe area(s) in which camp participants can gather in the event of a fire.¶
(D) A youth camp's on-site fire suppression capability shall at least include:¶
(i) A 1000 gallon mobile water supply that can reasonably serve all areas of the camp;¶
(ii) A 60 gallon-per-minute water pump and an adequate amount of hose and nozzles;¶
(iii) A sufficient number of firefighting hand tools; and¶
(iv) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.¶
(v) An equivalent level of fire suppression facilities may be determined by the governing body or its designate. The equivalent capability shall be based on the response time of the effective wildfire suppression agencies.¶
(E) The county shall require, as a condition of approval of a youth camp, that the land owner of the youth camp sign and record in the deed records for the county a document binding the land owner, the operator of the youth camp if different from the owner, and the land owner's or operator's successors in interest, prohibiting:¶
(i) 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;¶
(ii) future land divisions resulting in a lawfully established unit of land containing the youth camp that is smaller in size than required by the county for the original youth camp approval; and¶
(iii) development on the lawfully established unit of land that is not related to the youth camp and would require a land use decision as defined at ORS 197.015(10) unless the county's original approval of the camp is rescinded and the youth camp development is either removed or can remain, consistent with a county land use decision that is part of such rescission.¶
(F) Nothing in this rule relieves a county from complying with other requirements contained in the comprehensive plan or implementing land use regulations, such as the requirements addressing other resource values (e.g. resources identified in compliance with statewide planning Goal 5) that exist on agricultural lands.¶
(i) If a youth camp 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 youth camp 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 consistent with OAR chapter 660, divisions 16 and 23. If there is no program to protect the listed Goal 5 resource(s) included in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures in compliance with OAR chapter 660, division 23; and¶

~~(ii) If a proposed youth camp is located on lands where, after site specific consultation with a district state biologist, the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat, or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites, or pigeon springs), the applicant shall conduct a site-specific assessment of the land 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 habitats are anticipated. Based on the 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 habitats as 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 youth camp facility. Where the applicant and the 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 youth camp facility.¶~~
~~(iii) The commission shall consider the repeal of the provisions of subparagraph (ii) on or before January 1, 2022.¶~~
~~(i) Extension of Sewer to a Youth Camp. A Goal 11 exception to authorize the extension of a sewer system to serve a youth camp shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this section. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 11 shall not apply. Exceptions adopted pursuant to this section shall be deemed to fulfill the requirements for goal exceptions under ORS 197.732(1)(c) and Goal 2.¶~~
~~(A) A Goal 11 exception shall determine the general location for the proposed sewer extension and shall require that necessary infrastructure be no larger than necessary to accommodate the proposed youth camp.¶~~
~~(B) To address Goal 2, Part II(c)(1), the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Goal 2, Part II(c)(1) shall be found to be satisfied if the proposed sewer extension will serve a youth camp proposed for up to 600 youth camp participants.¶~~
~~(C) To address Goal 2, Part II(c)(2), the exception shall demonstrate that areas which do not require a new exception cannot reasonably accommodate the proposed sewer extension. Goal 2, Part II(c)(2) shall be found to be satisfied if the sewer system to be extended was in existence as of January 1, 1990 and is located outside of an urban growth boundary on lands for which an exception to Goal 3 has been taken.¶~~
~~(D) To address Goal 2, Part II(c)(3), the exception shall demonstrate that the long term environmental, economic, social, and energy consequences resulting from the proposed extension of sewer with measures to reduce the effect of adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the lawfully established unit of land proposed for the youth camp. Goal 2, Part II(c)(3) shall be found to be satisfied if the proposed sewer extension will serve a youth camp located on a tract of at least 1,000 acres.¶~~
~~(E) To address Goal 2, Part II(c)(4), the exception shall demonstrate that the proposed sewer extension is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. Goal 2, Part II(c)(4) shall be found to be satisfied if the proposed sewer extension for a youth camp is conditioned to comply with section (5) of this rule.¶~~
~~(F) An exception taken pursuant to this section does not authorize extension of sewer beyond what is justified in the exception.¶~~
~~(j) Applicability: The provisions of this section shall apply directly to any land use decision pursuant to ORS 197.646 and 215.427(3). A county may adopt provisions in its comprehensive plan or land use regulations that establish standards and criteria in addition to those set forth in this section, or that are necessary to ensure compliance with any standards or criteria in this section.¶~~
~~(41) Equine and equine-affiliated therapeutic counseling activities shall be conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental, and subordinate to the farm use on the tract. All individuals conducting therapeutic or counseling activities must act within the proper scope of any licenses required by the state¶~~
(C) A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (19)(c) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this paragraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.¶
(d) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all

or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.¶
(e) For applications submitted under subsection (c) of this section, the criteria of section (5) can be found to be satisfied when:¶
(A) The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.¶
(B) The subject property is not irrigated.¶
(C) The subject property is not high-value farmland.¶
(D) The number of proposed campsites does not exceed 12; or¶
(E) The number of proposed campsites does not exceed 36: and¶
(F) Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goal 3, Goal 4, or both.¶
(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.¶
(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.¶
(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.¶
(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:¶
(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;¶
(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;¶
(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;¶
(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:¶
(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;¶
(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and¶

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.¶
(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.¶
(22) Permanent features of a power generation facility shall not use, occupy or cover more than 20 acres unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a 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. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.¶
(23) A farm stand may be approved if:¶
(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and¶
(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.¶
(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.¶
(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.¶
(e) A farm stand may not be used for the sale, or to promote the sale, of marijuana products or extracts.¶
(24) Accessory farm dwellings as defined by subsection (e) of this section may be considered customarily provided in conjunction with farm use if:¶
(a) Each accessory farm dwelling meets all the following requirements:¶
(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;¶
(B) The accessory farm dwelling will be located:¶
(i) On the same lot or parcel as the primary farm dwelling;¶
(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract;¶
(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules;¶
(iv) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. "Farmworker housing" shall have the meaning set forth in ORS 215.278

and not the meaning in ORS 315.163; or¶
(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable; and¶
(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.¶
(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:¶
(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years or in an average of three of the last five years, the farm operator earned the lower of the following:¶
(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or¶
(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;¶
(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;¶
(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or paragraph (A) of this subsection; or¶
(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and¶
(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm;¶
(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and¶
(iii) A Producer License for the sale of dairy products under ORS 621.072.¶
(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in 660-033-0100.¶
(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.¶
(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code.¶
(f) Farming of a marijuana crop shall not be used to demonstrate compliance with the approval criteria for an accessory farm dwelling.¶
(g) Accessory farm dwellings destroyed by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 may be replaced. The temporary use of modular structures, manufactured housing, fabric structures, tents and similar accommodations is allowed until replacement under this subsection occurs.¶
(25) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center is allowed, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.¶
(26) Buildings and facilities associated with a site for the takeoff and landing of model aircraft shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter,

dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.¶
(27) Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the Oregon Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.¶
(28)(a) A facility for the processing of farm products is a permitted use under ORS 215.213 (1)(u) and ORS 215.283 (1)(r) on land zoned for exclusive farm use, only if the facility:¶
(A) Uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. A county may not apply siting standards in a manner that prohibits the siting of a facility for the processing of farm products; or¶
(B) Notwithstanding any applicable siting standard, uses less than 2,500 square feet for its processing area. However, a local government shall apply applicable standards and criteria pertaining to floodplains, geologic hazards, beach and dune hazards, airport safety, tsunami hazards and fire siting standards.¶
(b) A county may not approve any division of a lot or parcel that separates a facility for the processing of farm products from the farm operation on which it is located.¶
(c) As used in this section, the following definitions apply:¶
(A) "Facility for the processing of farm products" means a facility for:¶
(i) Processing farm crops, including the production of biofuel as defined in ORS 315.141, if at least one-quarter of the farm crops come from the farm operation containing the facility; or¶
(ii) Slaughtering, processing or selling poultry or poultry products from the farm operation containing the facility and consistent with the licensing exemption for a person under ORS 603.038(2).¶
(B) "Processing area" means the floor area of a building dedicated to farm product processing. "Processing area" does not include the floor area designated for preparation, storage or other farm use.¶
(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.¶
(b) Composting operations and facilities allowed on land not defined as high-value farmland shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Composting operations that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract are allowed uses, while other composting operations are subject to the review standards of ORS 215.296. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.¶
(30) The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner'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.¶
(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.¶
(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:¶
(a) A public right of way;¶
(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or¶
(c) The property to be served by the utility.¶
(33) An outdoor mass gathering as defined in ORS 433.735, subject to the provisions of ORS 433.735 to 433.770. A county may not require an outdoor mass gathering permit under ORS 433.750 for agri-tourism and other commercial events or activities permitted under ORS 215.213(11), 215.283(4), 215.451, 215.452, and ORS 215.449.¶
(34) An outdoor mass gathering of more than 3,000 persons any part of which is held outdoors and which continues or can reasonably be expected to continue for a period exceeding that allowable for an outdoor mass gathering as defined in ORS 433.735 is subject to review under the provisions of ORS 433.763.¶
(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the

purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and¶
(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to 215.130(5), (6) and (9).¶
(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.¶
(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down 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 wind 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. A proposal for a wind power generation facility shall be subject to the following provisions:¶
(38) A proposal to site a photovoltaic solar power generation facility in western Oregon shall be subject to the following definitions and provisions¶
(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.¶
(b) "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 at ORS 195.300(10) unless otherwise stated.¶
(c) "Dual-use development" means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.¶
(d) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.¶
(e) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V-VIII and no history of irrigation shall be considered nonarable 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.¶
(f) "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 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. 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 1320 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 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.¶
(g) "Western Oregon" means that portion of the State of Oregon lying west of a line beginning at the intersection of the northern boundary of the state and the eastern boundary of Hood River County, thence southerly along the eastern boundaries of the counties of Hood River, Clackamas, Marion, Linn, Lane, Douglas and Jackson to southern boundary of the state.¶
(h) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless the provisions of paragraph (h)(H) are satisfied; or¶
(i) The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on

high-value farmland described at ORS 195.300(10).¶
(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;¶
(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. The approved plan shall be attached to the decision as a condition of approval;¶
(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;¶
(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed 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;¶
(E) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(F) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Non high-value farmland soils are not available on the subject tract;¶
(ii) 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¶
(iii) 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 non high-value farmland soils; and¶
(G) 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:¶
(i) 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.¶
(ii) 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 as 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.¶
(H) A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:¶
(i) Is not located within the boundaries of an irrigation district;¶
(ii) Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;¶
(iii) Is located within the service area of an electric utility described in ORS 469A.052(2);¶
(iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and¶
(v) Does not qualify as high-value farmland under any other provision of law; or¶
(j) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 20 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶

(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Nonarable soils are not available on the subject tract;¶
(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(iii) 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;¶
(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);¶
(D) 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:¶
(i) 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.¶
(ii) 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 as 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and¶
(E) The requirements of OAR 660-033-0130(38)(h)(A), (B), (C) and (D) are satisfied.¶
(k) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;¶
(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);¶
(D) No more than 20 acres of the project will be sited on arable soils;¶
(E) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;¶
(F) 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¶
(G) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or 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 habitats are anticipated. Based on the 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 habitats as 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 the 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.¶

(l) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.¶
(m) 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 as defined in ORS 30.930(2) and (4).¶
(n) 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.¶
(o) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (g), (i) and (j) of this section.¶
(39) Dog training classes or testing trials conducted outdoors or in farm buildings that existed on January 1, 2019, when:¶
(a) The number of dogs participating in training does not exceed 10 per training class and the number of training classes to be held on-site does not exceed six per day; and¶
(b) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site does not exceed four per calendar year.¶
(40) A youth camp may be established on agricultural land under the requirements of this section. The purpose of this section is to allow for the establishment of youth camps that are generally self-contained and located on a lawfully established unit of land of suitable size and location to limit potential impacts on nearby land and to ensure compatibility with surrounding farm uses.¶
(a) Definitions: In addition to the definitions provided for this division in OAR 660-033-0020 and ORS 92.010, for purposes of this section the following definitions apply:¶
(A)"Low impact recreational facilities" means facilities that have a limited amount of permanent disturbance on the landscape and are likely to create no, or only minimal impacts on adjacent private lands. Low impact recreational facilities include, but are not limited to, open areas, ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding areas, swimming pools and zip lines. Low impact recreational facilities are designed and developed in a manner consistent with the lawfully established unit of land's natural environment.¶
(B) "Youth camp" means a facility that is either owned or leased, and is operated by a state or local government or a nonprofit corporation as defined under ORS 65.001 and is established for the purpose of providing an outdoor recreational and educational experience primarily for the benefit of persons 21 years of age and younger. Youth camps do not include a juvenile detention center or juvenile detention facility or similar use.¶
(C) "Youth camp participants" means persons directly involved with providing or receiving youth camp services, including but not limited to, campers, group leaders, volunteers or youth camp staff.¶
(b) Location: A youth camp may be located only on a lawfully established unit of land suitable to ensure an outdoor experience in a private setting without dependence on the characteristics of adjacent and nearby public and private land. In determining the suitability of a lawfully established unit of land for a youth camp the county shall consider its size, topography, geographic features and other characteristics, the proposed number of overnight participants and the type and number of proposed facilities. A youth camp may be located only on a lawfully established unit of land that is:¶
(A) At least 1,000 acres;¶
(B) In eastern Oregon;¶
(C) Composed predominantly of class VI, VII or VIII soils;¶
(D) Not within an irrigation district;¶
(E) Not within three miles of an urban growth boundary;¶
(F) Not in conjunction with an existing golf course;¶
(G) Suitable for the provision of protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands and uses. Such buffers shall consist of natural vegetation, topographic or other natural features and shall be implemented through the requirement of setbacks from adjacent public and private lands, public roads, roads serving other ownerships and riparian areas. Setbacks from riparian areas shall be consistent with OAR 660-023-0090. Setbacks from adjacent public and private lands, public roads and roads serving other ownerships shall be 250 feet unless the county establishes on a case-by-case basis a different setback distance sufficient to:¶
(i) Prevent significant conflicts with commercial resource management practices;¶
(ii) Prevent a significant increase in safety hazards associated with vehicular traffic on public roads and roads serving other ownerships; and¶
(iii) Minimize conflicts with resource uses on nearby resource lands;¶
(H) At least 1320 feet from any other lawfully established unit of land containing a youth camp approved pursuant

to this section; and¶
(I) Suitable to allow for youth camp development that will not interfere with the exercise of legally established water rights on nearby properties.¶
(c) Overnight Youth Camp Participants: The maximum number of overnight youth camp participants is 350 participants unless the county finds that a lower number of youth camp participants is necessary to avoid conflicts with surrounding uses based on consideration of the size, topography, geographic features and other characteristics of the lawfully established unit of land proposed for the youth camp. Notwithstanding the preceding sentence, a county may approve a youth camp for more than 350 overnight youth camp participants consistent with this subsection if resource lands not otherwise needed for the youth camp that are located in the same county or adjacent counties that are in addition to, or part of, the lawfully established unit of land approved for the youth camp are permanently protected by restrictive covenant as provided in subsection (d) and subject to the following provisions:¶
(A) For each 160 acres of agricultural lands predominantly composed of class I-V soils that are permanently protected from development, an additional 50 overnight youth camp participants may be allowed;¶
(B) For each 160 acres of wildlife habitat that is either included on an acknowledged inventory in the local comprehensive plan or identified with the assistance and support of Oregon Department of Fish and Wildlife, regardless of soil types and resource land designation that are permanently protected from development, an additional 50 overnight youth camp participants may be allowed;¶
(C) For each 160 acres of agricultural lands predominantly composed of class VI-VIII soils that are permanently protected from development, an additional 25 overnight youth camp participants may be allowed; or¶
(D) A youth camp may have 351 to 600 overnight youth camp participants when:¶
(i) The tract on which the youth camp will be located includes at least 1,920 acres; and¶
(ii) At least 920 acres is permanently protected from development. The county may require a larger area to be protected from development when it finds a larger area necessary to avoid conflicts with surrounding uses.¶
(E) Under no circumstances shall more than 600 overnight youth camp participants be allowed.¶
(d) The county shall require, as a condition of approval of an increased number of overnight youth camp participants authorized by paragraphs (c)(A), (B), (C) or (D) of this section requiring other lands to be permanently protected from development, that the land owner of the other lands to be protected sign and record in the deed records for the county or counties where such other lands are located a document that protects the lands as provided herein, which for purposes of this section shall be referred to as a restrictive covenant.¶
(A) A restrictive covenant shall be sufficient if it is in a form substantially the same as the form attached hereto as Exhibit B.¶
(B) The county condition of approval shall require that the land owner record a restrictive covenant under this subsection:¶
(i) Within 90 days of the final land use decision if there is no appeal, or¶
(ii) Within 90 days after an appellate judgment affirming the final land use decision on appeal.¶
(C) The restrictive covenant is irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the land subject to the restrictive covenant is located.¶
(D) Enforcement of the restrictive covenant may be undertaken by the department or by the county or counties where the land subject to the restrictive covenant is located.¶
(E) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the restrictive covenant required by this subsection.¶
(F) The county planning director shall maintain a copy of the restrictive covenant filed in the county deed records pursuant to this section and a map or other record depicting the tracts, or portions of tracts, subject to the restrictive covenant filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.¶
(e) In addition, the county may allow:¶
(A) Up to eight nights during the calendar year during which the number of overnight youth camp participants may exceed the total number of overnight youth camp participants allowed under subsection (c) of this section.¶
(B) Overnight stays at a youth camp for participants of adult programs that are intended primarily for individuals over 21 years of age, not including staff, for up to 30 days in any one calendar year.¶
(f) Facilities: A youth camp may provide only the facilities described in paragraphs (A) through (I) of this subsection:¶
(A) Low impact recreational facilities. Intensive developed facilities such as water parks and golf courses are not allowed;¶
(B) Cooking and eating facilities, provided they are within a building that accommodates youth camp activities but not in a building that includes sleeping quarters. Food services shall be limited to those provided in conjunction with the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual

meals may be offered only to family members or guardians of youth camp participants;¶
(C) Bathing and laundry facilities;¶
(D) Up to three camp activity buildings, not including a building for primary cooking and eating facilities.¶
(E) Sleeping quarters, including cabins, tents or other structures, for youth camp participants only, consistent with subsection (c) of this section. Sleeping quarters intended as overnight accommodations for persons not participating in activities allowed under this section or as individual rentals are not allowed. Sleeping quarters may include restroom facilities and, except for the caretaker's dwelling, may provide only one shower for every five beds. Sleeping quarters may not include kitchen facilities.¶
(F) Covered areas that are not fully enclosed for uses allowed in this section;¶
(G) Administrative, maintenance and storage buildings including permanent structures for administrative services, first aid, equipment and supply storage, and a gift shop available to youth camp participants but not open to the general public;¶
(H) An infirmary, which may provide sleeping quarters for medical care providers (e.g., a doctor, registered nurse, or emergency medical technician);¶
(I) A caretaker's residence, provided no other dwelling is on the lawfully established unit of land on which the youth camp is located.¶
(g) A campground as described in ORS 215.283(2)(c), OAR 660-033-0120, and section (19) of this rule may not be established in conjunction with a youth camp.¶
(h) Conditions of Approval: In approving a youth camp application, a county must include conditions of approval as necessary to achieve the requirements of this section.¶
(A) With the exception of trails, paths and ordinary farm and ranch practices not requiring land use approval, youth camp facilities shall be clustered on a single development envelope of no greater than 40 acres.¶
(B) A youth camp shall adhere to standards for the protection of archaeological objects, archaeological sites, burials, funerary objects, human remains, objects of cultural patrimony and sacred objects, as provided in ORS 97.740 to 97.750 and 358.905 to 358.961, as follows:¶
(i) If a particular area of the lawfully established unit of land proposed for the youth camp is proposed to be excavated, and if that area contains or is reasonably believed to contain resources protected by ORS 97.740 to 97.750 and 358.905 to 358.961, the application shall include evidence that there has been coordination among the appropriate Native American Tribe, the State Historic Preservation Office (SHPO) and a qualified archaeologist, as described in ORS 390.235(6)(b).¶
(ii) The applicant shall obtain a permit required by ORS 390.235 before any excavation of an identified archeological site begins.¶
(iii) The applicant shall monitor construction during the ground disturbance phase(s) of development if such monitoring is recommended by SHPO or the appropriate Native American Tribe.¶
(C) A fire safety protection plan shall be adopted for each youth camp that includes the following:¶
(i) Fire prevention measures;¶
(ii) On site pre-suppression and suppression measures; and¶
(iii) The establishment and maintenance of fire-safe area(s) in which camp participants can gather in the event of a fire.¶
(D) A youth camp's on-site fire suppression capability shall at least include:¶
(i) A 1000 gallon mobile water supply that can reasonably serve all areas of the camp;¶
(ii) A 60 gallon-per-minute water pump and an adequate amount of hose and nozzles;¶
(iii) A sufficient number of firefighting hand tools; and¶
(iv) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.¶
(v) An equivalent level of fire suppression facilities may be determined by the governing body or its designate. The equivalent capability shall be based on the response time of the effective wildfire suppression agencies.¶
(E) The county shall require, as a condition of approval of a youth camp, that the land owner of the youth camp sign and record in the deed records for the county a document binding the land owner, the operator of the youth camp if different from the owner, and the land owner's or operator's successors in interest, prohibiting:¶
(i) 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;¶
(ii) future land divisions resulting in a lawfully established unit of land containing the youth camp that is smaller in size than required by the county for the original youth camp approval; and¶
(iii) development on the lawfully established unit of land that is not related to the youth camp and would require a land use decision as defined at ORS 197.015(10) unless the county's original approval of the camp is rescinded and the youth camp development is either removed or can remain, consistent with a county land use decision that is part of such rescission.¶
(F) Nothing in this rule relieves a county from complying with other requirements contained in the comprehensive

plan or implementing land use regulations, such as the requirements addressing other resource values (e.g. resources identified in compliance with statewide planning Goal 5) that exist on agricultural lands.¶
(i) If a youth camp 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 youth camp 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 consistent with OAR chapter 660, divisions 16 and 23. If there is no program to protect the listed Goal 5 resource(s) included in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures in compliance with OAR chapter 660, division 23; and¶
(ii) If a proposed youth camp is located on lands where, after site specific consultation with a district state biologist, the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat, or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites, or pigeon springs), the applicant shall conduct a site-specific assessment of the land 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 habitats are anticipated. Based on the 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 habitats as 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 youth camp facility. Where the applicant and the 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 youth camp facility.¶
(iii) The commission shall consider the repeal of the provisions of subparagraph (ii) on or before January 1, 2022.¶
(i) Extension of Sewer to a Youth Camp. A Goal 11 exception to authorize the extension of a sewer system to serve a youth camp shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this section. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 11 shall not apply. Exceptions adopted pursuant to this section shall be deemed to fulfill the requirements for goal exceptions under ORS 197.732(1)(c) and Goal 2.¶
(A) A Goal 11 exception shall determine the general location for the proposed sewer extension and shall require that necessary infrastructure be no larger than necessary to accommodate the proposed youth camp.¶
(B) To address Goal 2, Part II(c)(1), the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Goal 2, Part II(c)(1) shall be found to be satisfied if the proposed sewer extension will serve a youth camp proposed for up to 600 youth camp participants.¶
(C) To address Goal 2, Part II(c)(2), the exception shall demonstrate that areas which do not require a new exception cannot reasonably accommodate the proposed sewer extension. Goal 2, Part II(c)(2) shall be found to be satisfied if the sewer system to be extended was in existence as of January 1, 1990 and is located outside of an urban growth boundary on lands for which an exception to Goal 3 has been taken.¶
(D) To address Goal 2, Part II(c)(3), the exception shall demonstrate that the long term environmental, economic, social, and energy consequences resulting from the proposed extension of sewer with measures to reduce the effect of adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the lawfully established unit of land proposed for the youth camp. Goal 2, Part II(c)(3) shall be found to be satisfied if the proposed sewer extension will serve a youth camp located on a tract of at least 1,000 acres.¶
(E) To address Goal 2, Part II(c)(4), the exception shall demonstrate that the proposed sewer extension is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. Goal 2, Part II(c)(4) shall be found to be satisfied if the proposed sewer extension for a youth camp is conditioned to comply with section (5) of this rule.¶
(F) An exception taken pursuant to this section does not authorize extension of sewer beyond what is justified in the exception.¶
(j) Applicability: The provisions of this section shall apply directly to any land use decision pursuant to ORS 197.646 and 215.427(3). A county may adopt provisions in its comprehensive plan or land use regulations that establish standards and criteria in addition to those set forth in this section, or that are necessary to ensure compliance with any standards or criteria in this section.¶
(41) Equine and equine-affiliated therapeutic counseling activities shall be conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental, and subordinate to the farm use on the tract. All individuals conducting therapeutic or counseling activities must act within the proper scope of any licenses required by the state.¶

(42)(a) For the purposes of siting a photovoltaic solar power generation facility in Eastern Oregon:¶
(A) "Agrivoltaics development" means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.¶
(B) "Agrivoltaics development plan" is a plan established for a photovoltaic solar power generation facility pursuant to an agrivoltaics development program adopted by a county in Eastern Oregon.¶
(C) "Agrivoltaics development program" means specific land use regulations adopted by a county in Eastern Oregon that authorize agrivoltaics development to have a larger project size than would otherwise be allowed under OAR 660-033-0130(38).¶
(D) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.¶
(E) "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 at ORS 195.300(10) unless otherwise stated.¶
(F) "Eastern Oregon" means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of the state and the western boundary of Wasco County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the state.¶
(G) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.¶
(H) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V-VIII and no history of irrigation shall be considered nonarable 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.¶
(I) "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 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. On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility 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 photovoltaic solar power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall not no effect on the original approval of the project. 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 1320 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 established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.¶
(b) Unless otherwise indicated, the following standards must be satisfied in order to approve a photovoltaic solar power generation facility in eastern Oregon.¶
(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;¶
(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. The approved plan shall be attached to the decision as a condition of approval;¶
(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;¶
(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed 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;¶
(E) The presence of a photovoltaic solar power generation facility will not result in unnecessary risks to soil health. This provision may be satisfied by the submittal and county approval of a vegetation management plan prepared by an adequately qualified individual, showing how a healthy vegetative cover will be established and maintained and how a bare earth situation will not occur. The approved plan shall be attached to the decision as a condition of approval;¶
(F) The photovoltaic solar power generation facility will be designed, constructed and managed in a way that will promote the prevention and mitigate the risk of wildfire. This provision may be satisfied by the submittal and county approval of a wildfire plan prepared by an adequately qualified individual that is consistent with the provisions identified at OAR 660-006-0029(1)(d) and OAR 660-006-0035. The approved plan shall be attached to the decision as a condition of approval;¶
(G) That considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an adequately qualified individual, that demonstrates how temporary workforce housing resulting in a benefit to the local community will be accommodated or that such temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved plan shall be attached to the decision as a condition of approval.¶
(c) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless:¶
(A) The provisions of paragraph (d)(E) are satisfied; or¶
(B) The county approves an agrivoltaics development plan consistent with the provisions of subsections (q) and (r); or¶
(C) The subject property has been determined to be a significant photovoltaic solar resource pursuant to OAR 660-023-0195(7) and is subject to the provisions of subsection (i) or (j), whichever is applicable.¶
(d) In addition to the standards and requirements identified at subsections (b) and (c), the governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10).¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Non high-value farmland soils are not available on the subject tract;¶
(ii) 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¶
(iii) 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 non high-value farmland soils; and¶
(D) A study area consisting of lands zoned for exclusive farm use located within three miles measured from the center of the proposed project shall be established and:¶
(i) If fewer than 84 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.¶
(ii) When at least 84 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 as 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.¶
(E) A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:¶

(i) Is not located within the boundaries of an irrigation district;¶
(ii) Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;¶
(iii) Is located within the service area of an electric utility described in ORS 469A.052(2);¶
(iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and¶
(v) Does not qualify as high-value farmland under any other provision of law.¶
(e) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 20 acres unless:¶
(A) The county approves an agrivoltaics development plan consistent with the provisions of subsections (q) and (r); or¶
(B) The subject property has been determined to be a significant photovoltaic solar resource pursuant to OAR 660-023-0195(7) and is subject to the provisions of subsection (i) or (j), whichever is applicable.¶
(f) In addition to the standards and requirements identified at subsections (b) and (e), the governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Nonarable soils are not available on the subject tract;¶
(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(iii) 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;¶
(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);¶
(D) A study area consisting of lands zoned for exclusive farm use located within five miles measured from the center of the proposed project shall be established and:¶
(i) If fewer than 400 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.¶
(ii) When at least 400 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 as 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 land use pattern 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, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.¶
(g) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres unless:¶
(A) The county approves an agrivoltaics development plan consistent with the provisions of subsections (q) and (r); or¶
(B) The subject property has been determined to be a significant photovoltaic solar resource pursuant to OAR 660-023-0195(7) and is subject to the provisions of subsection (i) or (j), whichever is applicable.¶
(h) In addition to the standards and requirements identified at subsections (b)(D) thru (G) and (g), The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;¶
(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);¶

(D) No more than 20 acres of the project will be sited on arable soils;¶
(E) 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¶
(F) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or 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 habitats are anticipated. Based on the 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 habitats as 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 the 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.¶
(i) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195(7) and a county has identified photovoltaic solar resource areas as defined at OAR 660-023-0195(2)(c) the following provisions apply:¶
(A) For high-value farmland a photovoltaic solar power generation facility shall not use, occupy, or cover more than 240 acres.¶
(B) For arable lands a photovoltaic solar power generation facility shall not use, occupy, or cover more than 2,560 acres.¶
(C) For nonarable lands a photovoltaic solar power generation facility shall not use, occupy, or cover more than 3,840 acres.¶
(D) A county may determine that ORS 215.296 and OAR 660-033-0130(5) are met when the applicable provisions of OAR 660-033-0130(38)(k)(A) thru (F) are found to be satisfied and any mitigation measures necessary to comply with the provisions of OAR 660-023-0195(14)(b) are required.¶
(j) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195(7) and a county has not identified photovoltaic solar resource areas as defined at OAR 660-023-0195(2)(c) and is instead limited to considering applications for individual photovoltaic solar resource sites the following acreage thresholds apply:¶
(A) For high-value farmland a photovoltaic solar power generation facility shall not use, occupy, or cover more than 160 acres.¶
(B) For arable lands a photovoltaic solar power generation facility shall not use, occupy, or cover more than 1,280 acres.¶
(C) For nonarable lands a photovoltaic solar power generation facility shall not use, occupy, or cover more than 1,920 acres.¶
(k) A county may determine that ORS 215.296 and OAR 660-033-0130(5) are met when the applicable provisions of OAR 660-033-0130(45) are found to be satisfied and any compensatory mitigation measures necessary to comply with the provisions of OAR 660-023-0195(12)(b) are required.¶
(m) A permit approved for a photovoltaic solar power generation facility shall be valid until commencement of construction or for six years, whichever is less. A county may grant up to two extensions for a period of up to 24 months each when an applicant makes a written request for an extension of the development approval period that is submitted to the county prior to the expiration of the approval period.¶
(n) A county may grant a permit described in subsection (m) a third and final extension for period of up to 24 months if:¶
(A) An applicant makes a written request for an extension of the development approval period prior to the expiration of the second extension granted under subsection (f) of this section;¶
(B) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and¶
(C) The county determines that the applicant was unable to begin or continue development during the approval

period for reasons for which the applicant was not responsible.¶
(o) 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 as defined in ORS 30.930(2) and (4).¶
(p) 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.¶
(q) A county may approve agrivoltaics development plans pursuant to an adopted agrivoltaics development program.¶
(r) For an agrivoltaics development program, the adopted land use regulations must require sufficient assurances that the farm use element of the agrivoltaics development is established and maintained so long as the photovoltaic solar power generation facility is operational or components of the facility remain on site. An agrivoltaics development program:¶
(A) For high-value farmland, may not allow an agrivoltaics development plan for any project with a nameplate capacity greater than four megawatts or 40 acres and the countywide total of lands included in approved agrivoltaics development plans does not cumulatively exceed 160 acres of high-value farmland.¶
(B) For arable land, may not allow an agrivoltaics development plan for any project with a nameplate capacity greater than nine megawatts or 80 acres and the countywide total of lands included in approved agrivoltaics development plans does not cumulatively exceed 400 acres of arable land.¶
(C) For nonarable land, may not allow an agrivoltaics development plan for any project with a nameplate capacity greater than 80 megawatts or 720 acres, and the countywide total of lands included in approved agrivoltaics development plans does not cumulatively exceed 3,840 acres of nonarable land.
Statutory/Other Authority: ORS 197.040
Statutes/Other Implemented: ORS 197.040, ORS 215.213, ORS 215.275, ORS 215.282, ORS 215.283, ORS 215.301, ORS 215.448, ORS 215.459, ORS 215.705, ORS 215.449

AMEND: 660-033-0145

RULE SUMMARY: The proposed rulemaking provides clarity on how counties will apply standards for siting photovoltaic solar power generation facilities in agricultural and forest zones.

CHANGES TO RULE:

660-033-0145
Agriculture/Forest Zones ¶

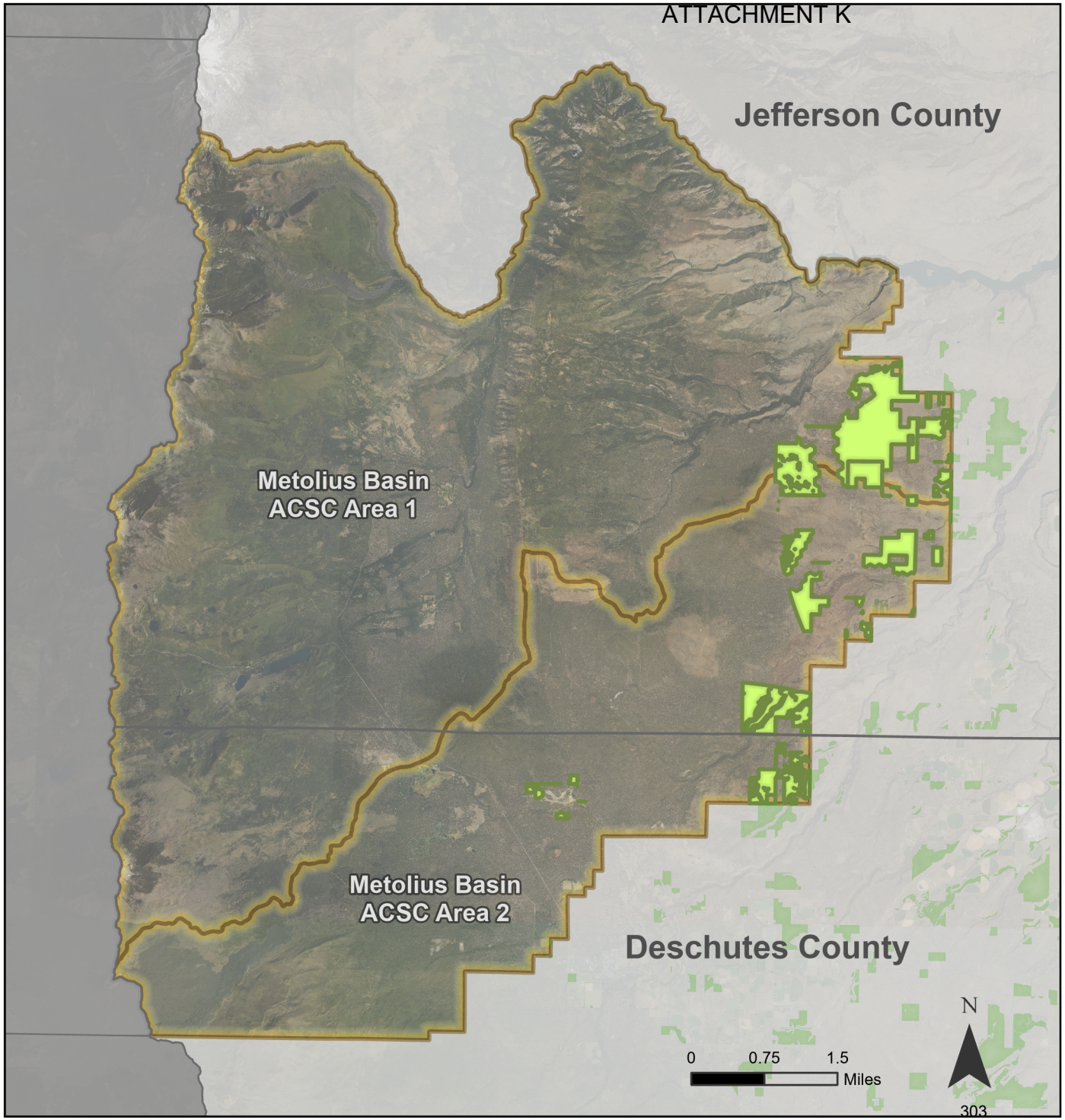
(1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-0050;¶
(2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055; and¶
(3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-0057.¶
(4) A county shall apply either OAR chapter 660, division 6 or 33 standards for siting a photovoltaic solar power generation facility in an agriculture/forest zone based on the predominant use of the tract on January 1, 2024.
Statutory/Other Authority: ORS 183, ORS 197.040, ORS 197.230, ORS 197.245
Statutes/Other Implemented: ORS 197.040, ORS 197.213, ORS 197.215, ORS 197.230, ORS 197.245, ORS 197.283, ORS 197.700, ORS 197.705, ORS 197.720, ORS 197.740, ORS 197.750, ORS 197.780

LCDC Solar Rulemaking

Land Potential within the Metolius Basin Area of Critical State Concern (ACSC)

- Potentially Eligible
- Metolius Basin ACSC Boundaries
- Eastern OR Counties

Sum of potentially eligible acres: 8,933



OREGON
Department of Land Conservation & Development

Credits: Oregon Statewide Imagery Program; Department of Land Conservation and Development; Bureau of Land Management; Natural Resources Conservation Service; Oregon Department of Geology and Mineral Industries; Portland State University Population Research Center
May 22, 2025

ONE-MILE BUFFERS AROUND URBAN GROWTH BOUNDARIES OF CITIES GREATER THAN 2,500

LCDC Solar Rulemaking

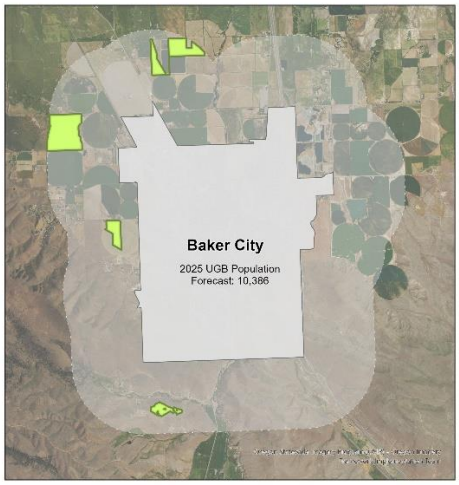
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 305

N
0 0.5 1 Miles

April, 2025



LCDC Solar Rulemaking

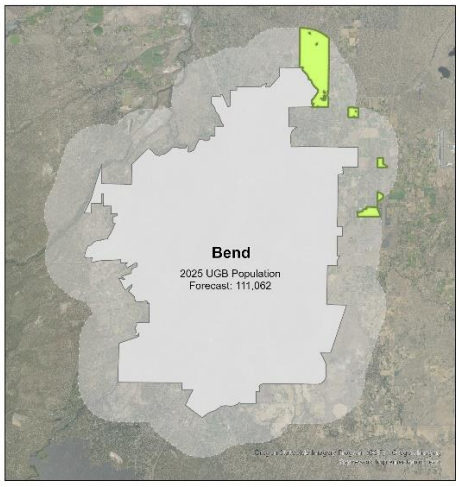
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 868

N
0 1 2 Miles

April, 2025



LCDC Solar Rulemaking

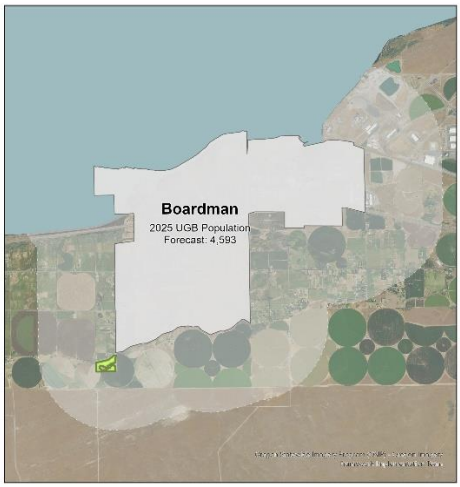
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 20

N
0 0.5 1 Miles

April, 2025



LCDC Solar Rulemaking

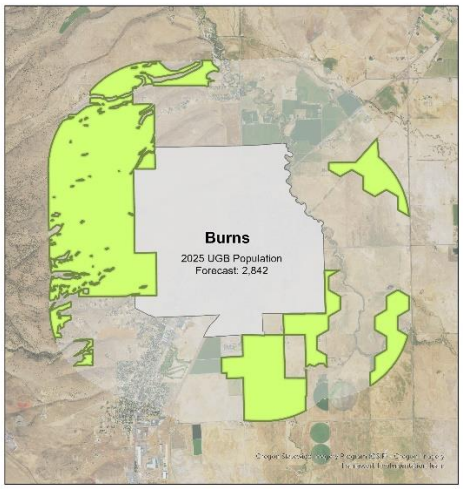
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 2,662

N
0 0.5 1 Miles

April, 2025



LCDC Solar Rulemaking

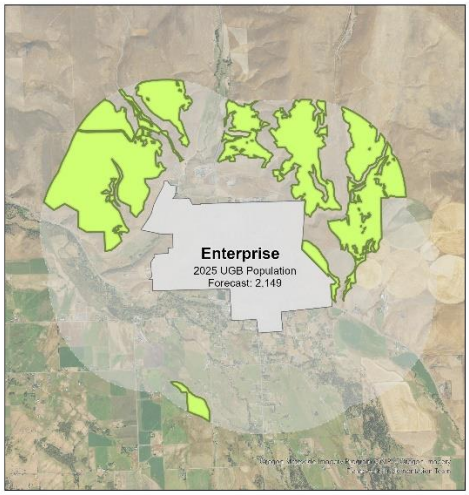
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 1,482

N
0 0.42 0.85 Miles

April, 2025



LCDC Solar Rulemaking

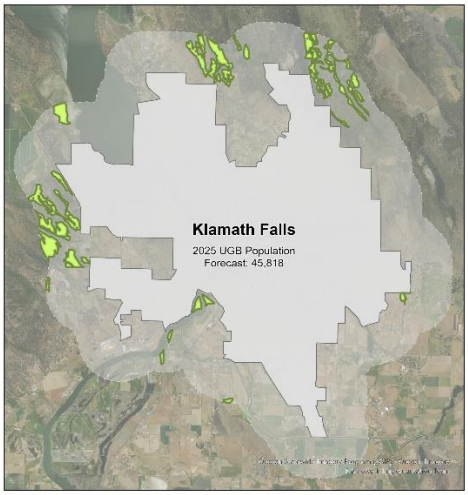
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 1,393

N
0 1 2 Miles

April, 2025



ONE-MILE BUFFERS AROUND URBAN GROWTH BOUNDARIES OF CITIES GREATER THAN 2,500

LCDC Solar Rulemaking

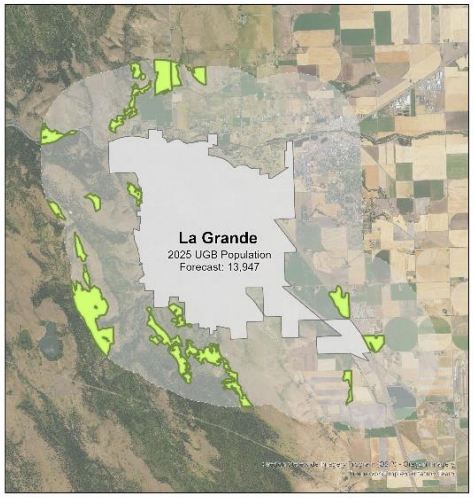
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 853

N
0 0.5 1 Miles

April, 2025



LCDC Solar Rulemaking

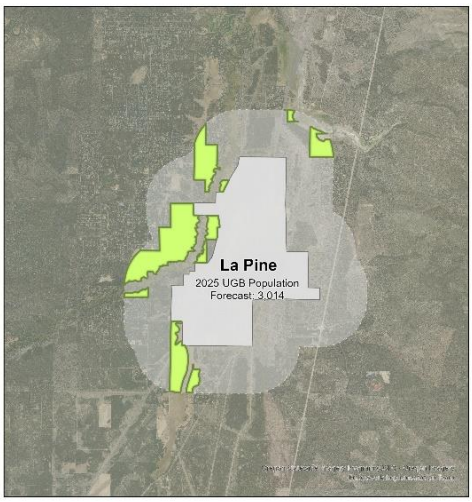
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 1,673

N
0 0.75 1.5 Miles

April, 2025



LCDC Solar Rulemaking

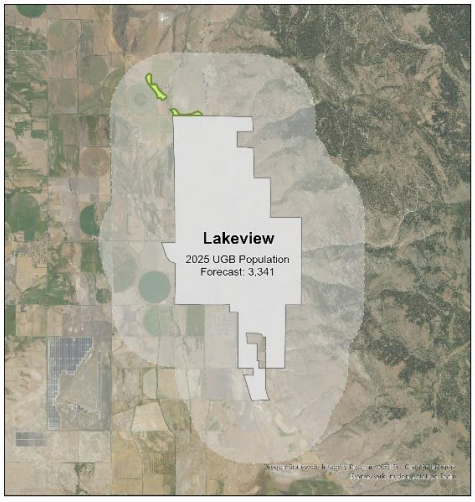
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 38

N
0 0.5 1 Miles

April, 2025



LCDC Solar Rulemaking

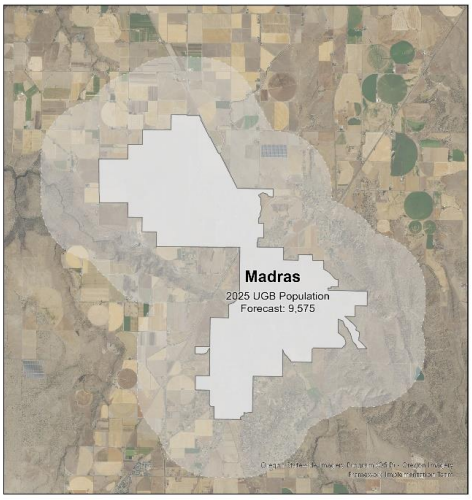
Land Potential Near Urban Growth Boundaries

One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 0

N
0 0.75 1.5 Miles

April, 2025



LCDC Solar Rulemaking

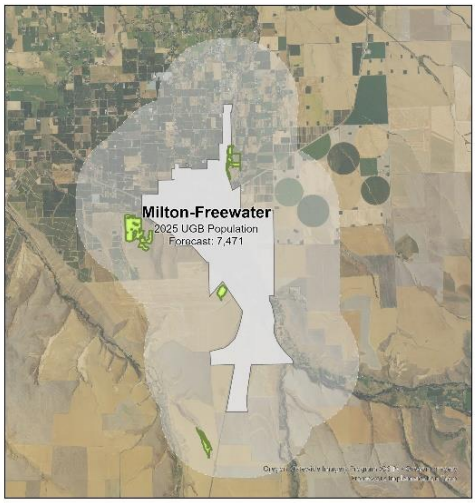
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 109

N
0 0.5 1 Miles

April, 2025



LCDC Solar Rulemaking

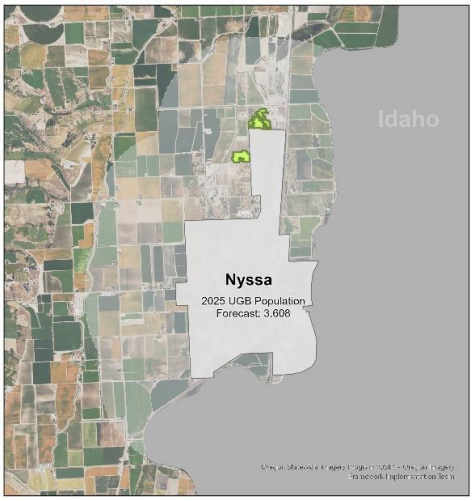
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 32

N
0 0.5 1 Miles

April, 2025



ONE-MILE BUFFERS AROUND URBAN GROWTH BOUNDARIES OF CITIES GREATER THAN 2,500

LCDC Solar Rulemaking

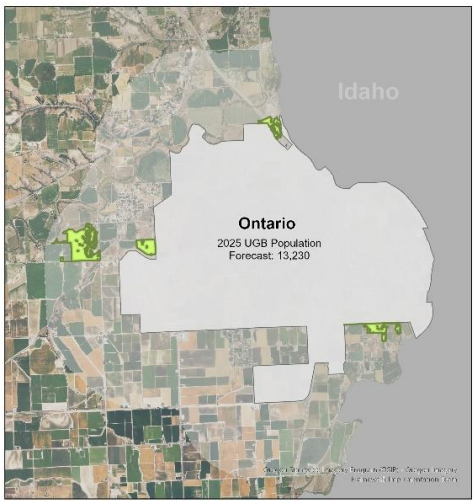
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 166

N
0 0.5 1 Miles

April, 2025



LCDC Solar Rulemaking

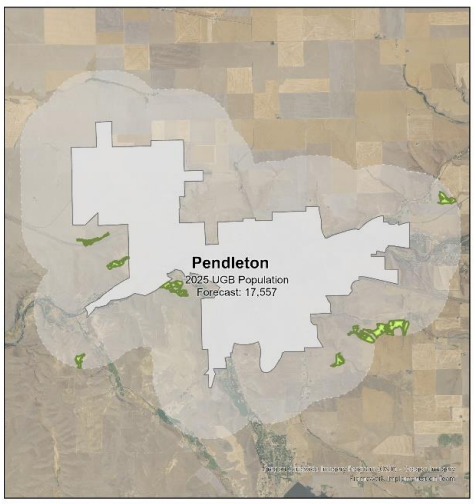
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 213

N
0 0.75 1.5 Miles

April, 2025



LCDC Solar Rulemaking

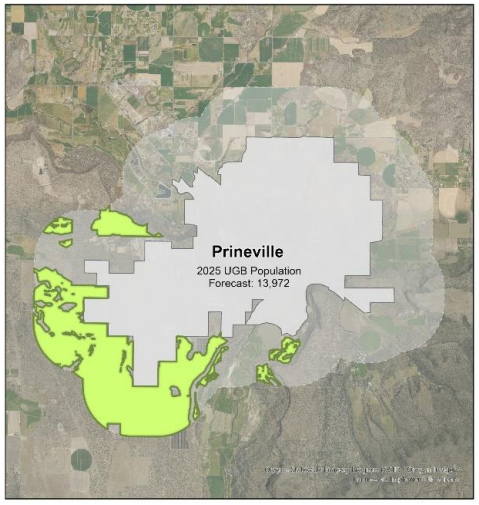
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 3,903

N
0 0.75 1.5 Miles

April, 2025



LCDC Solar Rulemaking

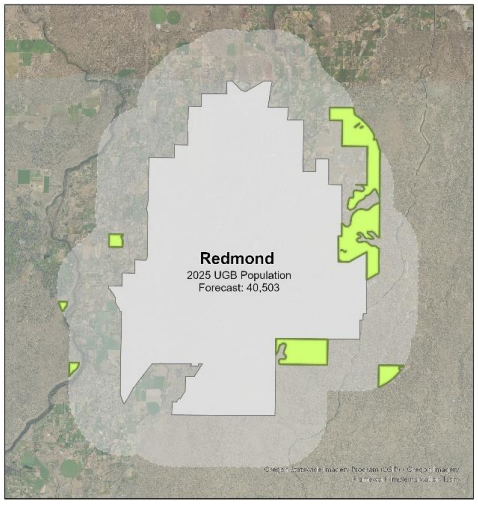
Land Potential Near Urban Growth Boundaries

Potentially Eligible Areas 10+ Acres
One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 1,367

N
0 0.75 1.5 Miles

April, 2025



LCDC Solar Rulemaking

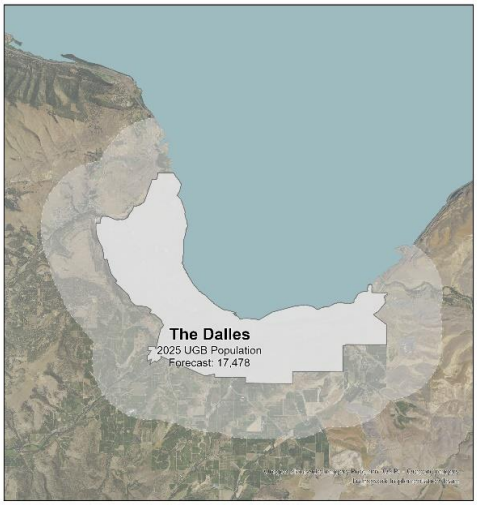
Land Potential Near Urban Growth Boundaries

One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 0

N
0 0.75 1.5 Miles

April, 2025



LCDC Solar Rulemaking

Land Potential Near Urban Growth Boundaries

One-Mile Buffer
Urban Growth Boundary

Sum of potentially eligible acres : 0

N
0 0.75 1.5 Miles

April, 2025