

# **EASTERN OREGON SOLAR SITING RULEMAKING ADVISORY COMMITTEE MEETING PACKET #6**



**TO:** Solar Siting Rulemaking Advisory Committee Members  
**FROM:** Adam Tate, Renewable Energy Planner  
**SUBJECT:** Rulemaking Advisory Committee (RAC) Meeting Packet #6

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Dear Solar Siting Rulemaking Advisory Committee Members,

Thank you again for bringing your diverse experience and expertise to this rulemaking process and for a good fifth RAC meeting in Moro. Our focus now turns to our all-virtual RAC meeting on Tuesday, October 1st. This meeting will feature updated recommendations from our Technical Advisory Committees and how they relate to new draft rule language for Division 23, as well as Divisions 33, 6, and 4. We will also look at the required Fiscal, Housing, and Racial Equity Impact Statements that have been drafted by DLCD consultant Johnson Economics.

Unlike our previous meetings, there will be no tour aspect to this meeting as the meeting will be held virtually via Zoom. Initially we had considered making this a mostly virtual meeting and offering the availability of joining us in person at the DLCD office in Salem, but our facilitation team has advised us that an all-virtual meeting will be both more productive and equitable for all participants. We do however look forward to hosting you all soon for the final RAC meeting on November 5<sup>th</sup> and encourage you to attend that meeting in person if you are able.

## **RAC Meeting Packet Contents:**

1. Cover Memo
2. Agenda
3. Summary from fifth RAC Meeting
4. Jon's Awesome Venn Diagram
5. Refresher on HB 3409
6. Draft Rule Updates for Divisions 23, 33, 4, and 6
7. Impact Statements
8. Results from County Planning Director Survey
9. Results from RAC Member Survey with Staff Commentary

To attend the all-virtual meeting please use the following Zoom link:

<https://kearnswest.zoom.us/j/89818305533?pwd=y419i0C440Ot4fG6rbkdbHdmvpg6e5.1>

Meeting ID: 898 1830 5533

Passcode: 085502

Casaria Taylor will be providing support for the Zoom meeting.  
[Casaria.taylor@dlcd.oregon.gov](mailto: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

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## AGENDA

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

#### Date and Time

Tuesday, October 1, 2024, from 9:00 am – 4:00 pm PT (**may go to 5:00 pm if necessary**)

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

#### Desired Outcomes

- Continued refinement of draft rule language.
- Shared understanding of Technical Advisory Committee work and outcomes.

**Note: Agenda may change slightly as some segments may need to be rearranged, if needed an update will be provided.**

#### Tuesday, October 1, 2024, Solar RAC Meeting Agenda

9:00 – 9:10 am (10 min)	<b>Welcome, Opening Remarks, and Agenda Review</b>	Jamie Damon, Kearns & West Facilitator
9:10 – 9:30 am (20 min)	<b>Impact Statements Review</b> <ul style="list-style-type: none"><li>• Group review of the Fiscal, Housing &amp; Racial Impact Statements</li></ul>	All
9:30 - 10:00 am (30 min)	<b>Survey Outcomes</b> <ul style="list-style-type: none"><li>• Brief overview of survey results from county planning director survey &amp; RAC survey</li></ul>	All
10:00 – 10:30 am (30 min)	<b>Division 23 – Opting In, Subsection (14)</b> <ul style="list-style-type: none"><li>• Review and respond to updated subsection (14) Language.</li></ul>	All
10:30 – 10:40 am (10 min)	<b>Break</b>	All



10:40 – 12:30 pm (110 min)	<b>Division 23 – Mitigation, Subsections (11) &amp; (12)</b> <ul style="list-style-type: none"> <li>• Wildlife</li> <li>• Agriculture</li> <li>• Forestry</li> <li>• Historic, Cultural or Archeological Resources</li> </ul>	
12:30 – 1:00 pm (30 min)	<b>Lunch Break</b>	All
1:00 – 1:45 pm (45 min)	<b>Division 23 – Program to Achieve the Goal, Subsection (13)</b> <ul style="list-style-type: none"> <li>• Military Training Routes</li> <li>• Community Benefits</li> <li>• Historic, Cultural or Archeological Resources</li> <li>• Divisions 33 and 6</li> <li>• Local Provisions</li> </ul>	
1:45 – 2:30 pm (45 min)	<b>Division 23 – Determination of Significance, Subsections (6) &amp; (7)</b> <ul style="list-style-type: none"> <li>• Quality, Quantity, and Location</li> <li>• Areas eligible without mitigation</li> <li>• Areas eligible with mitigation</li> <li>• Areas not eligible</li> </ul>	All
2:30 - 2:40 pm (10 min)	<b>Break</b>	All
2:40 – 3:10 pm (30 min)	<b>Divisions 4 &amp; 6</b>	
3:10 - 3:50 pm (40 min)	<b>Division 33</b>	All
3:50 – 4:00 pm or later if needed. (10 min)	<b>Closing and Next Steps</b>	Jamie Damon, Kearns & West
4:00 – 5:00 pm	<b>Meeting Adjourn</b>	



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

August 28, 2024, RAC Meeting #5

Location: Burnet Building, 66365 Lone Rock Rd, Moro, OR 97039, and Zoom Webinar. An optional tour was from 1:00-4:00 pm the day before the meeting.

This meeting was livestreamed and recorded, available for viewing at <https://www.youtube.com/Oregondlcd>. Therefore, this summary will remain at a high-level overview. Please review the recording and archived meeting packet for details and presentation slides.

## Meeting Attendees

### RAC Member Attendees:

- Travis Sellers, Pendleton Building and Construction Trades Council
- April Snell, Oregon Water Resources Congress
- Thad Ekin, Oregon Wheat Growers League
- Anahi Segovia Rodriguez, Verde
- Andrew Mulkey, 1000 Friends of Oregon
- Mike W. McArthur, Community Renewable Energy Association
- Elaine Albrich, Davis Wright Tremain
- Greg Corbin, Green Diamond Resource Company
- Commissioner James Williams, Lake County
- Michael Eng, Lostine Fire Wise
- Max Yoklic, New Sun Energy
- Marc Hudson, Oregon Agricultural Trust
- Andrea Kreiner, Oregon Association of Conservation Districts
- Mike Totey, Oregon Hunters Association
- Damien Hall, Oregon Solar+Storage Industries Association
- Steve Knudsen, Retired - Bonneville Power Association
- Emily Griffith, Renewable Northwest
- Bill Richardson, Rocky Mountain Elk Foundation
- Lauren Link, The Nature Conservancy
- Jack Southworth, Oregon Cattlemen's Association

### Ex-Officio Attendees:

- Todd Farmer, Oregon Military Department
- Commissioner Mark Bennett
- Jim Johnson, Oregon Department of Agriculture
- Dan Hubner, Oregon Department of Forestry
- Chad Higgins, Oregon State University (OSU)



#### DLCD Staff Attendees:

- Angie Brewer, Oregon Department of Land Conservation and Development (DLCD)
- Dawn Marie Hert, Oregon Department of Land Conservation and Development (DLCD)
- Gordon Howard, Oregon Department of Land Conservation and Development (DLCD)
- Jon Jinings, Oregon Department of Land Conservation and Development (DLCD)
- Adam Tate, Oregon Department of Land Conservation and Development (DLCD)
- Casaria Taylor, Oregon Department of Land Conservation and Development (DLCD)

### Welcome, Opening Remarks, and Agenda Review

Jamie Damon, Kearns & West, introduced herself as a neutral third-party facilitator and facilitated introductions between RAC members.

Mike McArthur welcomed the RAC to Moro County and provided opening remarks.

Jack Southworth reflected on and shared highlights about the tour including discussions regarding soil types and farmlands.

Jamie and a few RAC members provided an overview of the August 27 public meeting including discussions regarding siting concerns, high-value farmland and soil definitions, government agency jurisdictions, environmental and social impacts, and land use processes.

Jamie provided an overview of the meeting agenda and objectives and asked if anything was missing.

RAC members shared the following:

- Requests for providing more detail on what specifically DLCD would like to talk through, such as subcategories of issues. This would help RAC members be more prepared to speak in meetings.
- Request to hear Technical Advisory Committee (TAC) progress and conversations.
- Requests for a work plan to know how many meetings are left and how time will be allocated.

### Division 33, Agricultural Lands Rule

Jon Jinings, DLCD, reviewed Division 33, including definitions on agrivoltaics, temporary workforce housing, review standards, lands, and permitting. He reviewed subsection 38 highlighting the proposed changes that reflected RAC member feedback.

The RAC had the following clarifying questions:

- RAC member question: Would these rules apply throughout Oregon or only to Eastern Oregon?
  - DLCD response: Eastern Oregon.



Jamie facilitated a discussion between RAC members. Key themes of the RAC's discussion include:

- County implementation. RAC members asked if baseline standards could be changed and what would happen if counties did not choose to implement these rules. DLCD replied that the legislature directed standards and DLCD wants to create a rule the counties would like to implement.
- Energy Facility Siting Council (EFSC) and DLCD jurisdiction. DLCD has authority under 320 acres and EFSC has authority over 320 acres. RAC members discussed amending the threshold to provide siting standards regardless of jurisdiction. DLCD staff shared that EFSC will apply DLCD's threshold.
- Consensus: Remove workforce housing. RAC members agreed to remove workforce housing.
- Agrivoltaics. RAC members discussed concerns relating to agrivoltaics including farm planning and income predictability. RAC members discussed balancing agrivoltaics with farm income and agricultural land use. Some RAC members noted that agrivoltaics will need large plots and that agrivoltaics will decrease farming revenue. A few RAC members suggested moving the discussion to the land use TAC.
  - Metrics. Some RAC members suggested using a percentage of land dedicated to solar, such as 90%, as the metric. Other RAC members suggested using metrics such as bushels, tonnage, or farm income. One RAC member shared that income metrics could lead to loopholes, and another RAC member suggested scaling the metrics based on agricultural type.
  - Definitions. RAC members discussed what definitions should be included in agrivoltaics including high-value farmland, irrigated lands, and soil classification. A RAC member suggested adopting definitions that are already in use in other states and national bills.

## Division 33, Permit Exemption

Jon reviewed Division 33 subsection (s). Jamie facilitated a discussion between RAC members. Key themes of the RAC's discussion include:

- Length and amount of permit exemptions. RAC members discussed how long a permit exemption should last and how many extensions there should be. Some RAC members suggested an eight-year permit exemption, with two, two-year extensions. Other members suggested a six-year permit exemption, with two, two-year extensions, or a four-year exemption, with two, two-year extensions.
- Removal of subsections (c) and (d). Some RAC members suggested removing subsections (c) and (d) in favor of two automatic extensions.
- Consensus: general support for subsections (a) and (b). RAC members came to a consensus in agreement on subsections (a) and (b).



Jon shared that DLCD staff will review the different viewpoints regarding permit exemptions and update the language for further discussion at a future meeting.

### Division 33, Standards

Jon reviewed Division 33, subsections (E) – (G). Jamie facilitated a discussion between RAC members. Key themes of the RAC’s discussion include:

- 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.
- Refinement for clarity. RAC members overall agreed that the concepts were good but needed refinement. They suggested that DLCD staff review the language and define vague items, including wildfire language, to ensure it aligns with objective standards. Some RAC members suggested referencing Oregon Department of Geology and Mineral Industries (DOGMAI) language on standards and removing references to EFSC.
- Redundancy. Some RAC members reflected that there are many codes, permits, and wildfire standards and that any rule language and standards should not be redundant or duplicative.

### Division 33, Size

Jon reviewed Division 33, subsections (q) – (r). Jamie facilitated a discussion between RAC members. Key themes of the RAC’s discussion include:

- EFSC and DLCD jurisdiction. RAC members circled back to their discussion on EFSC and DLCD jurisdiction and thresholds. DLCD staff reminded the RAC they cannot exceed their jurisdiction.
- Mitigation TAC. RAC members shared it was difficult to have this conversation without having the Mitigation TAC finish their work. RAC members agreed to hold this conversation until then.

### Division 23, Subsection 13

Jon reviewed Division 23, subsections 13. Jamie facilitated a discussion between RAC members. Key themes of the RAC’s discussion include:

- County opt-in process. RAC members asked about the rationale for the current county opt-in process. DLCD staff responded that this was the method they were most familiar with, and the goal was to indicate that official action from the county would be needed to opt-in and for the decision to have a public input component. RAC members discussed different pathways for the process, including adopting specific language and making the decision independent of each county’s land use process.





- EFSC and DLCD. RAC members asked what happens if they go directly to EFSC with a project. EFSC responded that they will apply their own standards and laws. DLCD and EFSC agreed to meet and discuss standards.

### Division 23, Subsection 7

Jon reviewed Division 23, subsection 7 and shared updates on the Wildlife and Agricultural/Forestry TACs. Jamie facilitated a discussion between RAC members. Key themes of the RAC's discussion include:

- Wildlife. RAC members shared concerns about wildlife impacts and displacement including that the language is a compromise for conservation, there is overlap between wildlife corridors and transmission lines, and potential for cumulative impacts.
- Cultural resources. DLCD staff noted that subsection G was an attempt to align language with DLCD's new tribal consultation rules. A RAC member suggested moving cultural areas under mitigation as they are on every site.
- Forestry. RAC members shared concerns about wildfire loss classifications, including forest stand and soil health. RAC members noted that burdened lands are difficult to define and there are other policy reasons to have land free from solar panels.
- Agriculture. RAC members noted that irrigation or fallow land is not a determination of land productiveness. RAC members discussed Conservation Reserve Program (CRP) lands.
- Maps. Some RAC members suggested it would be beneficial to have a map to showcase the rules, other RAC members noted not everything can be mapped and maps need to be updated regularly. DLCD staff noted that if a county does not opt-in, they would not have to develop a map.
- Implementation. RAC members and DLCD staff discussed the differences in implementation between Goal 5 and Goals 3 and 4, and different scenarios where exceptions would be beneficial. DLCD staff clarified the purpose of this subsection is to respond to the legislatures request for site characteristics.

### Division 23, Community Benefits

Jon reviewed Division 23, subsection (g), and shared updates on the Community Benefits TAC. Jamie facilitated a discussion between RAC members. Key themes of the RAC's discussion include:

- Community outreach. A RAC member suggested adding language to not only conduct community outreach but to also respond to it. RAC members reflected on the importance of community buy-in and one RAC member suggested having a community meeting ahead of the next RAC meeting.
- Community benefits. RAC members reflected that rural communities are providing resources that benefit the entire state and therefore should also receive benefits in return. 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. Regarding payments, RAC



members recommended improving how legislative dollars are allocated. RAC members suggested having benefits that provide a variety of options for each county and community to decide what is best for them.

## Closing and Next Steps

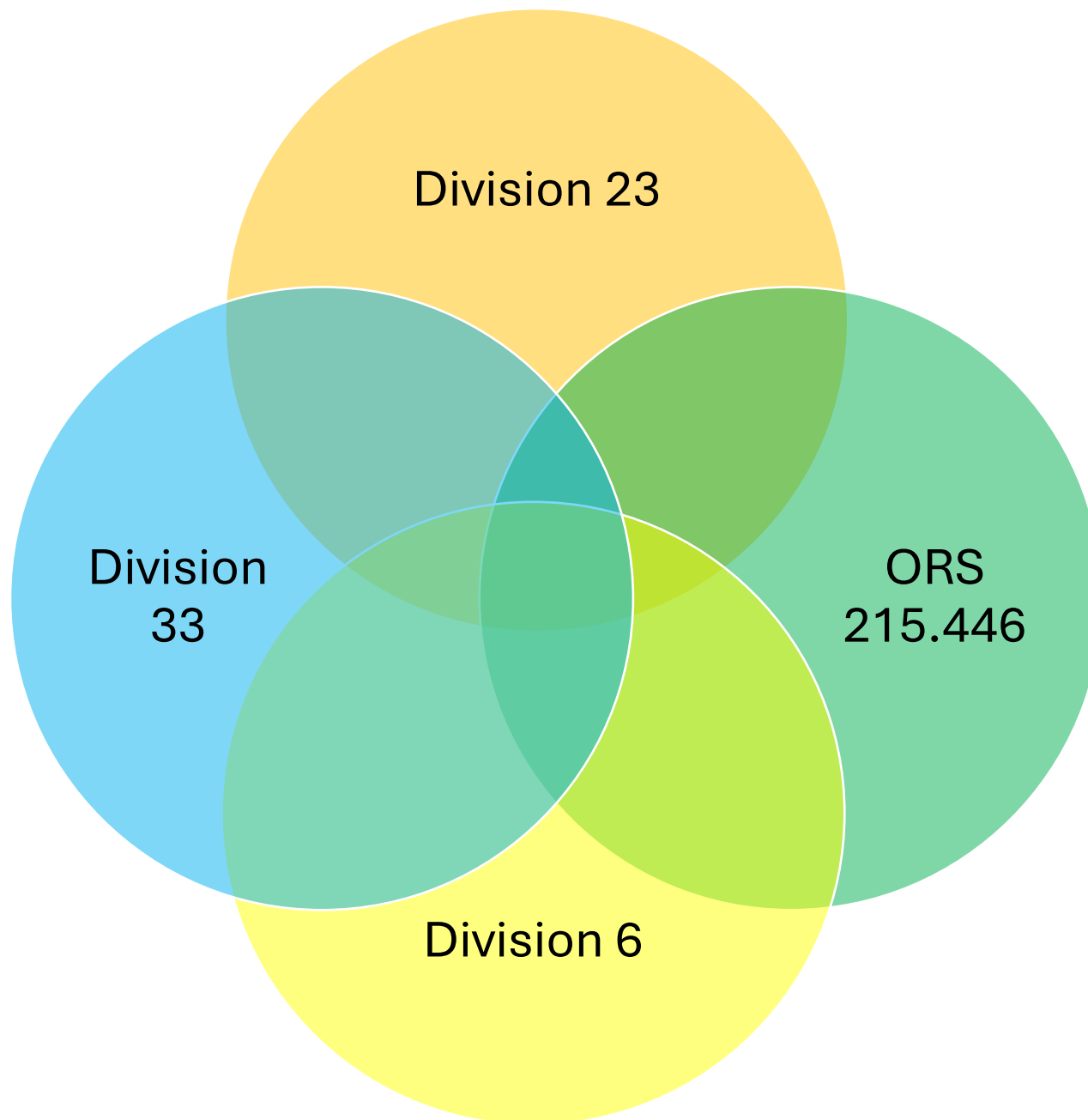
Jamie thanked everyone for their participation and reviewed the next steps.

Next steps:

- DLCD to incorporate feedback and share updated draft rule language along with a survey.
- DLCD and FESC to meet and discuss standards.
- TACs to move their work forward.
- RAC to discuss mitigation of Division 23 subsection 7b.
- RAC to receive a compiled map exercise.

## Meeting Adjourn

The meeting adjourned at 4:30 pm PT.



## **FINDING OPPORTUNITIES AND REDUCING CONFLICT IN SITING PHOTOVOLTAIC SOLAR POWER GENERATION FACILITIES**

SECTION 35. (1) On or before November 3, 2023, the Land Conservation and Development Commission shall adopt rules to allow a local government to consider a photovoltaic solar power generation facility a rural industrial use for purposes of justifying a reason for an exception under ORS 197.732 (2)(c)(A).

(2) On or before July 1, 2025, the commission shall adopt rules:

(a) Establishing criteria through which local governments may be permitted or required to allow the siting of a photovoltaic solar power generation facility, including criteria that consider:

(A) Potential conflicts with other resource lands; and

(B) Soliciting public feedback from neighboring landowners or residents; and

(b) Identifying the characteristics of lands in Eastern Oregon, as defined in ORS 321.700, best suited for counties to allow, encourage and incentivize photovoltaic solar power generation facilities, based on consideration of:

(A) The land's suitability for contributing to the state's clean energy goals;

(B) Site characteristics, resource potential, proximity to current and future transmission access and locations for potential interconnection; and

(C) The ability to readily avoid negative impacts on natural resources, forestry, habitat, agriculture, community needs and historic, cultural or archeological resources, or to readily minimize or mitigate those negative impacts.

SECTION 36. The Department of Land Conservation and Development may enter into intergovernmental agreements under ORS chapter 190 with other state agencies, tribal governments and counties, for the purposes of:

(1) Supporting the Land Conservation and Development Commission in adopting rules under section 35 of this 2023 Act;

(2) Furnishing information or technical assistance;

(3) Providing feedback on the membership and work of the Rules Advisory Committee for Siting Photovoltaic Solar Power Generation Facilities established under section 37 of this 2023 Act;

(4) Identifying opportunities to streamline permitting and review processes across and between state agencies; and

(5) With regard to tribal governments, consulting on how best to protect historic, cultural or archeological resources without revealing sensitive information.

SECTION 37. (1) The Rules Advisory Committee for Siting Photovoltaic Solar Power Generation Facilities is established to serve as an advisory committee, as described in ORS

183.333, to the Land Conservation and Development Commission in adopting administrative rules under section 35 (2) of this 2023 Act.

(2) The Department of Land Conservation and Development shall appoint the members of the rules advisory committee. In appointing members, the department shall solicit and consider recommendations for membership from:

- (a) Public bodies;
- (b) Tribal governments;
- (c) Federal and state agencies;
- (d) Energy, community and conservation advocates; and
- (e) Individuals who have expertise in the energy or natural resources industries, including renewable energy developers, utilities and agricultural producer associations.

(3) The membership of the rules advisory committee shall consist of at least 17 members, including:

- (a) At least two members representing a tribal government or county;
- (b) At least one member who represents public bodies;
- (c) At least one member who represents small-scale renewable energy developers;
- (d) At least one member who represents large-scale renewable energy developers;
- (e) At least one member who has expertise in community renewable energy development;
- (f) At least one member who has expertise in renewable energy siting, policy or planning;
- (g) At least one member who has expertise in transmission siting;
- (h) At least one member who represents electric utilities, as defined in ORS 757.600;
- (i) At least one member who represents the labor interests of the clean energy or renewable energy workforce;
- (j) At least one member who represents environmental justice communities, as defined in ORS 469A.400;
- (k) At least one member who represents owners of irrigated or dryland farmland or rangeland;
- (L) At least one member who has expertise in habitat conservation, preservation and restoration;
- (m) At least one member who has expertise in land and water use;
- (n) At least one member who has expertise in rural economic development;
- (o) At least one member who has expertise in industrial forestland management; and
- (p) At least one member who has expertise in small woodland management.

(4) In addition to its duties under subsection (1) of this section, 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.

(5)(a) On or before September 15, 2025, the Department of Land Conservation and Development shall provide an interim copy of the report under subsection (4) of this section to an appropriate interim committee of the Legislative Assembly in the manner provided in ORS 192.245.

(b) On or before December 31, 2025, the department shall provide a copy of the final report under subsection (4) of this section to, and seek feedback from:

(A) Regional energy planning entities;

(B) The Energy Facility Siting Council;

(C) The Environmental Justice Council;

(D) The Land Conservation and Development Commission

(E) The State Department of Fish and Wildlife;

(F) The State Department of Agriculture; and

(G) Relevant federal agencies, including the United States Department of Defense, the Bureau of Land Management, the United States Forest Service and the Bonneville Power Administration.

(6) A majority of the members of the rules advisory committee constitutes a quorum for the transaction of business.

(7) Official action by the rules advisory committee requires the approval of a majority of the members of the rules advisory committee.

(8) The rules advisory committee may adopt rules necessary for the operation of the rules advisory committee and form subcommittees.

(9) In addition to other scheduled meetings, the rules advisory committee shall also meet at least four times a year in different parts of this state where there is considered, planned or ongoing renewable energy and transmission development.

(10) In performing their duties under this section, the Department of Land Conservation and Development and the rules advisory committee shall coordinate with and support any efforts to establish a statewide energy strategy.

(11) The department shall contract with a third party or parties to provide support to the rules advisory committee, including support related to:

(a) Facilitating and coordinating meetings; and

(b) Furnishing data, maps and technical assistance.

(12) A member of the rules advisory committee is entitled to compensation and expenses as provided in ORS 292.495.

SECTION 37a. Sections 36 and 37 of this 2023 Act are repealed on January 2, 2026.

June 10, 2023

Dear Co-Chairs Sanchez and Steiner, Joint Committee on Ways and Means, and Co-Chairs Pham and Dembrow, Subcommittee on Natural Resources:

I wanted to offer additional context and intent, for the record, on Sections 35-37 of HB 3409. I hope this will be helpful in supporting the implementation of what can often be a complicated and intricate area – land use rulemaking – to accomplish the bill's overarching policy intent as indicated in its title "Finding Opportunities and Reducing Conflict in Utility Scale Photovoltaic Solar Siting."

To accomplish this, Section 35 directs the Land Conservation and Development Commission to adopt administrative rules and specifies items to be included in these efforts. Under Section 35 it is intended, among other things, that the Land Conservation and Development Commission will consider and adopt, as needed, and based upon recommendations from a Rulemaking Advisory Committee (RAC), revisions to administrative rules that implement Goal 2 (Exceptions Process), Goal 3 (Agricultural Land), Goal 4 (Forest Land), and Goal 5 (Renewable Energy Resources).

Revisions to the Goal 5 rule are intended to be the centerpiece of the necessary rulemaking(s). Revisions to the Goal 5 rule are expected to include a "safe-harbor" option, which would allow for certain solar projects to not require other goal exceptions, and direction for counties interested in creating more detailed local programs. Both approaches – a "safe-harbor" or other Goal 5 revisions – are intended to be voluntary and allow counties to opt in as they see fit.

It is also the intent that administrative rules regarding facility siting adopted under Section 35 would include criteria based on broad consideration of community priorities and benefits. Equally, it is the intent that those adopted rules would also include connectivity of agricultural and forest lands and wildlife habitat areas in its consideration of natural resources and resource lands.

Section 37 provides direction for the establishment of a Rulemaking Advisory Committee (RAC) to assist the Land Conservation and Development Commission in carrying out their responsibilities under HB 3409. It is intended that the Department of Land Conservation and Development will initiate consultation with Tribal governments in advance of convening the RAC. Additionally, it is the intent that counties should be a central piece of the process and DLCDD engagement, including through county membership on the RAC.

Thank you for your consideration.

Pam Marsh  
State Representative  
House District 5



## AGENDA ITEM # 7

### NOVEMBER 2-3, 2023 - LCDC MEETING

#### ATTACHMENT C

HB 3409, also known as the Climate Omnibus Package, was passed by the Oregon Legislature in 2023. Sections 35- 37 of HB 3409 are titled “Finding Opportunities and Reducing Conflict in Utility Scale Photovoltaic Solar Siting.” These three sections include specific direction to the Land Conservation and Development Commission (commission) to promulgate administrative rules designed to assist counties with siting considerations for utility-scale photovoltaic solar facilities. Section 37(2) calls for the Department to appoint a diverse Rules Advisory Committee (RAC) to help with necessary administrative rule development. The minimum required RAC membership is described in Section 37.(3), and includes representatives from tribes, local governments, renewable energy developers and experts, public utilities, labor, environmental justice, agriculture, environmental protection, forestry, and economic development

Department staff have developed a draft charge to aid in the implementation of HB 3409, Sections 35-37. It is intended that the charge will support the RAC’s efforts by serving as an expression of commission expectations. Should there be confusion or disagreement among the RAC, the charge will be looked to for guidance. The following draft language has been reviewed by DLCD’s Rural Team, Policy Team, Community Involvement Advisory Committee (CIAC), and the Local Officials Advisory Committee (LOAC).

#### **Proposed charge:**

*Members of the Rules Advisory Committee (RAC) will provide assistance to agency staff to analyze, draft, and recommend Oregon Administrative Rules (OARs) that faithfully implement the legislative intent and direction outlined in Sections 35 thru 37 of House Bill 3409 (2023 Session). The Land Conservation and Development Commission will consider administrative rules that:*

- *Are informed by consultation with Tribal Governments regarding how best to protect historic, cultural or archeological resources without revealing sensitive information.*
- *Are informed by public information sessions to be offered in conjunction with Rule Advisory Committee (RAC) meetings held in Eastern Oregon communities.*
- *Establish a voluntary “safe harbor” option in OAR chapter 660, division 23 allowing counties to identify preferred locations for siting photovoltaic solar power generation facilities.*
- *Establish guidance in OAR chapter 660, division 23 for counties that decline using the “safe harbor” option in favor of developing a more detailed local program to identify preferred locations for siting photovoltaic solar power generation facilities.*
- *Identify that areas considered “significant” for photovoltaic solar power generation\_ for purposes of OAR chapter 660, division 23 are to be designated based on having an adequate estimated Annual Solar Utility-Scale Capacity Factor, and reasonable proximity to transmission, as well as the ability to entirely or substantially avoid other important resources or values.*
- *Include area selection criteria based on broad consideration of community priorities and benefits. . Among other things, consideration will be given to possible impacts to city growth scenarios, future housing availability, and urbanization strategies."*
- *include connectivity of agricultural and forest lands and wildlife habitat areas in its consideration of natural resources and resource lands.*

- *Include revisions to OAR chapter 660, Divisions 6 and 33 identifying acreage thresholds for photovoltaic solar power generation facilities considered under the newly established provisions of OAR chapter 660, division 23 that are larger than would otherwise be allowable without an exception to Goals 3 or 4.*
- *Include revisions to any applicable administrative rules are necessary to carry out the mandate of “Finding Opportunities and Reducing Conflict in Utility Scale Photovoltaic Solar Siting.” Applicable rules include, but are not limited to, OAR chapter 660, divisions 4, 6, 23, and 33.*
- *Include measures designed to mitigate impacts to commercial farming, ranching and forestry activities on lands protected under Goals 3 and 4. Mitigation measures should provide certainty for applicants as well as decision makers.*

If approved, this charge would lead the document of operating principles for the Rules Advisory Committee as they begin their work.

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

**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 subsections (5) through (15). Furthermore, 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 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 account for conflicts with the variety of values and resources identified for consideration pursuant to Section 35.(2) of HB 3409 (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 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.

(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. 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.

(c) "Military Training Route (MTR)" means airspace of defined vertical and lateral dimensions established for the conduct of military flight training at indicated airspeeds in excess of 250 knots.

(d) "Oregon Renewable Energy Siting Assessment (ORESAs)" 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 & Development and Oregon State University's Institute for Natural Resources. ORESAs collected

1 data and information through assessments to develop a report and mapping tool that provide  
2 an understanding of the opportunities and constraints that come with renewable energy and  
3 transmission development in Oregon. The ORESA mapping tool is housed on Oregon Explorer.

4 (e) "Photovoltaic solar resource areas" are lands typically comprised of multiple ownerships  
5 that are particularly well suited for the siting of photovoltaic solar power generation facilities  
6 because they have been determined to be significant pursuant to subsection (7) of this rule.  
7 Multiple photovoltaic solar energy generation facilities may be located within a photovoltaic  
8 solar resource area.

9 (f) "Photovoltaic solar resource site" is a property specific location that is particularly well  
10 suited for the siting of a photovoltaic solar power generation facility because it has been  
11 determined to be significant pursuant to subsection (7) of this rule. Photovoltaic solar resource  
12 sites include a single approval for photovoltaic solar energy development residing outside of a  
13 photovoltaic solar resource area.

14 (g) "Significant photovoltaic solar resource" means lands that have the necessary characteristics  
15 to support successful photovoltaic solar energy generation while also avoiding, minimizing or  
16 providing compensatory mitigation for conflicts with the variety of other important resources  
17 as identified at subsection (7). A significant photovoltaic solar resource may be identified as a  
18 photovoltaic solar resource area or considered as a photovoltaic solar resource site.

19 (h) "Transmission Line" has the meaning stated at ORS 758.012(b), which is a linear utility  
20 facility by which a utility provider transmits or transfers electricity from a point of origin or  
21 generation or between transfer stations.

22 (3) Local governments may amend their acknowledged comprehensive plans to designate  
23 photovoltaic solar resource areas or establish a photovoltaic solar resource site or sites using  
24 the standards and procedures in OAR 660-023-0030 through 660-023-0050.

25 (4) Rather than using the standard process described at subsection (3) above, counties in  
26 eastern Oregon may instead choose the following process identified in subsections (5) thru (14)  
27 to designate photovoltaic solar resource areas or establish a photovoltaic solar resource site or  
28 sites.

29 (5) A local government may use data from reliable online mapping tools, such as that included  
30 in the Oregon Renewable Energy Siting Assessment (ORESAs), to inform determinations made  
31 under subsections (6) and (7).

32 (6) Quality, Quantity, and Location. In order to be considered significant pursuant to subsection  
33 (7), lands under consideration as a potential photovoltaic solar resource area or a photovoltaic  
34 resource site must first be determined by the local government to have adequate site  
35 characteristics, resource potential, and proximity to current and future transmission access and

locations for potential interconnects necessary to support successful photovoltaic solar development. A determination under this subsection may be based on substantial evidence in the record, or, in the alternative a county may rely on 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% or less.

(b) An estimated Annual Solar Utility-Scale Capacity Factor of 19-21 percent or greater.

(c) Are located:

(A) Within 2 miles of a Transmission Line with a rating of up to 69 KV; or

(B) Within 5 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 to satisfy subsection (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, characterized by ODFW mitigation policy 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 subsection (11) and, if applicable, the compensatory mitigation requirements of subsection (12) of this rule.

(A) Wildlife habitat identified by ODFW as Category 2 that is not otherwise limited by subsection (7)(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 Oregon Renewable Energy Siting Assessment (ORESAs) 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 subsection may be deferred to a property specific assessment but must be done in consultation with ODFW;

(B) Wildlife habitat identified by ODFW 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 subsection 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 the Oregon State Historic Preservation Office (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.

1 (B) Priority Wildlife Connectivity Areas as designated by the Oregon Department of Fish and  
2 Wildlife (ODFW). The exact location of wildlife habitat may be refined during consideration of a  
3 specific project but must be done in consultation with ODFW.

4 (C) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. The exact  
5 location of wildlife habitat may be refined during consideration of a specific project but must be  
6 done in consultation with ODFW.

7 (D) Wildlife habitat identified by ODFW as Category 1. The exact location of wildlife habitat may  
8 be refined during consideration of a specific project but must be done in consultation with  
9 ODFW.

10 (E) High-Value Farmland Soils as described at OAR 660-033-0020(8)(a).

11 (F) High-Value Farmland as defined at ORS 195.300(10) except as provided under subsection  
12 (7)(b)(F).

13 (G) Agricultural lands protected under Goal 3 that were receiving water for purposes of  
14 irrigation on January 1, 2024.

15 (H) Forest lands protected under Goal 4 with a capability of producing greater than 85 cubic  
16 feet wood fiber/acre/year.

17 (I) Sites that are at least 50 percent comprised of Historic, Cultural or Archeological Resources.  
18 In the absence of easily obtainable data, a determination regarding the location of historic,  
19 cultural or archeological resources may be deferred to a property specific assessment but must  
20 be done in consultation with the Oregon State Historic Preservation Office (SHPO) and any  
21 federally recognized Indian Tribes that may be affected by the application.

22 (J) Lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660,  
23 division 21; or

24 (K) Lands within one mile of the urban growth boundary of a city with a population of 10,000 or  
25 greater; and

26 (L) Other areas, if any, determined by a local government.

27 (8) Conflicting uses. A local government may choose not to identify conflicting uses as would  
28 otherwise be required by the standard process. In the alternative, a local government may  
29 choose to conduct a more detailed analysis that may lead to the identification of conflicting  
30 uses.

31 (9) Economic, Social, Environmental and Energy (ESEE) consequences. A local government may  
32 choose not to limit or prohibit conflicting uses on nearby or surrounding lands without further  
33 analysis. In the alternative, a local government 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 subsections (8), or (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) Compensatory mitigation requirements of this subsection shall assure that the approved measures are of suitable durability and proximity, and result in no net loss of the resource.

(a) Necessary compensatory mitigation for wildlife habitat will follow the requirements of the ODFW mitigation strategy

(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 subsection (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 monetary amount shall be approved by the county and will be 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 local government 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

1 within a Military Special Use Airspace or a Military Training Route with a proposed floor  
2 elevation of 500 feet above ground level (AGL) or less shall include a glint and glare analysis for  
3 the applicable utilized military airspace. Any measures necessary to avoid possible conflicts  
4 with low flying aircraft identified in the glint and glare analysis will be developed in  
5 coordination with the United States Department of Defense, described in the application  
6 materials, and attached as conditions of approval to the local decision.

7 (b) Community Needs and Benefits. All applications for a photovoltaic solar power energy  
8 generation facility shall address community needs and benefits by identifying how the project  
9 will make contributions, financial and otherwise, that serve to help improve a community's  
10 social health, well-being, and functioning. The contributions will be in addition to property tax  
11 revenues and shall be both meaningful and reasonable. A county may approve a method or  
12 methods proposed by the applicant when substantial evidence in the record demonstrates that  
13 the criteria of this subsection has been satisfied. In the alternative, a county may rely on the  
14 following items, which will be considered in all instances to comply with the criteria of this  
15 subsection:

16 (A) The applicant has conducted detailed public outreach activities in advance of submitting a  
17 complete application; and

18 (B) The applicant commits to contributing to a local fund or funding mechanism in an amount  
19 that is reasonably estimated to represent 0.0025 percent of the project budget. The necessary  
20 contribution shall be made prior to the acquisition of building permits; or

21 (C) The applicant contributes to a local fund or funding mechanism in an amount that is  
22 reasonably estimated to represent 20 percent of the savings in time value and direct costs of  
23 not going through the state process. The necessary contribution shall be made prior to the  
24 county granting final approval; or

25 (D) The county has established a Strategic Investment Program (SIP) or Payment in Lieu of Taxes  
26 (PILOT) strategy that dedicates one percent of county revenues generated in lieu of property  
27 taxes to be provided to households within one-mile of the development; or

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

31 (c) The applicant has contacted and sought comments from the entities listed at paragraph  
32 (13)(c) at least 90 days prior to submitting a land use application.

33 (d) The complete application accepted by the county demonstrates that the construction and  
34 operation of the renewable energy facility, taking into account mitigation, will not result in  
35 significant adverse impacts to historic, cultural and archaeological resources that are:

1 (A) Listed on the National Register of Historic Places under the National Historic Preservation  
2 Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

3 (B) Inventoried in a local comprehensive plan; or

4 (C) Evaluated as a significant or important archaeological object or archaeological site, as those  
5 terms are defined in ORS 358.905.

6 (e) All mitigation required by subsections (11) and (12), including mitigation for Historic,  
7 Cultural or Archeological Resources, is identified and attached as a condition of approval.

8 (f) The applicable provisions of OAR 660-033-0130(38) and OAR 660-006-0025(k) have been  
9 satisfied.

10 (g) Any applicable local provisions have been satisfied.

11 (14) Voluntary Implementation. Local governments may implement this rule for the purposes of  
12 considering photovoltaic resources sites as defined at subsection (2)(f), to establish  
13 photovoltaic solar resource areas as defined at subsection (2)(e), or both.

14 (a) Photovoltaic solar sites are established to be established through direct application of this  
15 rule. Applications for photovoltaic solar sites are to be processed as individual land use  
16 applications and reviewed against the provisions of subsections (6), (7), and (13) as well as all  
17 other applicable provisions of law without the need for an individual Post Acknowledgement  
18 Plan Amendment.

19 (A) To implement this rule for the purposes of considering photovoltaic solar resource sites a  
20 county shall follow the Post-Acknowledgment Plan Amendment (PAPA) process pursuant to  
21 ORS 197.610 and provide notice as described at subsection (14)(c).

22 (B) The PAPA process may be initiated by the county or by any other applicant.

23 (b) Photovoltaic solar resource areas are established through the adoption of a local program  
24 that includes an overlay zone and other ordinance provisions found to be consistent with the  
25 provisions of this rule that set forth applicable review procedures and criteria. A county may  
26 rely on project specific assessments when information regarding features and resource  
27 categories are readily available.

28 (c) To implement this rule for the purposes of establishing photovoltaic solar resource areas a  
29 county shall follow the PAPA process pursuant to ORS 197.610 and provide notice as described  
30 at subsection (14)(d). The adopted ordinance shall specify if the local government has elected  
31 to exercise any or all of the discretions offered with regard to excluded areas pursuant to  
32 subsection (7)(c)(L), conflicting uses, ESEE analysis or other items.

1 (A) The post-acknowledgement plan amendment process may be initiated by the county or by  
2 any other applicant.

3 (B) Prior to conducting a hearing to consider an ordinance establishing a photovoltaic solar  
4 resource area or areas a local government will hold one or more public meetings to solicit input  
5 from county residents. The public meeting(s) must occur in areas of the county that include  
6 lands likely to be determined significant photovoltaic solar resources. The county must provide  
7 mailed notice of the meeting(s) to property owners in the general vicinity of such areas. The  
8 county must also provide mailed notice to any physical address assigned to property in the  
9 general vicinity of such areas as shown in county assessor records that are not the same as the  
10 property owner address. The meetings shall include a quorum of the county planning  
11 commission and at least one member of the county elected officials.

12 (C) Prior to making a decision regarding an ordinance, a local government will hold two more  
13 public hearings before the county planning commission and one or more public hearings before  
14 the county elected officials

15 (d) In addition to submitting the proposed change to the Director of the Department of Land  
16 Conservation and Development required by ORS 197.610(1), notice of the Post-  
17 Acknowledgement Plan Amendment will also be provided to:

18 (A) The State Department of Fish and Wildlife;

19 (B) The State Department of Energy;

20 (C) The State Historic Preservation Officer;

21 (D) The Oregon Department of Agriculture.

22 (E) The Oregon Department of Forestry.

23 (F) The Oregon Department of Aviation;

24 (G) The United States Department of Defense; and

25 (H) Federally recognized Indian tribes that may be affected by the application.

26 (15) Scheduled Review. On or before June 30, 2030 the department will provide a report to the  
27 Land Conservation and Development Commission that:

28 (a) Is informed by coordination with parties consistent with those interests represented on the  
29 Rules Advisory Committee established pursuant to Section 37 of HB 3409 (2023).

30 (b) Identifies those counties who have chosen to voluntarily implement the provisions of this  
31 rule.

32 (c) Describes how well the intent of this rule as stated in Subsection (1) is being accomplished.

- 1 (d) Includes recommended updates, if any, the department identifies as being necessary to  
2 better accomplish the intent of this rule as stated in Subsection (1).
- 3 (e) Makes recommendations to the commission as to whether the need for renewable solar  
4 energy production to achieve Oregon's renewable energy goals compared to the number of  
5 counties voluntarily implementing the provisions of this rule results in a need to make  
6 implementation of these rules directly applicable to local governments in Eastern Oregon.

7

Discussion Draft - RAC Meeting #6

**OAR 660-033-0130**

(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

1 Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860,  
2 division 84.

3 (g) "Western Oregon" means that portion of the State of Oregon lying west of a line  
4 beginning at the intersection of the northern boundary of the state and the eastern  
5 boundary of Hood River County, thence southerly along the eastern boundaries of the  
6 counties of Hood River, Clackamas, Marion, Linn, Lane, Douglas and Jackson to  
7 southern boundary of the state.

8 (h) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power  
9 generation facility shall not use, occupy, or cover more than 12 acres unless:

10 (A) The provisions of paragraph (h)(H) are satisfied; or

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

13 (A) The proposed photovoltaic solar power generation facility will not create  
14 unnecessary negative impacts on agricultural operations conducted on any portion of  
15 the subject property not occupied by project components. Negative impacts could  
16 include, but are not limited to, the unnecessary construction of roads dividing a field or  
17 multiple fields in such a way that creates small or isolated pieces of property that are  
18 more difficult to farm, and placing photovoltaic solar power generation facility project  
19 components on lands in a manner that could disrupt common and accepted farming  
20 practices;

21 (B) The presence of a photovoltaic solar power generation facility will not result in  
22 unnecessary soil erosion or loss that could limit agricultural productivity on the subject  
23 property. This provision may be satisfied by the submittal and county approval of a soil  
24 and erosion control plan prepared by an adequately qualified individual, showing how  
25 unnecessary soil erosion will be avoided or remedied. The approved plan shall be  
26 attached to the decision as a condition of approval;

27 (C) Construction or maintenance activities will not result in unnecessary soil compaction  
28 that reduces the productivity of soil for crop production. This provision may be satisfied  
29 by the submittal and county approval of a plan prepared by an adequately qualified  
30 individual, showing how unnecessary soil compaction will be avoided or remedied in a  
31 timely manner through deep soil decompaction or other appropriate practices. The  
32 approved plan shall be attached to the decision as a condition of approval;

33 (D) Construction or maintenance activities will not result in the unabated introduction or  
34 spread of noxious weeds and other undesirable weed species. This provision may be  
35 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.

1 **(45)(a) For the purposes of siting a photovoltaic solar power generation facility in**  
2 **Eastern Oregon:**

3 **(A) “Agrivoltaics development” means developing the same area of land for both**  
4 **a photovoltaic solar power generation facility and for farm use.**

5 **(B) “Agrivoltaics development plan” is a plan established for a photovoltaic solar**  
6 **power generation facility pursuant to an agrivoltaics development program**  
7 **adopted by a county in Eastern Oregon.**

8 **(C) “Agrivoltaics development program” means specific land use regulations**  
9 **adopted by a county in Eastern Oregon that authorize agrivoltaics development**  
10 **to have a larger project size than would otherwise be allowed under OAR 660-033-**  
11 **0130(38).**

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

14 **(E) “Arable soils” means soils that are suitable for cultivation as determined by**  
15 **the governing body or its designate based on substantial evidence in the record**  
16 **of a local land use application, but “arable soils” does not include high-value**  
17 **farmland soils described at ORS 195.300(10) unless otherwise stated.**

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

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

25 **(H) “Nonarable soils” means soils that are not suitable for cultivation. Soils with an**  
26 **NRCS agricultural capability class V–VIII and no history of irrigation shall be considered**  
27 **nonarable in all cases. The governing body or its designate may determine other soils,**  
28 **including soils with a past history of irrigation, to be nonarable based on substantial**  
29 **evidence in the record of a local land use application.**

30 **(I) “Photovoltaic solar power generation facility” includes, but is not limited to, an**  
31 **assembly of equipment that converts sunlight into electricity and then stores, transfers,**  
32 **or both, that electricity. This includes photovoltaic modules, mounting and solar tracking**  
33 **equipment, foundations, inverters, wiring, storage devices and other components.**  
34 **Photovoltaic solar power generation facilities also include electrical cable collection**  
35 **systems connecting the photovoltaic solar generation facility to a transmission line, all**

1 necessary grid integration equipment, new or expanded private roads constructed to  
2 serve the photovoltaic solar power generation facility, office, operation and maintenance  
3 buildings, staging areas and all other necessary appurtenances, **including but not**  
4 **limited to on-site and off-site facilities for temporary workforce housing for**  
5 **workers constructing a photovoltaic solar power generation facility. On-site and**  
6 **off-site facilities for temporary workforce housing for workers constructing a**  
7 **photovoltaic solar power generation facility must be removed or converted to an**  
8 **allowed use under OAR 660-033-0130(19) or other statute or rule when project**  
9 **construction is complete. Temporary workforce housing facilities not included in**  
10 **the initial approval may be considered through a minor amendment request filed**  
11 **after a decision to approve a photovoltaic solar power generation facility. A minor**  
12 **amendment request shall be subject to OAR 660-033-0130(5) and shall not no**  
13 **effect on the original approval of the project.** For purposes of applying the acreage  
14 standards of this section, a photovoltaic solar power generation facility includes all  
15 existing and proposed facilities on a single tract, as well as any existing and proposed  
16 facilities determined to be under common ownership on lands with fewer than 1320 feet  
17 of separation from the tract on which the new facility is proposed to be sited. Projects  
18 connected to the same parent company or individuals shall be considered to be in  
19 common ownership, regardless of the operating business structure. A photovoltaic solar  
20 power generation facility does not include a net metering project established consistent  
21 with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project  
22 established consistent with ORS 757.365 and OAR chapter 860, division 84.

23 (b) Unless otherwise indicated, the following standards must be satisfied in order to  
24 approve a photovoltaic solar power generation facility in eastern Oregon.

25 (A) The proposed photovoltaic solar power generation facility will not create  
26 unnecessary negative impacts on agricultural operations conducted on any portion of  
27 the subject property not occupied by project components. Negative impacts could  
28 include, but are not limited to, the unnecessary construction of roads dividing a field or  
29 multiple fields in such a way that creates small or isolated pieces of property that are  
30 more difficult to farm, and placing photovoltaic solar power generation facility project  
31 components on lands in a manner that could disrupt common and accepted farming  
32 practices;

33 (B) The presence of a photovoltaic solar power generation facility will not result in  
34 unnecessary soil erosion or loss that could limit agricultural productivity on the subject  
35 property. This provision may be satisfied by the submittal and county approval of a soil  
36 and erosion control plan prepared by an adequately qualified individual, showing how  
37 unnecessary soil erosion will be avoided or remedied. The approved plan shall be  
38 attached to the decision as a condition of approval;

1 (C) Construction or maintenance activities will not result in unnecessary soil compaction  
2 that reduces the productivity of soil for crop production. This provision may be satisfied  
3 by the submittal and county approval of a plan prepared by an adequately qualified  
4 individual, showing how unnecessary soil compaction will be avoided or remedied in a  
5 timely manner through deep soil decompaction or other appropriate practices. The  
6 approved plan shall be attached to the decision as a condition of approval;

7 (D) Construction or maintenance activities will not result in the unabated introduction or  
8 spread of noxious weeds and other undesirable weed species. This provision may be  
9 satisfied by the submittal and county approval of a weed control plan prepared by an  
10 adequately qualified individual that includes a long-term maintenance agreement. The  
11 approved plan shall be attached to the decision as a condition of approval;

12 **(E) The presence of a photovoltaic solar power generation facility will not result in**  
13 **unnecessary risks to soil health. This provision may be satisfied by the submittal**  
14 **and county approval of a vegetation management plan prepared by an adequately**  
15 **qualified individual, showing how a healthy vegetative cover will be established**  
16 **and maintained and how a bare earth situation will not occur. The approved plan**  
17 **shall be attached to the decision as a condition of approval;**

18 **(F) The photovoltaic solar power generation facility will be designed, constructed**  
19 **and managed in a way that will promote the prevention and mitigate the risk of**  
20 **wildfire. This provision may be satisfied by the submittal and county approval of**  
21 **a wildfire plan prepared by an adequately qualified individual that is consistent**  
22 **with the provisions identified at OAR 660-006-0029(1)(d) and OAR 660-006-0035.**  
23 **The approved plan shall be attached to the decision as a condition of approval;**

24 **(G) That considerations for the amount, type, and location of temporary**  
25 **workforce housing have been made. This provision may be satisfied by the**  
26 **submittal and county approval of a workforce housing plan prepared by an**  
27 **adequately qualified individual, that demonstrates how temporary workforce**  
28 **housing resulting in a benefit to the local community will be accommodated or**  
29 **that such temporary housing is reasonably likely to occur. The plan need not**  
30 **obligate the applicant to financially secure the temporary housing. The approved**  
31 **plan shall be attached to the decision as a condition of approval.**

32 (c) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power  
33 generation facility shall not use, occupy, or cover more than 12 acres unless:

34 (A) The provisions of paragraph (d)(E) are satisfied; or

35 (B) The county approves an agrivoltaics development plan consistent with the  
36 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

1 the resource management agency cannot agree on what mitigation will be carried out,  
2 the county is responsible for determining appropriate mitigation, if any, required for the  
3 facility.(i) For lands determined to be significant photovoltaic solar resources pursuant to  
4 OAR 660-023-0195(7) and a county has identified photovoltaic solar resource areas as  
5 defined at OAR 660-023-0195(2)(c) the following provisions apply:

6 **(A) For high-value farmland a photovoltaic solar power generation facility shall**  
7 **not use, occupy, or cover more than 240 acres.**

8 **(B) For arable lands a photovoltaic solar power generation facility shall not use,**  
9 **occupy, or cover more than 2,560 acres.**

10 **(C) For nonarable lands a photovoltaic solar power generation facility shall not**  
11 **use, occupy, or cover more than 3,840 acres.**

12 **(D) A county may determine that ORS 215.296 and OAR 660-033-0130(5) are met**  
13 **when the applicable provisions of OAR 660-033-0130(38)(k)(A) thru (F) are found**  
14 **to be satisfied and any mitigation measures necessary to comply with the**  
15 **provisions of OAR 660-023-0195(14)(b) are required.**

16 **(j) For lands determined to be significant photovoltaic solar resources pursuant**  
17 **to OAR 660-023-0195(7) and a county has not identified photovoltaic solar**  
18 **resource areas as defined at OAR 660-023-0195(2)(c) and is instead limited to**  
19 **considering applications for individual photovoltaic solar resource sites the**  
20 **following acreage thresholds apply:**

21 **(A) For high-value farmland a photovoltaic solar power generation facility shall**  
22 **not use, occupy, or cover more than 160 acres.**

23 **(B) For arable lands a photovoltaic solar power generation facility shall not use,**  
24 **occupy, or cover more than 1,280 acres.**

25 **(C) For nonarable lands a photovoltaic solar power generation facility shall not**  
26 **use, occupy, or cover more than 1,920 acres.**

27 **(k) A county may determine that ORS 215.296 and OAR 660-033-0130(5) are met**  
28 **when the applicable provisions of OAR 660-033-0130(45) are found to be satisfied**  
29 **and any compensatory mitigation measures necessary to comply with the**  
30 **provisions of OAR 660-023-0195(12)(b) are required.**

31 **(m) A permit approved for a photovoltaic solar power generation facility shall be**  
32 **valid until commencement of construction or for six years, whichever is less. A**  
33 **county may grant up to two extensions for a period of up to 24 months each when**  
34 **an applicant makes a written request for an extension of the development**

1 approval period that is submitted to the county prior to the expiration of the  
2 approval period.

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

5 (A) An applicant makes a written request for an extension of the development  
6 approval period prior to the expiration of the second extension granted under  
7 subsection (f) of this section;

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

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

13 (o) The county governing body or its designate shall require as a condition of  
14 approval for a photovoltaic solar power generation facility, that the project owner  
15 sign and record in the deed records for the county a document binding the  
16 project owner and the project owner's successors in interest, prohibiting them  
17 from pursuing a claim for relief or cause of action alleging injury from farming or  
18 forest practices as defined in ORS 30.930(2) and (4).

19 (p) Nothing in this section shall prevent a county from requiring a bond or other  
20 security from a developer or otherwise imposing on a developer the  
21 responsibility for retiring the photovoltaic solar power generation facility.

22 (q) A county may approve agrivoltaics development plans pursuant to an adopted  
23 agrivoltaics development program.

24 (r) For an agrivoltaics development program, the adopted land use regulations  
25 must require sufficient assurances that the farm use element of the agrivoltaics  
26 development is established and maintained so long as the photovoltaic solar  
27 power generation facility is operational or components of the facility remain on  
28 site. An agrivoltaics development program:

29 (A) For high-value farmland, may not allow an agrivoltaics development plan for  
30 any project with a nameplate capacity greater than four megawatts or 40 acres  
31 and the countywide total of lands included in approved agrivoltaics development  
32 plans does not cumulatively exceed 160 acres of high-value farmland.

33 (B) For arable land, may not allow an agrivoltaics development plan for any  
34 project with a nameplate capacity greater than nine megawatts or 80 acres and

1 the countywide total of lands included in approved agrivoltaics development  
2 plans does not cumulatively exceed 400 acres of arable land.

3 (C) For nonarable land, may not allow an agrivoltaics development plan for any  
4 project with a nameplate capacity greater than 80 megawatts or 720 acres, and  
5 the countywide total of lands included in approved agrivoltaics development  
6 plans does not cumulatively exceed 3,840 acres of nonarable land.

7  
8 660-033-0145

9 **Agriculture/Forest Zones**

10 (1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-  
11 006-0050;

12 (2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR  
13 660-006-0055; and

14 (3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR  
15 660-006-0057.

16 (4) A county shall apply either OAR chapter 660, division 6 or 33 standards for  
17 siting a photovoltaic solar power generation facility in an agriculture/forest zone  
18 based on the predominant use of the tract on January 1, 2024. Photovoltaic Solar  
19 Power Generation facilities shall be based on the predominate use of the property as of  
20 January 1, 2024.  
21



**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.**

(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.

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**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 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

(2) A photovoltaic solar power generation facility in eastern Oregon that is not subject to the provisions of subsections (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 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 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 “Siting Standards for Dwellings and Structures in Forest Zones, OAR 660-006-0030 “Fire Site Standards for Dwellings and Structures”, and other applicable provisions of law, the following criteria must also 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 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.

(5) A permit approved for a photovoltaic solar power generation facility shall be valid for ~~four~~ six years. A county may shall grant a total of 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.

(6) A county may grant a permit described at subsection (s) a third and final ~~total of two~~ extensions for period of up to 24 months ~~each~~ if:

(i) An applicant makes a written request for an extension of the development approval period;

(ii) The request is submitted to the county prior to the expiration of the approval period;

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

(iv) 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.

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#### 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.

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

3 (4) The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a  
4 photovoltaic solar power generation facility in an agriculture/forest zone based on the  
5 predominant use of the tract on January 1, 2024.  
6  
7

Discussion Draft RAC #6

**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.

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(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 OAR 660-004-0022(3) and is also found to satisfy 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) or OAR 660-006-0025(4)(k).



**RULEMAKING IMPACT STATEMENTS  
PHOTOVOLTAIC SOLAR POWER GENERATION FACILITIES  
IN EASTERN OREGON**

**SEPTEMBER 2024**



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## I. INTRODUCTION

The Department of Land Conservation and Development (DLCD) has prepared a series of draft rules which address siting criteria of photovoltaic solar power generation facilities with the State of Oregon's land use system. The proposed rules address how photovoltaic solar resources areas or sites are dealt with within the Goal 5 process for the protection of resource lands. It establishes an optional process for counties in eastern Oregon to identify and recognize significant photovoltaic solar resources areas as well as sites. The rule revisions are made in the following areas:

- OAR 660-004-0022(4) – New language modifying the “reasons” exception rule
- OAR 660-006-0025(4) & (3) – Provisions for Photovoltaic Solar Development in the Forest Rule
- OAR 660-023-0195 – Photovoltaic Solar Resources in Goal 5 Rule
- OAR 660-033-0130(38) – Revisions to LCD's existing “solar rule”

The new rules clarify the treatment of solar resource areas within the Goal 5 process and seek to mitigate adverse impacts to other identified resource categories such as farmland, forest land, and critical habitat areas. The following is summary of topics covered by the new rules.

Definitions	<ul style="list-style-type: none"><li>•Defines terms used in the rules</li></ul>
Clarified Relationship with Goal 5 Process	<ul style="list-style-type: none"><li>•Clarifies photovoltaic solar resource areas protection within the Goal 5 process</li><li>•Outlines relationship with existing rules and protections</li></ul>
Photovoltaic Solar Resource Areas - Requirements for Consideration	<ul style="list-style-type: none"><li>•Summarizes characteristics for consideration as a potential resource area or site</li></ul>
Process and Procedures to Designate Resource Areas or Sites	<ul style="list-style-type: none"><li>•Provides for an alternative process for counties in eastern Oregon.</li><li>•Process is written as optional for local governments</li></ul>
Adds Photovoltaic Solar Energy Generation Facilities to Uses Authorized in Forest Zones	<ul style="list-style-type: none"><li>•Geographically limited to eastern Oregon</li><li>•Provides standards and provisions for these facilities in Forest Zones</li></ul>

Codifying an alternative process for photovoltaic solar power generation areas and site(s) is the most significant aspect of the proposed rules. The process is optional for local governments but if utilized is expected to streamline evaluations.



DLCD is not required to conduct original research in creating a FIS. DLCD must use available information to project any significant effect of the proposed rule, including a quantitative estimate of how the proposed rule affects these entities or an explanation of why DLCD cannot make the estimate. See ORS 183.335(2)(b)(E). DLCD is required to identify any persons this proposed rule could affect economically including:

- Small and large businesses, as defined in ORS 183.310(10)
- State agencies (DLCD and any other State agency),
- Local governments, and
- The public.

This report summarizes the new rule followed by an assessment of potential fiscal impacts on businesses, local government, state agencies, and the public. The report includes a Fiscal Impact Statement (FIS), a Housing Impact Statement (HIS), and a Racial Equity Statement. The purpose of these statements is to help inform the rulemaking process.

## II. SUMMARY OF RULE CHANGES

This rulemaking project covers photovoltaic solar power generation facilities on farmland in Eastern Oregon. The proposed rules are included in OAR 660, with changes made in multiple Divisions of chapter 660 of the Oregon Administrative Rules (OAR):

- **Division 4** - The purpose of this division is to interpret the requirements of Goal 2 and ORS 197.732 regarding exceptions. New language is added as 660-004-0022 (4).
- **Division 6** - The purpose of this division is to conserve forest lands as defined by Goal 4 and to define standards for compliance with implementing statutes at ORS 215.700 through 215.799. New language is added in 660-06-025 (5) (j-k). A section is added as 660-006-0033.
- **Division 23** - This division establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. A new section is included as 660-023-0195.
- **Division 33** - The purpose of this division is to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799. The new rules modify language and add sections to 660-033-0130 (38). It also adds language as 660-033-0145 (4).

The proposed rule changes define photovoltaic solar power generations facilities and address their treatment under Goal 5 and Goal 3. The most significant portion of the proposed new rules is contained in OAR 660-023-0195.

The following is a summary of the proposed changes arising from the rulemaking process, broken down by category.





## 1. DEFINITIONS

The proposed administrative rule changes include a series of definitions of terms used in the rule (08/20/24 draft).

Term	Definition (Summarized)
<b>Photovoltaic solar power generation facility</b>	A detailed definition is included as OAR 660-006-033 (1). The language includes guidance on facilities and improvement.
<b>Eastern Oregon</b>	“Eastern Oregon” in the context of the new rules is defined as the portion of the State of Oregon lying east of a line delineated by the western boundaries of Wasco, Jefferson, Deschutes, and Klamath counties. OAR 660-023-195 (2) (c)
<b>Military Special Use Airspace</b>	This definition refers to areas of additional limitations from the FAA under Order 7610.4K CHG 1, Section 1.3. OAR 660-023-195 (2) (f)
<b>Military Training Route</b>	Airspace established for the conduct of military flight training. OAR 660-023-195 (2) (h)
<b>Oregon Renewable Energy Siting Assessment (ORESAS)</b>	ORESAS generated a report and mapping tool providing input on renewal energy and transmission development in Oregon. The tool is housed on Oregon Explorer. OAR 660-023-195 (2) (i)
<b>Photovoltaic solar resource areas</b>	Lands that are particularly well suited to the siting of photovoltaic solar power generation facilities OAR 660-023-195 (2) (j)
<b>Photovoltaic solar resource site</b>	This is a property-specific location that is well suited for the siting of a facility. This may include a single approval for photovoltaic solar energy development outside of a solar resource area. OAR 660-023-195 (2) (k)
<b>Significant photovoltaic resource</b>	Lands with necessary characteristics to support successful photovoltaic solar energy generation while also avoiding, minimizing, or providing compensatory mitigation for conflicts with other important resources. OAR 660-023-195 (i) (sic)
<b>Transmission Line</b>	A linear utility facility by which a utility provider transmits or transfers electricity from a point of origin or generation or between transfer stations. OAR 660-023-195 (2) (k) (sic)
<b>Agrivoltaics Development</b>	Developing the same area of land for both a photovoltaic solar power generation facility and for farm use. This type of development may occur as part of any approved facility without the need for additional land use reviews or approvals. ORS 660-033-0130 (38) (c)
<b>Agrivoltaics Development Plan</b>	A plan adopted by a county in Eastern Oregon demonstrating that income from farm activities on a site will be equal or greater to existing farm income on lands developed with photovoltaic solar generation facilities, or that any reduction in income is offset by an increase in income from other lands within the farm. ORS 660-033-0130 (38) (d)
<b>Agrivoltaics Development Program</b>	Specific land use provisions adopted by a county in Eastern Oregon that authorizes agrivoltaic development to have a larger project size than would otherwise be allowed. The definition also includes additional guidance on program requirements. OAR 660-033-0130 (38) (e)



There are additional changes to language definitions throughout the four impacted divisions, but these are done for internal consistency and do not introduce new terms.

## **2. DISCUSSION OF OAR 660-023-0195: PHOTOVOLTAIC SOLAR ENERGY RESOURCES**

OAR 660-023-0195 represents the primary addition to the administrative rules from this rulemaking project. The requirements of this rule modify, supplement, or supersede the requirements of the standard Goal 5 process. The are also designed to assist local governments 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 under Goal 5. The intent is to contribute to meeting the state’s clean energy goals, increase the potential for local governments and residents to share in benefits from these types of developments, and account for conflicts of values and resources.<sup>1</sup>

This section walks through 660-023-0195, summarizing new language and then discussing potential impacts.

### 660-023-0195 (3)

*Local governments 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.*

This allows, but does not require, local governments to adopt the standards and procedures in OAR 660-23-0030 through 660-023-0050 to include photovoltaic solar resource areas or establish a photovoltaic solar resource site. This is the standard process already in place for complying with Goal 5. This includes the process for inventorying Goal 5 resources, as well as procedures and requirements for developing a program to achieve compliance based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

The net impact of this is an expansion in the types of identified Goal 5 resource types. This will expand the types of resources to be considered in the ESEE analysis and would be expected to lead to more findings of conflict between resource types. The resolution of these conflicts could result in a marginal reduction in non-photovoltaic resource protections. Other portions of the proposed rules work towards mitigating impacts, but some would be expected, nonetheless. As adoption is optional as opposed to mandatory for jurisdictions, it would be our expectation that jurisdictions would only adopt these measures if they were viewed to be beneficial.

### 660-023-0195 (4)

*Rather than using the standard process described at subsection (3) above, counties in eastern Oregon may instead choose the following process identified in subsections (5) thru (12) to designate photovoltaic solar resource areas or establish a photovoltaic solar resource site or sites.*

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<sup>1</sup> This paragraph is paraphrased from 660-023-0195 (1).



This language allows an alternative process from the standard Goal 5 process outlined in OAR 660-23-0030 through 660-023-0050. This new process is outlined in subsections (5) through (12), and represents the most significant change in the new rules.

#### 660-023-0195 (5)

A local government may use data from reliable online mapping tools, such as that included in the Oregon Renewable Energy Siting Assessment (ORESAs), to inform determinations made under subsections (6) and (7).

This provides for the use of reliable mapping tools, with the ORESA data specifically called out as an accepted and reliable resource. The language provides clarity with respect to accepted resources which can reduce the risk and cost of the alternative process for a jurisdiction. The ORESA data was recently developed through a significant federal grant.

#### 660-023-0195 (6)

In order to be considered significant pursuant to subsection (7), lands under consideration as a potential photovoltaic solar resource area or a photovoltaic resource site must first be determined by the presiding local government to have 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 determination under this subsection may be based on substantial evidence in the record, or, in the alternative a county may rely on 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 generally 15% or less.
- (b) An estimated Annual Solar Utility-Scale Capacity Factor of at 19-21 percent or greater.
- (c) Are located:
  - (A) Within 2 miles of a Transmission Line with a rating of up to 69 KV; or
  - (B) Within 5 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.

This rule provides safe harbor determination rules for a jurisdiction, while not precluding alternative approaches with “substantial evidence” in the record for support. This level of clarity should simplify the process while providing confidence in an acceptable product, while allowing adequate flexibility to address local factors and conditions if needed. While the rule is clear as written, photovoltaic energy production relies upon several emerging technologies, and site requirements are likely to change over time. In addition, the industry is highly impacted by the regulatory environment and public incentives. Regular industry outreach would be necessary to keep these standards consistent with current technologies and industry practices.

#### 660-023-0195 (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 to satisfy subsection (6) shall be considered significant photovoltaic solar resources when they are found to be consistent with:

- (a) The following areas are eligible for a determination of significance without the need for mitigation.
  - (A) Lands protected under Goal 3 that are comprised of soils with an agricultural capability class VII and VIII.



- (B) Lands protected under Goal 3 that are comprised of soils with an agricultural capability class VI and do not have the ability to produce ? pounds of forage per acre per year.
  - (C) Lands protected under Goal 4 that are capable of producing 0 to 20 cubic feet per acre per year of wood fiber.
  - (D) Any lands protected under Goal 4 that have been significantly affected by wildfire.
  - (E) Wildlife Habitat characterized by features such as noxious weed infestation or other areas with little or no restoration potential.
- (b) The following areas are eligible for a determination of significance when subject to the relevant mitigation requirements identified at Subsection (11) of this rule.
- (A) Mule Deer Winter Range, Rocky Mountain 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.
  - (B) Wildlife Habitat characterized by older forested areas, big game summer range, and degraded rangelands. In the absence of easily obtainable data, a determination regarding wildlife habitat under this subsection may be deferred to a property specific assessment but must be done in consultation with ODFW.
  - (C) Lands protected under Goal 3 that are comprised of soils with an agricultural capability class VI that have the ability to produce greater than ? pounds of forage per acre per year.
  - (D) Lands protected under Goal 3 that are not irrigated and comprised of soils with an agricultural capability class III, IV, or V.
  - (E) Lands protected under Goal 3 comprised of soils with an agricultural capability class II that have no past history of irrigation that have not been managed for the production of crops or livestock at any time during the previous five years.
  - (F) Lands protected under Goal 3 that are included in an irrigation district or a federally recognized viticultural area that have no past history of irrigation.
  - (G) Lands protected under Goal 4 with a capability of producing from 20-85 cubic feet wood fiber/acre/year that do not include areas significantly affected by wildfire.
  - (H) 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.
- (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) Priority Wildlife Connectivity Areas as designated by the Oregon Department of Fish and Wildlife (ODFW). The exact location of wildlife habitat may be refined during consideration of a specific project but must be done in consultation with ODFW.
  - (C) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. 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 cannot be mitigated. 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) except as provided under subsection (7)(b)(E).
- (F) High-Value Farmland as defined at ORS 195.300(10) except as provided under subsection (7)(b)(F).
- (G) Lands protected under Goal 3 that were receiving water for purposes of irrigation on January 1, 2024.
- (H) Lands protected under Goal 4 with a capability of producing greater than 85 cubic feet wood fiber/acre/year that do not include areas that have been severely affected by wildfire.
- (K) Lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21.
- (M) Lands within one mile of the urban growth boundary of a city with a population of 10,000 or greater.
- (N) Other areas, if any, determined by a local government.

The preceding subsection outlines the metrics for a designation as a “significant” photovoltaic resource or photovoltaic resource site by a local government. Significant sites would first need to clear the screening criteria outlined in subsection (6). There are three general types of determinations of significance.

The first classification (7)(a) are lands that do not have a need for mitigation. The criteria for this designation relate to agricultural or lumber production capability, or quality as wildlife habitat. The second designation (7)(b) links a determination of significance to mitigation requirements. Areas designated under this categorization will be required to develop mitigation requirements with the Oregon Department of Fish and Wildlife (ODFW).

The third category (7)(c) is not eligible for a determination of significance. This includes significant sage grouse habitat and priority wildlife connectivity areas as designated by ODFW. The exact location of these areas must be determined in consultation with ODFW.

The screening criteria provides clarity to the process. The determination of wildlife habitat and connectivity areas through ODFW may be a source of uncertainty and/or delay, as would the requirement for consultation with ODFW. Our expectation is that these factors are inventoried and readily available, and that ODFW staff would be available and responsive in a timely manner to assist in determinations and ongoing consultation.

The amount of potential forage production per acre per year has not yet been established in this version (b)(C).

#### 660-023-0195 (8)

Conflicting uses. A local government may choose not to identify conflicting uses as would otherwise be required by the standard process. In the alternative, a local government may choose to conduct a more detailed analysis that may lead to the identification of conflicting uses.

The option for local governments to not follow the standard process for identifying conflicting uses will provide more flexibility. It appears that this language provides the alternative of the standard process or a more detailed analysis.



The “detailed analysis” language is unclear as to the requirements of this type of analysis but appears to be cleared up in 660-023-0195 (10).

#### 660-023-0195 (9)

Economic, Social, Environmental and Energy (ESEE) consequences. A local government may choose not to limit or prohibit conflicting uses on nearby or surrounding lands without further analysis. In the alternative, a local government 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.

This language allows a local government to bypass the typical ESEE analysis required in the Goal 5 process. If utilized this could reduce permitting times as well as reducing costs to the local government. The optional process may also fail to identify or recognize conflicts that would have emerged in an ESEE analysis, some of which may have significant impacts. In general, the language increases flexibility and responsiveness, but had the potential to miss conflicts that should be considered. The

#### 660-023-0195 (10)

If a local government chooses to conduct an additional analysis regarding subsections (8), or (9), or both, it must follow the provisions of OAR 660-023-0040.

This section provides clarity on the requirements of an additional analysis, which is an optional path for local governments to choose. The provisions refers to the current ESEE process at OAR 660-023-0040.

#### 660-023-0195 (11)

Mitigation. Unless otherwise stated, plans and programs carrying out the mitigation requirements of this subsection shall assure that the approved measures are of suitable durability and proximity, result in no net loss of the resource.

- (a) Wildlife.
- (b) Agricultural Lands.
- (c) Forest Lands.
- (e) Historic, Cultural or Archeological Resources. As part of a complete application, demonstrate 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.

This language is expected to prevent any significant negative impacts to alternative resources from photovoltaic solar energy installations. The subsection requires a finding of “no net loss” wildlife, agriculture, and forest resource categories under Goal 5. This standard is higher than required under a typical Goal 5 ESEE approach, which recognizes



but does not preclude impacts. Historic, cultural, or archeological resources can consider mitigation in the finding of no net loss. The impact of this subsection will be limited to areas or sites that require mitigation. The net impact is likely a reduction in the number of cost-effective sites available for photovoltaic solar energy installations. The degree to which this has a substantive impact on the level of installations and cost is a function of the number of suitable sites not requiring mitigation and/or the cost of required mitigation.

660-023-0195 (12)

Program to achieve the goal. A local government 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. If so, the application 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 (DoD), described in the application materials, and attached as conditions of approval to the local decision.
- (g) 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 determination under this subsection may be based on substantial evidence in the record, or, in the alternative a county may rely on the following items, which will be considered to comply with the requirements of this rule:
  - (A) The applicant has conducted detailed public outreach activities in advance of submitting a complete application; and
  - (B) The applicant contributes to a local fund or funding mechanism in the amount of \$ \_?\_ or an alternative amount that is reasonably estimated to represent \_?\_% of the project budget, whichever is less; or
  - (C) The applicant contributes to a local fund or funding mechanism in the amount of \$ \_?\_ or an alternative amount that is reasonably estimated to represent \_?\_% of the savings in time value and direct costs of not going through the state process, whichever is less; or
  - (D) The county has established a Strategic Investment Program (SIP) or Payment in Lieu of Taxes (PILOT) strategy that dedicates (?)% 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 ensuring that emergency service providers are guaranteed a source of electricity during a power outage event through providing battery storage or some other method.
- (b) All mitigation required by subsection (11), including mitigation for Historic, Cultural or Archeological Resources, is identified and attached as a condition of approval.
- (c) The applicable provisions of OAR 660-033-0130(38) and OAR 660-006-0025(k) have been satisfied.
- (d) Any applicable local provisions have been satisfied.



This subsection outlines the requirements for approval of a photovoltaic solar power generation facility in a resource area or on a site that has cleared the previous requirements. It outlines the requirements of a community needs and benefits assessment, with substantial evidence required in the record. An additional analysis is required for sites within a Military Special Use Airspace or a Military Training Route, including coordination with the United States Department of Defense. It also provides for an alternative in which a series of stated requirements can meet the requirements of the rule.

The community needs and benefits section (12)(g) provides a great deal of latitude in how needs and benefits may be assessed, with terms such as “meaningful and reasonable” subject to interpretation. This does provide for flexibility that may be useful but can also provide some uncertainty for a local government and/or applicant on whether a program will be ruled compliant with the rule.

The alternative path to rely on a list of items outlined in (12)(g) includes several variables yet to be determined. Many of these seem likely to be variable over time and will likely need to be revisited and revised on some type of scheduled basis. The dedication of county revenues to households within one-mile of the development appears somewhat arbitrary and could represent a very small pool of impacted households in the largely rural areas that these facilities are likely to be sited.

#### 660-023-0195 (13)

Voluntary Implementation. Local governments may implement this rule upon adopting an ordinance through the post-acknowledgment plan amendment process. The 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 subsection (7)(a)(M), conflicting uses, ESEE analysis or other items. The post-acknowledgement plan amendment process may be initiated by the county or by any other applicant.

- (a) Prior to conducting a hearing to consider an ordinance implementing the provisions of this rule a local government will hold one or more public meetings to solicit input from county residents. The public meetings should occur in areas of the county that include lands likely to be determined significant photovoltaic solar resources. The county will provide mailed notice of the meetings to property owners and residents in the general area of the meeting location. The meetings shall include the county planning commission and at least one member of the county elected officials.
- (b) Prior to making a decision regarding an ordinance, a local government will hold two more public hearings before the county planning commission and one or more public hearings before the county elected officials. A county may not consider establishing photovoltaic solar resource areas at locations that have not been the subject of a public meeting pursuant to the provisions of subsection (13)(a).
- (c) In addition to submitting the proposed change to the Director of the Department of Land Conservation and Development required by ORS 197.610(1), notice of the Post-Acknowledgement Plan Amendment will also be provided 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 Aviation;
  - (E) The United States Department of Defense; and





(F) Federally recognized Indian tribes that may be affected by the application.

This subsection summarizes the steps to implement this rule through an ordinance in the post-acknowledgement plan amendment process. It allows a county or any other applicant to initiate the process and outlines the public process and notice requirements. The process includes a significant public outreach effort, the cost of which would be borne by the local government.

#### 660-023-0195 (14)

When a local government chooses to voluntarily implement the provisions of this rule it may identify photovoltaic solar resource areas as defined at OAR 660-023-0195(2)(c). Photovoltaic solar resource areas may be identified as part of the original post-acknowledgment plan amendment or through a subsequent post-acknowledgement plan amendment.

- (a) Until a local government has identified photovoltaic solar resource areas, it will accept individual applications for photovoltaic solar resource sites; and
- (b) Applications for photovoltaic solar sites are to be processed as individual land use applications and reviewed against the provisions of subsections (5) and (7), as well as all other applicable provisions of law without the need for an individual Post Acknowledgement Plan Amendment.

This subsection clarifies how applications for photovoltaic solar resource sites are to be processed if the rule is not implemented locally or prior to implementation of this rule through the post-acknowledgement process. It clarifies that if resource areas are not identified the local government will need to accept individual applications for solar resource sites.

#### 660-023-0195 (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 Section 37 of HB 3409 (2023).
- (b) Identifies those counties who have chosen to voluntarily implement the provisions of this rule.
- (c) Describes how well the intent of this rule as stated in Subsection (1) is being accomplished.
- (d) Includes recommended updates, if any, the department identifies as being necessary to better accomplish the intent of this rule as stated in Subsection (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 local governments in Eastern Oregon.

This subsection outlines a DLCD review of the program prior to June 30, 2030. This review will include recommendations to the Land Conservation and Development Commission (LCDC) regarding how well the intent of this rule is being accomplished. This provides for a time certain review of the program, which would likely trigger a reassessment of the effectiveness of the rules.



### 3. ADDITIONAL PROPOSED RULE LANGUAGE CHANGES

The rulemaking impacted three other subsections, OAR 660-004-0022, OAR 660-006-0025, and OAR 660-033-0130. Proposed new language is highlighted in green.

#### 660-004-0022 (4)

A site justified for a photovoltaic solar power generation facility under OAR 660-004-0022(3) and is also found to satisfy 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) or OAR 660-006-0025(4)(k).

This subsection retains the underlying zone for photovoltaic solar power generation facilities if located on resource land. This is a clarification that assures that resource land protections will remain in place and considered in the siting provisions.

#### 660-006-0025 (4)

This subsection of the OAR covers uses authorized in Forest Zones. The new language is highlighted in green.

- (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.

The preceding language separates a photovoltaic solar power generation facility in eastern Oregon for specific treatment outside of a commercial utility facility. The standards for these facilities are then outlined in 660-006-0033. This language separates the treatment of photovoltaic solar power generation facilities in eastern Oregon from commercial utility power generation facilities.

#### 660-006-0033

- (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 subsections (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 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 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 "Siting Standards for Dwellings and Structures in Forest Zones, OAR 660-006-0030 "Fire Site Standards for Dwellings and Structures", and other applicable provisions of law, the following criteria must also 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 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.

(5) A permit approved for a photovoltaic solar power generation facility shall be valid for 10 four years.

(6) A county may grant a permit described at subsection (5n) a total of two extensions for period of up to 24 months each 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.

This addition to the administrative rules outlines the standards that apply to photovoltaic solar energy facilities in eastern Oregon if they are allowed on forest lands. The language allows for larger scale facilities in counties that have identified photovoltaic solar resource areas. There are several instances in the new rules such as this that provide incentives for counties to identify resource areas.

#### 660-033-0130 (38)

This subsection of the rules outlines definitions and provisions for siting a photovoltaic solar power generation facility. It introduces the term “Agrivoltaic development” into the rules, which is defined as a development that uses the same land area for both photovoltaic solar power generation and farm use. This was formerly referred to in the rules as “dual use development”

- (c) “Agrivoltaics Dual-use development” means developing the same area of land for both a photovoltaic solar power generation facility and for farm use. Agrivoltaics development may occur as part of any approved photovoltaic solar power generation facility without the need for additional land use review or approvals. Agrivoltaics development approved pursuant to a locally adopted agrivoltaics development program in a county in eastern Oregon may include a project size that is larger than would otherwise be allowed.



- (d) “Agrivoltaics development plan” is a plan established pursuant to an agrivoltaics development program adopted by a county in eastern Oregon demonstrating that income from farm activities on the subject site will be equal or greater to existing farm income on lands physically developed with photovoltaic solar generation facilities, or that any reduction in farm income on lands physically developed with photovoltaic solar generation facilities is off-set by an increase of equal or greater amount in farm income from farm activities on land within the farm that are not physically developed with photovoltaic solar generation facilities. An agrivoltaics development plan requires submittal of a report at least once every two years to the county by the managers of the farm documenting the amount of solar energy generated and the farm income derived from farm activities within the reporting period, with an explanation of any discrepancies between the adopted farm management plan and actual results. The provisions of this subsection are repealed on January 1, 2035.
- (e) “Agrivoltaics development program” means specific land use provisions adopted by a county in eastern Oregon that authorize agrivoltaics development to have a larger project size than would otherwise be allowed. The adopted land use provisions 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, does 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, does 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, does 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.
- ~~(f) “Microgrid” means a self-sufficient energy system that serves a discrete geographic footprint, such as a college campus, hospital complex, business center or neighborhood.~~

This language provides an alternative entitlement path for an “agrivoltaic” development program. It would allow for a larger project size but places limits on size and/or capacity of facilities on high-value farmland and arable land. Higher size limits are allowed for nonarable land. Periodic reports are required by the managers of the farm to the county verifying ongoing compliance with the rules. The language provides a sunset of this provision in 2035. Current rules provide criteria that must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland. The new language expands upon the current provisions and clarifies requirements for an agrivoltaic development program.

The definition of a facility is clarified in 660-033-0130(38)(i) to include temporary workforce housing, using the following new language:



“including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.”

This provision clarifies what was likely the original intent of the rules. Allowing for temporary housing during construction would be expected to reduce offsite impacts on the housing market due to a temporary surge in demand during the construction process.

References to microgrids have been removed in several sections. Language is also removed in 660-033-0130(38)(i) referring to “a community solar project”. Language is changed in several portions of this rule to incorporate updated numbering as well as newly written definitions and provisions. This includes agrivoltaic installations.

The following is new language included under 660-033-0130(k):

- (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) 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 procedural requirements of OAR 345-022-0115. 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.

This language expands the issues specifically called out for evaluation to include soil health and wildfire risk. The standard is “unnecessary risk” for soil health, and promotion under wildfire risk. It also includes a requirement that temporary workforce housing has been considered. This will likely be an important consideration as installations are expected to frequently be sited in rural areas with limited housing capacity.



A significant amount of new text has been added under 660-033-0130(q) and 660-033-0130(r):

- (q) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-17 023-0195(7) and a county has identified photovoltaic solar resource areas as defined at OAR 18 660-023-0195(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.
- (r) 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.
  - (s) A permit approved for a photovoltaic solar power generation facility shall be valid for four 5 years.
  - (t) A county may grant a permit described at subsection (s) a total of two extensions for period of up to 24 months each 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.*

This section summarizes the provisions for counties, depending upon whether a county has identified photovoltaic solar resource areas under 6606-023-0195(2)(c) prior to the application or not. The provisions outline higher maximum size limits for counties that have identified areas, as well as placing greater size restrictions on high-value farmlands and arable lands.



### III. FISCAL IMPACT STATEMENT

As part of the rulemaking process, 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. ORS Chapter 183.335(2)(b)(E) also requires that, 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.”

The new rules being evaluated in this report impact 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 is 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 addressed in the current 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(s) under this rule will 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 chose to amend their comprehensive plans to designate photovoltaic solar resource areas or establish a photovoltaic solar resource site or sites under the current Goal 5 process (OAR 660-23-0030 through 660-023-0050).
- An alternative path is also offered in the new language (660-023-0195(5-12)). The new language provides significant clarity on site requirements, which provides clarity. The primary advantage of the new procedure is the ability to not complete a full Economic, Social, Environmental and Energy (ESEE) analysis if conflicting uses on nearby or surrounding lands are not limited or prohibited. The mitigation requirements are “no net loss” of the resource, which is a high standard.
- 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 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 draft 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 they are 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 and/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 660-023-0195(12)(g). This subsection allows for a range of mitigation measures, including financial contributions. This would be expected to assure 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. This would be expected 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.

#### SMALL AND LARGE BUSINESSES

The proposed rules are not expected to have any substantive impact on most businesses. If the new rule increases the number of photovoltaic facilities sited in eastern Oregon, we expect positive impacts on businesses that are involved in the construction and operation of these facilities. These would include 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 significant fiscal impact primarily on DLCD among state agencies. The rules cite the Oregon Renewable Energy Siting Assessment (ORESAs) 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 ORESAs, 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 comment on any submittals under these rules, requiring staff time. The level of effort is unlikely to be high as the new rules largely provide clear and objective 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, which would incur legal fees and demand a modest increase in staff effort in time to review and compile legal records.



The fiscal impact to DLCD 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 more than able and willing 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 and/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 660-023-0195(12)(D).

## **IV. HOUSING IMPACT STATEMENT**

ORS Chapter 183.335(2)(b)(E) and ORS 183.530 require that rules adopted by the LCDC include 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 183.530). This Housing Impact Statement (HIS) is described in 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 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 demand for construction services locally associated with construction and operation of solar generation facilities, it is possible that construction costs could be increased on the margin. As a result, the cost of constructing a 1,200 square foot detached single-family dwelling is likely to increase somewhat. Local incomes would also be expected to increase on the margin, which may offset any impacts 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 larger cities from determinations that impacts 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 and/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 done 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.

## **V. RACIAL EQUITY STATEMENT**

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)(a) (HB 2993). 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 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.

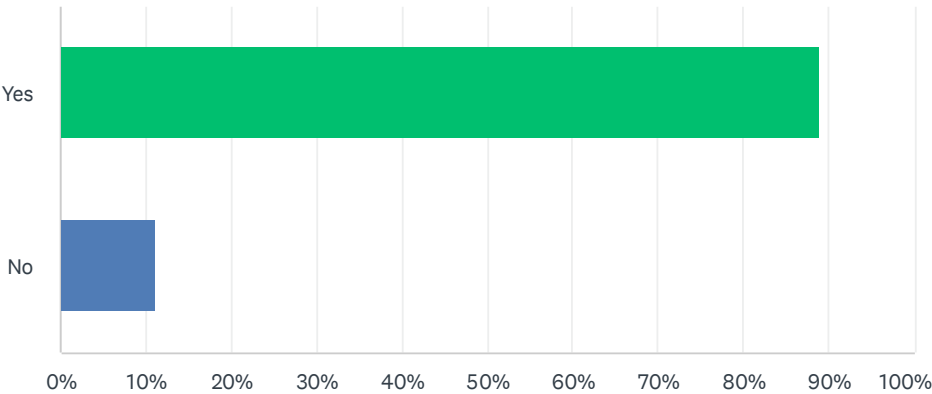
The proposed new rule is not expected to negatively impact racial equity and equitable outcomes. The rules provide guidance on siting criteria for photovoltaic power generation facilities and are expected to increase the number of facilities that constructed and operated in eastern Oregon through clarification of rules and standards, as well as by providing an alternative process for entitlement.

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. 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 conditions.

Q1 Has your county received applications for photovoltaic solar energy generation projects?

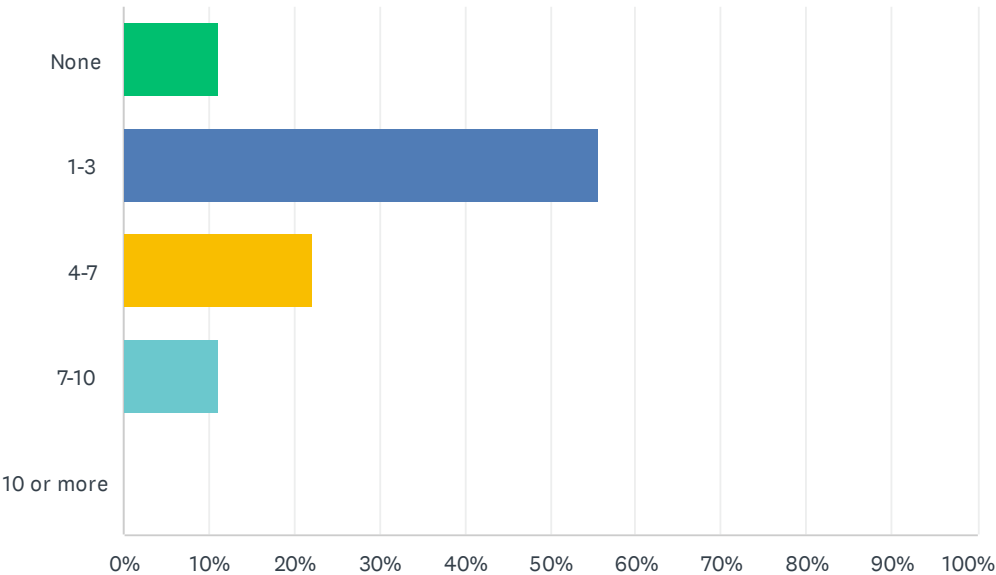
Answered: 9 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	88.89%	8
No	11.11%	1
TOTAL		9

Q2 If so, in the last five years how many applications for photovoltaic solar energy generation projects has your county received?

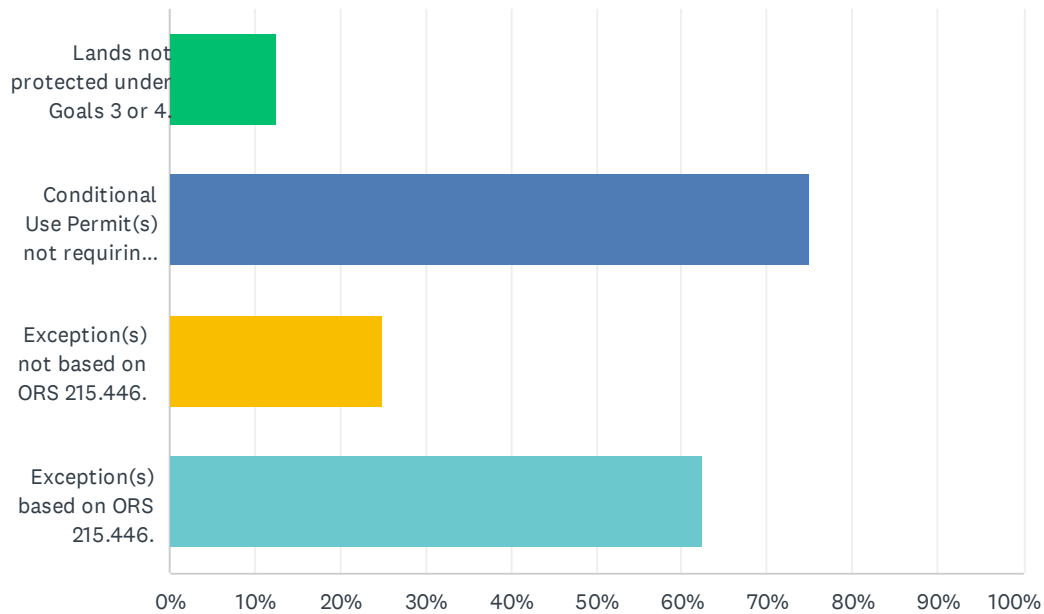
Answered: 9    Skipped: 0



ANSWER CHOICES	RESPONSES	
None	11.11%	1
1-3	55.56%	5
4-7	22.22%	2
7-10	11.11%	1
10 or more	0.00%	0
TOTAL		9

### Q3 If so, were the applications for: (check all that apply)

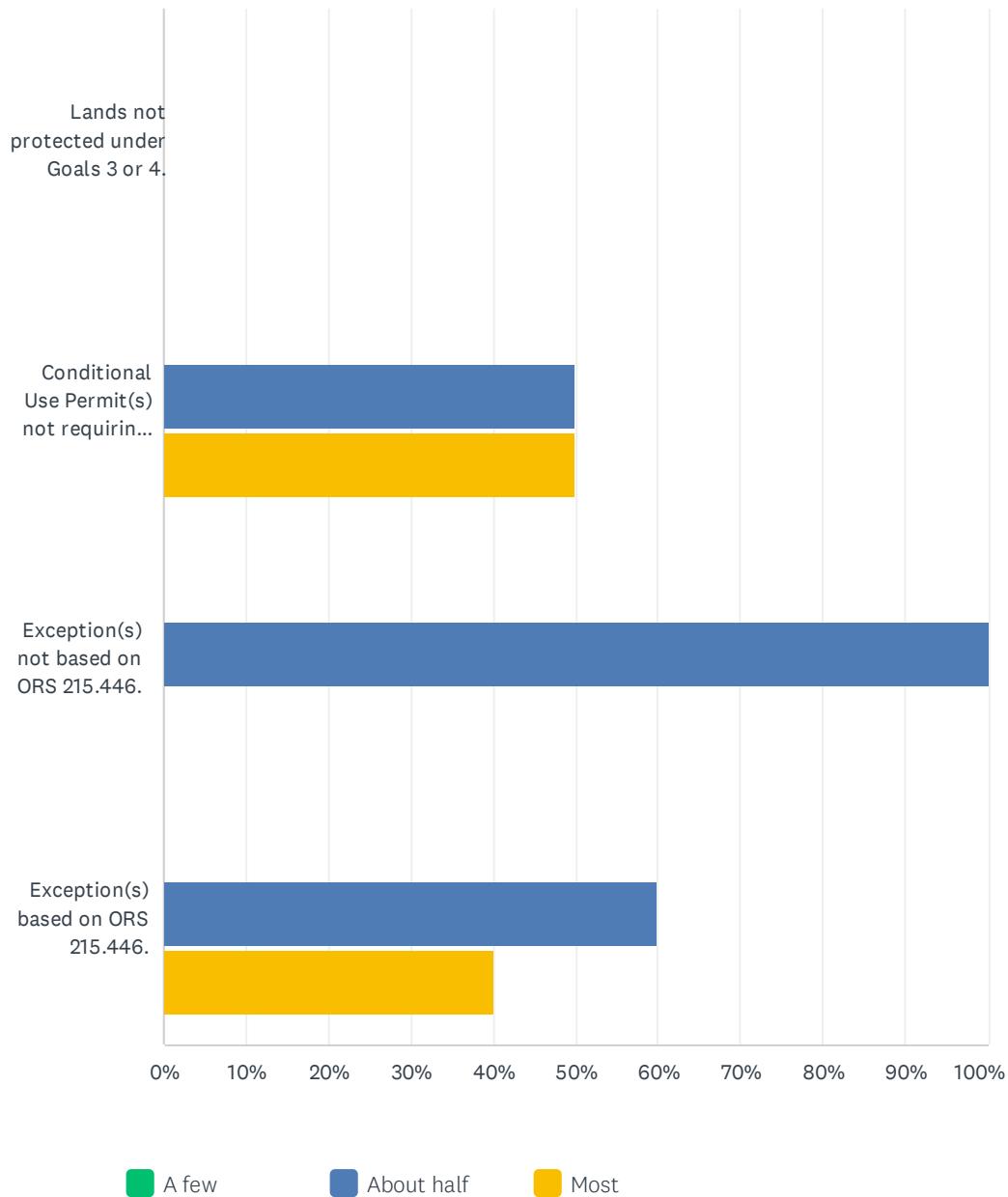
Answered: 8 Skipped: 1



ANSWER CHOICES	RESPONSES	
Lands not protected under Goals 3 or 4.	12.50%	1
Conditional Use Permit(s) not requiring an exception.	75.00%	6
Exception(s) not based on ORS 215.446.	25.00%	2
Exception(s) based on ORS 215.446.	62.50%	5
Total Respondents: 8		

## Q4 If so, were the applications for: (check all that apply)

Answered: 8 Skipped: 1

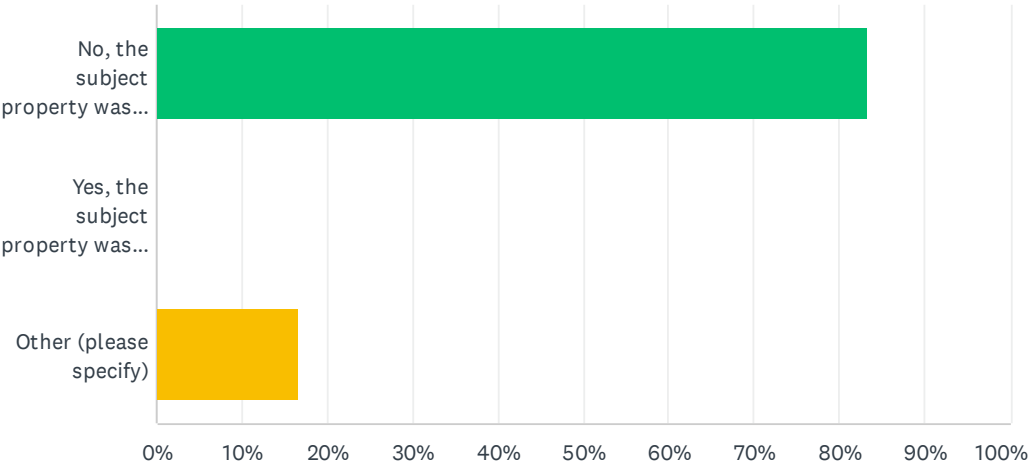


	A FEW	ABOUT HALF	MOST	TOTAL	WEIGHTED AVERAGE
Lands not protected under Goals 3 or 4.	0.00% 0	0.00% 0	0.00% 0	0	0.00
Conditional Use Permit(s) not requiring an exception.	0.00% 0	50.00% 3	50.00% 3	6	2.50
Exception(s) not based on ORS 215.446.	0.00% 0	100.00% 2	0.00% 0	2	2.00
Exception(s) based on ORS 215.446.	0.00% 0	60.00% 3	40.00% 2	5	2.40



Q5 If an application was for an Exception based on ORS 215.446 or otherwise, did the proposal include a zone change?

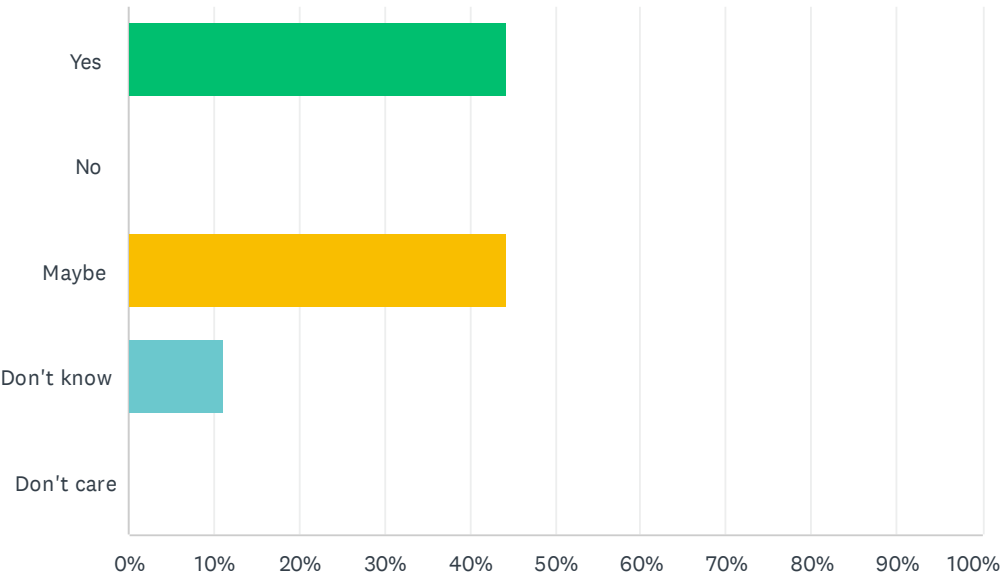
Answered: 6   Skipped: 3



ANSWER CHOICES	RESPONSES	
No, the subject property was proposed to retain its resource zoning under Goal 3 and or Goal 4.	83.33%	5
Yes, the subject property was proposed to be re-zoned from a resource designation to a development designation.	0.00%	0
Other (please specify)	16.67%	1
TOTAL		6

Q6 Do you think your county is interested in siting photovoltaic solar energy generation projects in the future?

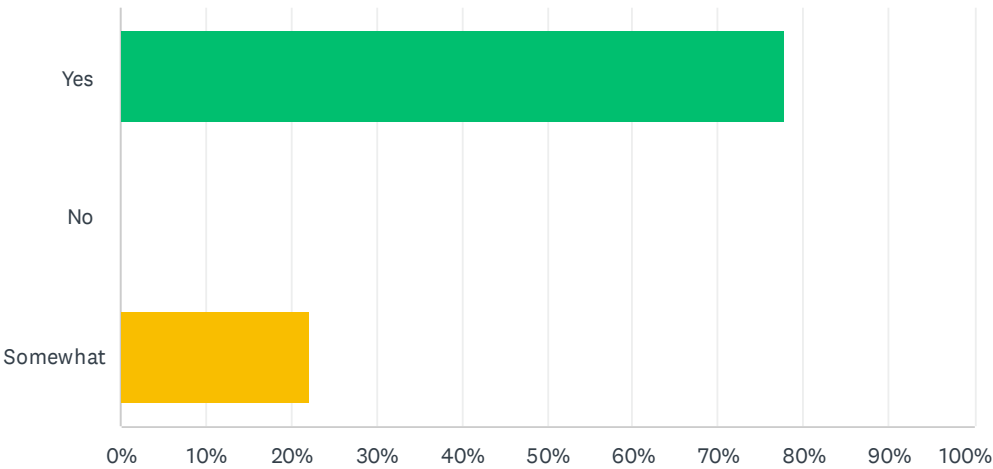
Answered: 9    Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	44.44%	4
No	0.00%	0
Maybe	44.44%	4
Don't know	11.11%	1
Don't care	0.00%	0
TOTAL		9

Q7 Are you familiar with LCDC’s current rulemaking project regarding “Finding Opportunities and Reducing Conflict in Siting Photovoltaic Solar Power Generation Facilities,” required by HB 3409 (2023)?

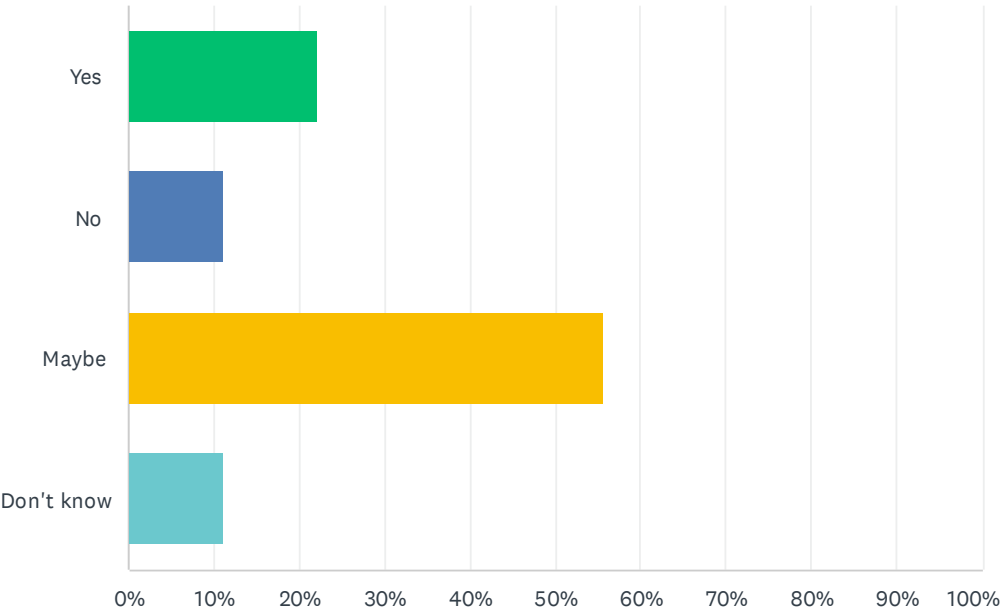
Answered: 9    Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	77.78%	7
No	0.00%	0
Somewhat	22.22%	2
TOTAL		9

Q8 Do you think your county would be interested in implementing opportunities established by this LCDC rulemaking project that would allow the consideration of larger projects when proposed in certain places determined to be “low conflict?”

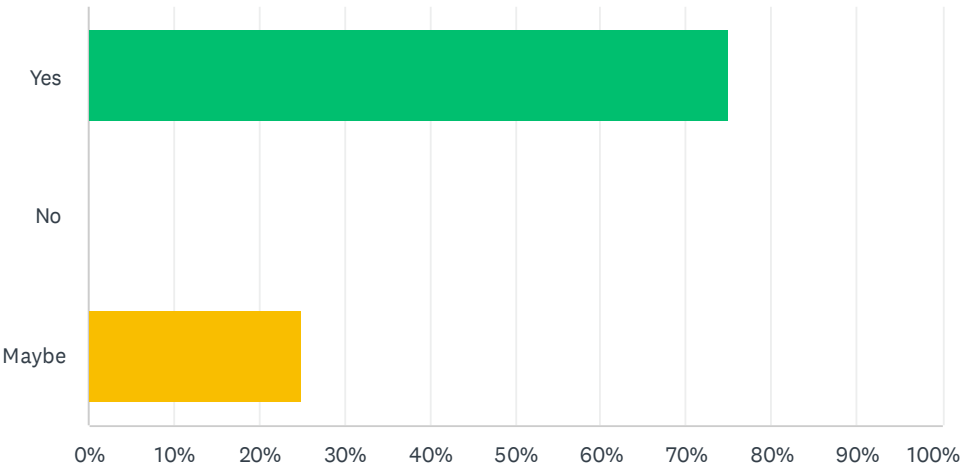
Answered: 9    Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	22.22%	2
No	11.11%	1
Maybe	55.56%	5
Don't know	11.11%	1
TOTAL		9

Q9 If so, do you think your county would require Technical Assistance from DLCD in order to implement the new opportunity created in Division 23?

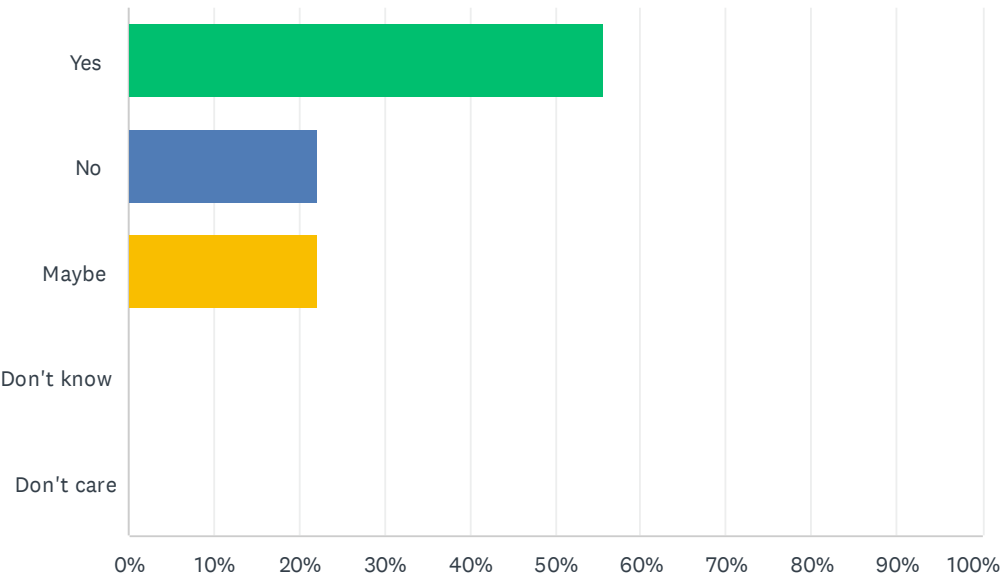
Answered: 8 Skipped: 1



ANSWER CHOICES		RESPONSES	
Yes		75.00%	6
No		0.00%	0
Maybe		25.00%	2
TOTAL			8

Q10 Has your county considered "agrivoltaics" as a possible development scenario?Agrivoltaics is defined as the dual use of land for solar energy production and agriculture. It can be used in both farming and ranching.

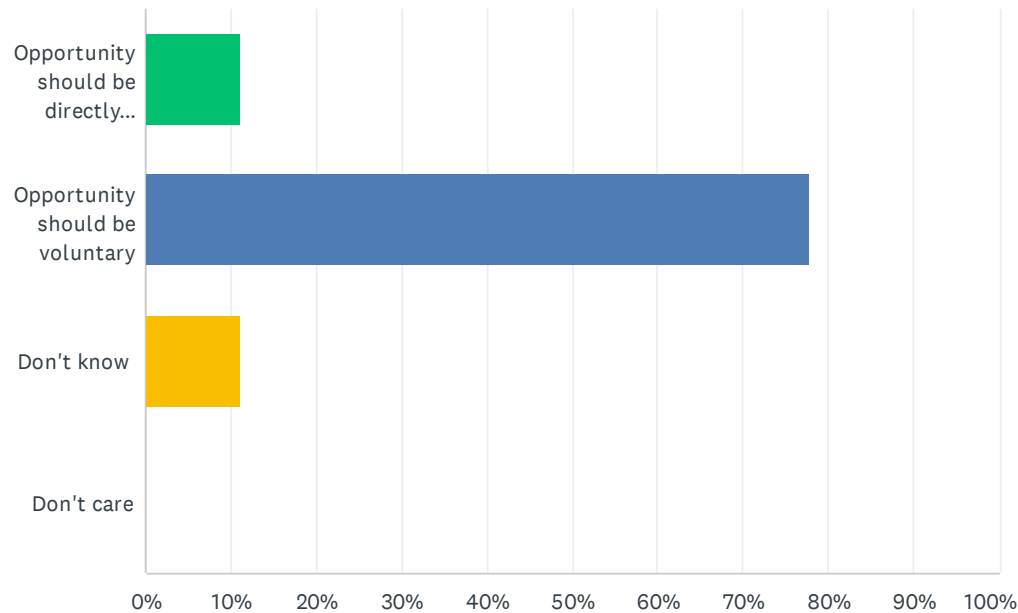
Answered: 9    Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	55.56%	5
No	22.22%	2
Maybe	22.22%	2
Don't know	0.00%	0
Don't care	0.00%	0
TOTAL		9

Q11 How should opportunities be made for counties to consider larger photovoltaic solar projects as part of an agrivoltaics project?

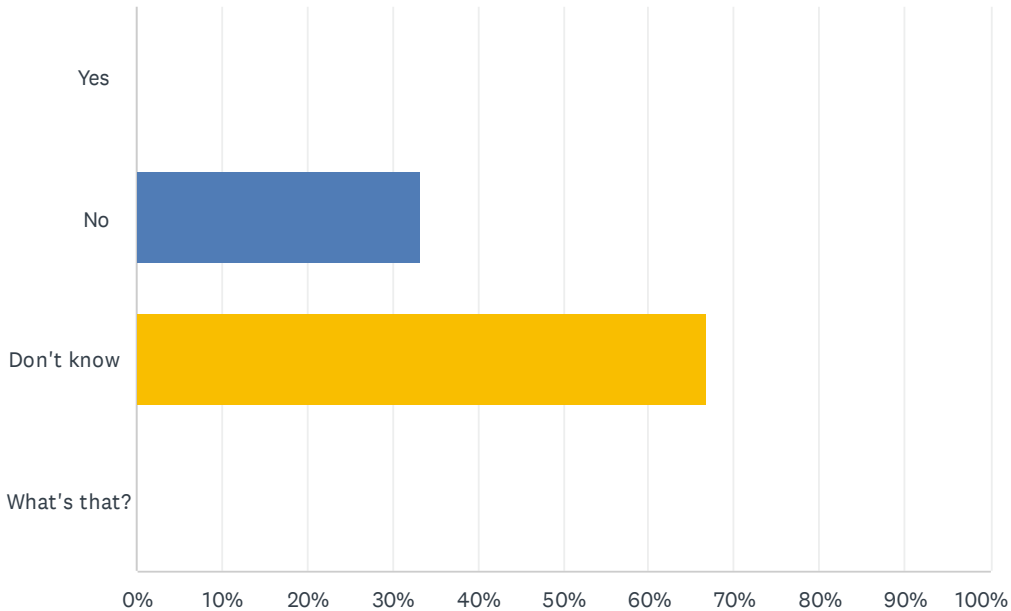
Answered: 9 Skipped: 0



ANSWER CHOICES	RESPONSES	
Opportunity should be directly applicable	11.11%	1
Opportunity should be voluntary	77.78%	7
Don't know	11.11%	1
Don't care	0.00%	0
TOTAL		9

Q12 Does your County have a partnership with a Community Benefits Organization?

Answered: 9 Skipped: 0

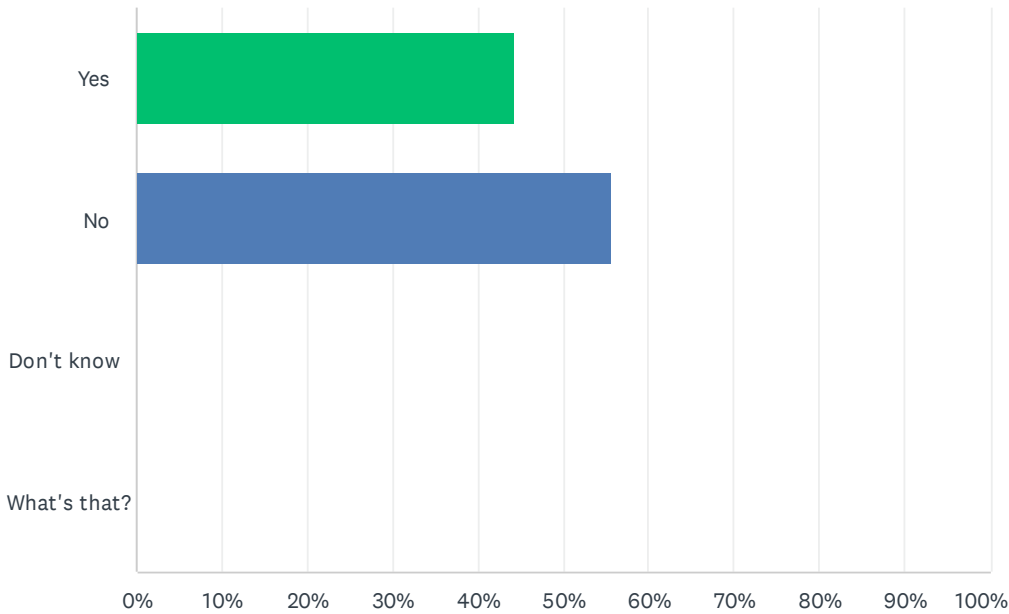


ANSWER CHOICES		RESPONSES	
Yes		0.00%	0
No		33.33%	3
Don't know		66.67%	6
What's that?		0.00%	0
TOTAL			9



Q13 If your County has accepted applications for photovoltaic solar energy generation projects, has your county ever entered into a Community Benefits Agreement, Strategic Investment Program, or Payment in lieu of Taxes (PILOT) agreement with a Solar Developer?

Answered: 9 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	44.44%	4
No	55.56%	5
Don't know	0.00%	0
What's that?	0.00%	0
TOTAL		9

**Q14 In addition to the Director, how many planners does your county have on staff?**

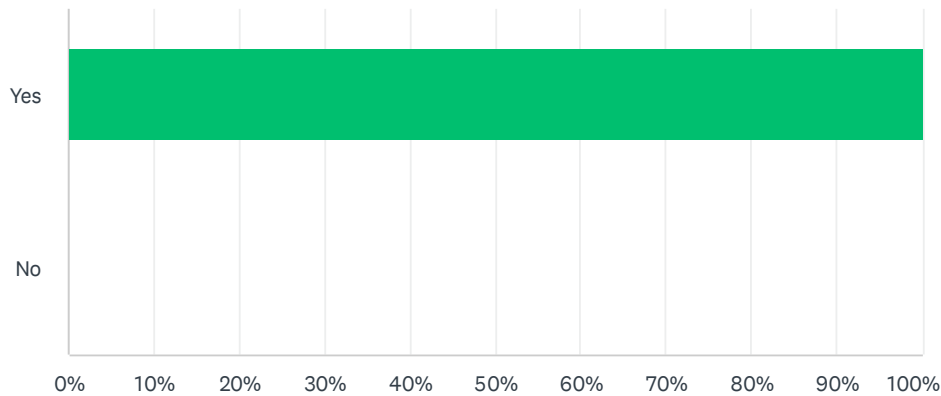
Answered: 9   Skipped: 0

## Q15 What is your county's application fee for Conditional Use Permits for energy generation facilities?

Answered: 9   Skipped: 0

Q16 Would you be interested in participating in additional on-line surveys?

Answered: 8    Skipped: 1



ANSWER CHOICES		RESPONSES	
Yes		100.00%	8
No		0.00%	0
TOTAL			8

## Q17 Do you believe in Sasquatch?

Answered: 8   Skipped: 1



# Oregon

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September 23, 2024

LCDC Solar Rules Advisory Committee  
RAC Survey Results  
Meeting #6



The following tables include comments on the various administrative rule divisions from the RAC Survey that were received on or before September 19. The department's thoughts and observations are offered in [blue](#).

## Comments – Division 23

### Sections 1-4

- Section 2 should only adopt definitions that are applicable to the regulation. Broad cross-references create unspecified impacts. - HV farmland definition should be limited to ORS 215 definition. - 2(e) and (f) indicate that section 7 is a proxy for whether a site is suitable for solar. That is not accurate. The factors in Section 7 amounts to some approximation of the “least impact” concept. - Section 4 site specific provisions should be mandatory.

The department has learned that providing definitions for words or terms that are newly introduced, may be subject to more than one interpretation, or that are not commonly used or recognized provides clarity and that clarity reduces risk. Both ORS 215.446 and OAR 660-033-0130(38) refer to the definition of high-value farmland at ORS 195.300(10), which includes the definition at ORS 215.710. The department has considered whether it would make sense to rely on the definition ORS 215.710 but have not wanted to be in jeopardy of running afoul of existing provisions of law. Subsection (7) is intended identify lands that can be considered genuinely special within the millions of acres that could be reasonable candidates for photovoltaic solar development. These special, and therefore, “Significant” areas and sites are deserving of a level of preferential treatment. In the department’s experience, the greatest opportunities, and least amount of risk may often be found at locations that do not present land use conflicts. It is the department’s understanding based on written testimony in the legislative record that counties should be allowed to decide whether or not to implement the new rules. The voluntary approach is also included as part of the Charge for this rulemaking approved by LCDC in November of 2023.

Section 4 refers to 5-7 and I have issues with 5-7, I cannot support section 4 unless 5-7 are addressed

Please see comments regarding subsection (5)-(7) below.

**- need military threshold for solar (maybe wrong section)**

Language designed to account for the presence of Military Airspace is now located at subsection (13)(a).

### **Sections 5-7**

**Among those have previously flagged, to call out that section 7.b.F does not provide sufficient parameters: "(F) Lands protected under Goal 3 that are included in an irrigation district or a federally recognized viticultural area that have no past history of irrigation." We should not be parsing out high-value farmland- keep those definitions intact and whole**  
**Discussed in a time we could not make meetings, but that is a long way from transmission on 6.C.c Farm impacts test consideration necessary. Ensure a cumulative impact consideration per county**

The department has included language regarding irrigation districts & AVA's as both have come up and we believe they are deserving of discussion. We appreciate receiving comments regarding the adequacy of the draft language. The RAC may decide not to include this type of provision.

Subsection (6)(c)(C) was written after several RAC members objected to a distance of five-miles from all sized of transmission lines. The department's research suggests that all, or nearly all, photovoltaic solar projects that have been developed in Oregon or submitted to EFSC for review, as well as county approvals we can find are located within four-miles of a transmission line.

The farm impacts test at ORS 215.296 and OAR 660-033-0130 is applicable as a matter of law is beyond LCDC's authority to remove. We have discussed how, or whether this test might be interpreted to be applied to these projects in a more straight forward, clear and objective style way.

Currently, a cumulative impacts assessment is triggered when 48-acres of solar has been developed or obtained building permits within a one-mile study area when the project is proposed in high-value farmland. The test for arable land is 80-acres. Please see OAR 660-033-0130(38)(h)(G) and (i)(D). There has been no discussion about removing or changing these provisions.

**Too many standards that are unrelated to solar production. - Result is that there is no way to assess the impact of this draft rules in the aggregate at the state or county level. How should counties determine whether to adopt regulations? Would solar production increased by this regulation? - 6(b) and (c) should be removed. Arbitrary and serve no policy purpose.-Standards should be mandatory- Section 5 - what makes a mapping tool “reliable”? Can’t the county rely on non-online tools? Like a consultant’s report?- Should remove prohibition on ORS 195 definition of HV farmland. It is overbroad and does not implement any Statewide Planning Goal.**

The department feels that the standards in the draft rule are instrumental to carrying out the text and context of HB 3409 for “Finding Opportunities and Reducing Conflicts in Siting Photovoltaic Solar Power Generation Facilities.” We appreciate mapping layers do not exist for all of the items that need to be considered. However, we are uncertain how limiting or removing consideration of certain resources or values would create a more complete picture. All we would know for certain is that some resource categories valued by Oregonians could get overlooked if they aren’t called out.

Subsections (6)(b) & (c) are written to carry out the direction of HB 3409, Section 35(2)(b)(B), which we have mentioned before. The policy objective is to understand lands with characteristics suitable for successful photovoltaic solar development, which together with subsection (7) is intended to allow for areas that are genuinely special and deserving of special consideration. Without the considerations expressed at subsections (6) and (7) there is no basis to determine that the direction of HB 3409, Section 35 has been honored, or that any particular site is deserving of regulatory relief.

It is the department’s expectation that counties will determine to adopt ordinances to implement the opportunities to be provided by the new Division 23 rules if they are interested in being able to consider larger projects without having to take an exception.

What *does* make an on-line tool “reliable.” It just felt like a decent language choice. Maybe we should remove that term. Nothing at subsection (5) is intended to preclude a county from using other sources of data. The intention is simply to identify that desktop tools are available and may be utilized rather than having to incur additional costs by commissioning consultant studies.

As mentioned above. Both ORS 215.446 and OAR 660-033-0130(38) reference ORS 195.300(10).



**I do not agree with using distance to transmission lines as a criteria for expediting siting. Nor do I feel the slope requirement is necessary. These are things that are on the solar company decision-making, not what the State needs to be utilizing as limiting/enabling factors for where to expedite.**

Longstanding conversations with the development community has left the department with the understanding that successful solar projects are dependent upon three things: access to the solar resource, access to transmission, and relatively flat land that can be affordably developed. More importantly, Hb 3409, Section 35(2)(b)(B) calls for consideration of “Site characteristics, resource potential, proximity to current and future transmission access and locations for potential interconnection.” Some of these items are proving elusive there does not seem to be any way to understand locations for potential interconnection without access to confidential information or conducting expensive studies. However, certain data is readily available from online sources like ORESA and are easily mappable. Transmission lines, which can crudely represent “Proximity to Transmission” and slope data representing “site characteristics” are two of these items. We remain interested in other ideas on how to do this but we don’t feel we could simply disregard language in the legislation.

**I cannot find a ORS 195.300(10) - (7)(b)(f)... do you mean 7bf of this document or the code. Same for other section references. If referencing statute and this code in same sentence clarity would be good. I have a very strong objection to Pg 5 lines 13-14. If a county wishes to site next to their UGB, that should be up to them.**

Subsection (7)(b)(F) from the Sept 6 draft reads “Agricultural lands protected under Goal 3 that are included in an irrigation district or a federally recognized viticultural area but have no past history of irrigation;” We agree that additional clarity would be good. It’s something we are working on.

Cities and counties have a legal duty to establish urban growth boundaries suitable to accommodate a variety of land use categories (residential, employment, public, etc...) over a long-range planning horizon, usually 20 years. From time to time, the UGB’s need to be expanded. Rural lands prioritized for inclusion in a UGB resemble those that might be emphasized for solar development (low quality ag land, poor wildlife habitat, etc...). Cities are inherently constrained in where they may expand. If a large, land intensive use is occupying an area that would otherwise be considered a high priority for expansion, this city can’t just stop. Instead, they will be obligated to disregard that area and move on to lands that are a lower priority, like higher quality farmland. On the other hand, solar, so it would seem, has dramatically more options, such that siting near a UGB of one of eastern Oregon’s larger cities shouldn’t be a deal breaker for the industry. Put another way, taking measures to avoid

frustrating the urbanization needs of cities to provide needed housing and other items feels like a reasonable policy question to bring up.

**Regarding Subsection 5(c)(A), (B), and (C), I had the impression from solar development reps on the RAC that distance from transmission lines was certainly a factor in determining financial feasibility of a project, but that costs associated with distance could potentially be offset by other factors. Also, without knowing the available capacity of the various transmission lines, one couldn't realistically or accurately determine financial feasibility. RE: Subsection 7 (a)(B) &(C) how is forage production capability determined? RE: Subsection 7(a)(D), I have questions and concerns about the meaning, interpretation, and application of the phrase "significantly affected by wildfire". I would like to hear others' views on this proposed language.**

As mentioned above, HB 3409, Section 35(2)(b)(B) directs this work to consider "proximity to transmission." The language has been drafted in such a way that a county may rely on the distances expressed at subsection (6)(c) or they may do something different so long as it can be justified. We agree that understanding the capacity of transmission lines and substations would be ideal. This information doesn't seem possible to obtain.

Data on vegetation can be found on an on-line tool called the Rangeland Analysis Platform [Rangeland Analysis Platform \(rangelandanalysis.com\)](https://rangelandanalysis.com) we should probably make mention of this in the rule if we ultimately decide to go this way.

"Significantly affected by wildfire" should have read "severely affected by wildfire." This is a notion the Ag & Forestry Mitigation subgroup had discussed a bit. At this point, it is likely to be removed from future drafts altogether.

**Page 3, Line 10: "...Factor of 19 percent or greater".**

This annual utility capacity factor would include almost all of eastern Oregon.

## **Sections 8-10**

### **- Not clear what conflicting uses are being considered**

Subsection (8) does not require a county to identify conflicting uses, thereby eliminating what is often a complex and even controversial part of the Goal 5 process. Counties can choose to identify conflicting uses but would need to use the standard process.

**I would like to hear from local governments regarding these subsections.**

Agreed. Hopefully our local government partners on the RAC are able to discuss this at the next RAC meeting on October 1.

**Need military threshold for solar (maybe wrong section)**

Language designed to account for the presence of Military Airspace is now located at subsection (12)(a).

**Sections 11-12**

**public outreach not just conducted but responded to... there should be language similar in other planning areas that could be reflected here. Mitigation on funding - especially SIP- does not really mitigate.**

Good points. We don't see public outreach as just a "check the box" item either. We will think about language and look for examples. Any suggestions will be appreciated. A Strategic Investment Program (SIP) could, possibly, be a component of addressing the Community Benefits test although this remains to be seen. We don't anticipate a SIP or Payment in Lieu of Taxes (PILOT) having a role in other types of compensatory mitigation.

**Section 11 mitigation appears to be completely at the discretion of the county-12(g) is arbitrary and subjective- 12(g)(E) is not within the power of a project.**

Additional details on mitigation are included for discussion in the most recent draft.

Subsection (12)(g) attempts to provide a tangible opportunity for the county and its residents to share in the benefits of solar development. We are hopeful that one result would be a more accepting and welcoming environment in the local community. The subsection (12)(g) criterion may be satisfied in one of two ways. First, a county can apply discretion and judgement to determine if the proposal included application materials satisfies the language. This approach provides flexibility but would also involve a certain amount of risk. The second way would be to utilize the approach(es) furnished at subsection (12)(g)(A) thru (E), which are intended to function as a genuine "safe harbor." There would be less flexibility but compliance with the rule would be guaranteed. The current draft offers some refinement but this is still a work in progress. We appreciate these comments and would welcome additional examples.

**would like to see us give some guidance on what would be the types of acceptable agricultural mitigation. Otherwise, how do we determine whether it is a sufficient mitigation.**

Additional details on mitigation are included for discussion in the most recent draft.

**you're missing an 11(d). It's also unclear to me at this point where the mitigation guidelines and guard rails will be provided, it not being fleshed out here or in the other Divisions provided.**

Thanks for catching that typo. Additional details on mitigation are included for discussion in the most recent draft.

**It seems that Subsection (11) mitigation plans should be reviewed and approved by relevant state agencies: ODFW, ODA, ODF. RE: Subsection (12)(g)?, Community Needs and Benefits, I have concerned that the proposed funding mechanisms would have issues with transparency and accuracy of data provided, and would be vulnerable to manipulation. "Savings in time value" could be very difficult to determine and guarantee; it could also change during the project development. I like the introductory paragraph (g), but the proposed funding mechanisms don't seem to connect very well with the requirement to "help improve a community's social health, well-being, and functioning". I'd like to see more work on this and more examples. Local community should determine their priorities for "community needs and benefits" and negotiate an acceptable Agreement. The specifics of (12)(g)(E) are helpful, but leaves much to be determined - how? through negotiation with the local government?**

Mitigation plans for wildlife are subject to ODFW's mitigation policy, which would necessarily require the agency's involvement. We would expect that other agencies would also be involved in the review of mitigation plans related to their respective missions.

As mentioned above, subsection (12)(g) is a work in progress. There could be an opportunity for the community to negotiate an agreement if a county (and applicant) chose not to pursue what is intended to be a clear and objects, risk free pathway under (12)(g)(A) thru (E). A typical land use proceeding involves decision makers measuring facts and evidence against criteria and standards to determine whether a proposal should be approved. The department has been sensitive to the possibility that a community negotiation might lead to a quid pro quo situation that could be viewed as resulting in a pre-determined outcome. This could run counter to the need to satisfy legal thresholds. However, we are open to the possibility that our anxiety is unfounded. We would like to discuss this further.

**"...proximity, and result in no net loss..."**

These terms are commonly used in compensatory mitigation discussions and are intended to provide some context for what is expected under subsection (11)

### **Sections 13-15**

**Should Oregon Dept of Ag / Oregon Dept of Forestry be included in the PAPA notice? That is just a question... not certain what is appropriate Important to retain this as an opt-in rather than opt-out process. Since original commitment was to make it voluntary.**

The department believes that this is worth discussion. The current draft includes ODA and ODF in the list of parties to receive notice.

The department intends for the rules to be voluntary. This may (or may not?) be revisited during the scheduled review required by subsection (15)

**Pg 8 subsection (C) we would expect an agricultural agency review for any proposals that included significant solar resource development on agricultural lands, or with agricultural mitigation.**

ODA does not have regulatory authority over land use cases. None the less, it is the department's expectation that natural resource agencies could participate in the review of county level applications. As mentioned above, the current draft includes ODA and ODF in the list of parties to receive notice.

**Subsection (13)(b)(B), meeting notice should also go to property owners in the vicinity of the proposed project, not just the meeting location. I'd like to hear from local governments and Planning Departments re: Subsection (13).**

The department intends for the notice requirements in subsection (13) to help implement the direction of HB 3409, Section 35(2)(a)(B), which reads "Soliciting public feedback from neighboring landowners or residents." The current draft includes some revisions that we hope get at this issue better.

**Page 8, Line 3: "...will hold two or more..."**

Establishing Photovoltaic Solar Areas would require a more robust public process. The department believes this will help implement the direction of HB 3409, Section 35(2)(a)(B), which reads "Soliciting public feedback from neighboring landowners or residents".

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## Comments – Division 33

### Subsections 38 a - i

**Agrivoltaics that are actual cultivation should be unlimited acres.**

**(d) I thought we discussed this and the income requirement was deemed irrelevant. I am very uncomfortable with this section as written.**

**If the impact to agricultural productivity is de minimus from agrovoltaics, then the acreage limits seem unnecessary.**

**I don't think it is reasonable to require that farm income be equal or greater with an agrivoltaics program, as without it - or that any less farm income farm from the specific project site, can be offset by greater income from elsewhere on the farm. Agrivoltaics provides an opportunity for the farmer to generate two streams of revenue, while accepting that some loss in crop revenue may result. I don't understand the rationale for the same cumulative cap levels, regardless of the county's overall size and variable number of acres of different quality and classified land and soils.**

So long as an agrivoltaics development delivers electricity to paying customers the department believes it falls into the category of “Commercial utility facilities for the purpose of generating power for public use by sale” under ORS 215.283(2)(g). This means that a proposal for an agrivoltaics development must be approved by local decision makers and is subject to conditional use criteria.

The department has consistently observed that for all of the interest in agrivoltaics, there remains more than a shadow of doubt in many minds on whether agrivoltaics is viable. Those expressing the greatest degree of doubt tend to be members of the agricultural community. The sideboard examples in the draft language are offered in an attempt to strike the balance by providing genuine opportunity for legitimate agrivoltaics development and providing a sufficient comfort level to those who remain unconvinced.

The current draft includes revised language that does not include income requirements, among other things.

### Subsection (38) j-o

**In Section (E) "vital living ecosystem" doesn't require for it to be site appropriate - you can replace the entire soil on a property and still have a vital living ecosystem, it doesn't mean "appropriate to the area and soil and moisture**

The current draft removes the term “vital living ecosystem.”

**Defining the meaning of "unnecessary" is problematic. Who determines this and how is that determination verified? Same concerns with "significantly reduce the project's ability to operate successfully." I'd like to hear from others on these subsections.**

The use of these terms date to the original language of Section (38) as it was adopted in 2012. The expectation is that a county would be able to rely on facts and evidence in the record, often in the form of a consultant report. Our local government and developer partners may be able to provide some insight as to how this language is typically implemented at the local level.

#### **Subsection (38) p-t**

**12 years is a long time to leave ground locked up and for communities to be unable to prosper**

Twelve years does seem like a long time, although it may be merited in these circumstances.

**(D) - again - we need to know how we determine that the Ag mitigation is sufficient.**

The current draft of Division 23 provides additional information on mitigation.

**I'd like to hear from others on these subsections.**

The department is hopeful that there will be productive conversation at the next RAC meeting.

#### **660-033-0145 Agriculture/Forest Zones**

**I'd like to hear from others on these subsections.**

The department is hopeful that there will be productive conversation at the next RAC meeting.

### **Comments – Division 6**

**OAR 660-006-0025**

(no comments on forestry section)

**OAR 660-006-0033**

**I'd like to hear from others on these proposed changes. I'd like to better understand the CO<sub>2</sub> trade-offs between sequestration by forested land, versus potential CO<sub>2</sub> reductions from the solar energy project. What parameters determine whether this is a wise tradeoff?**

The department is hopeful that there will be productive conversation at the next RAC meeting.

**OAR 660-006-0050**

**I need to hear from others on this.**

The department is hopeful that there will be productive conversation at the next RAC meeting.

**Comments -Division 4**

**660-004-0022**

**Should be mandatory**

The proposed revisions are intended to add clarity, by codifying what appear to be common and accepted practices. The department believes that improved clarity results in reduced conflict, which is consistent with the direction provided by HB 3409.

**As long as we come to agreement on the language for the relevant OARs**

Fair enough.