

EASTERN OREGON SOLAR SITING RULEMAKING ADVISORY COMMITTEE MEETING PACKET #9



TO: Solar Siting Rulemaking Advisory Committee Members
FROM: Adam Tate, Renewable Energy Planner
SUBJECT: Rulemaking Advisory Committee (RAC) Meeting Packet #9

Dear Solar Siting Rulemaking Advisory Committee Members,

Thank you for bringing your diverse experience and expertise to this long and complicated rulemaking process, we really appreciate the time and energy you have brought to it. We are now coming to the end of the RAC process. This meeting will be the last truly substantive meeting to review, discuss and refine the proposed rules. The final planned meeting on January 9th is for review and approval of a final rules package and the recommendations of the RAC for LCDC. (Note that LCDC has the ability to ask for one additional RAC meeting, but we do not anticipate them doing so)

This meeting will be held on Wednesday, December 18th from 9:00 am to 1:00 pm PT.

We will go over draft rule language for Divisions 4, 6, 23 and 33 that has been refined from the last RAC meeting, the last subcommittee meeting, and some feedback from our partner agencies ODFW, OWD, SHPO and more. Please note item No. 4 below, a new segment of the packet that focuses on specific questions for the RAC and what to expect in the new rule drafts. Please read it before you read the updated rule language.

RAC Meeting Packet Contents:

1. Cover Memo
2. Meeting Agenda
3. Summary from eighth RAC Meeting
4. Specific Questions for the RAC
5. Updated draft rule language for Divisions 4, 6, 23 & 33

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

Topic: DLCD: Eastern Oregon Solar Siting RAC Meeting #9

Time: Dec 18, 2024 09:00 AM Pacific Time (US and Canada)

Join Zoom Meeting

<https://kearnswest.zoom.us/j/86064100029?pwd=VFJyVDf6HM5CaCaQFVtbb6YqsIJX39.1>

Meeting ID: 860 6410 0029

Passcode: 790267

Casaria Taylor will be providing support for the Zoom meeting.

Casaria.taylor@dlcd.oregon.gov 971-600-7699.

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

[Oregon DLCD - YouTube](#)

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

Thank you,

Adam Tate

Renewable Energy

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AGENDA

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

Date and Time

December 18, 2024, from 9:00 am – 1:00 pm PT

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

Desired Outcomes and Purpose

- Discuss and resolve outstanding sections of the rule.

Agenda

| Time (PT) | Topic | Lead |
|---------------------------|--|--|
| 9:00 – 9:10 am (10 min) | Welcome and roll call | Jamie Damon, Kearns & West Facilitator |
| 9:10 – 9:40 am (30 min) | Report Outs <ul style="list-style-type: none">• DLCD updates on conversations with the Oregon Department of Fish and Wildlife; Historic, Archaeologic, and Cultural Resources Technical Advisory Committee; and Oregon Water Resources Department.• Land Conservation and Development Commission (LCDC) December 6 meeting updates.• Clarifying Questions | All |
| 9:40 – 11:40 am (120 min) | Draft Language Review <ul style="list-style-type: none">• Divisions 33, 6, and 4• RAC discussion | All |



| | | |
|------------------------------------|---|--|
| 11:40 – 11:50 am (10 min) | Break | All |
| 11:50 am – 12:45 pm (55 min) | Draft language review <ul style="list-style-type: none">• Division 23 outstanding sections• RAC discussion | All |
| 12:45 – 1:00 pm (15 min) | Next Steps and Closing <ul style="list-style-type: none">• Next RAC meetings:<ul style="list-style-type: none">○ January 9, 1 - 5pm• LCDC Meeting January 23-24 | Jamie Damon, Kearns & West Facilitator |
| 1:00 pm | Meeting Adjourn | |

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

December 5, 2024, RAC Meeting #8

1pm – 5pm

Location: Virtual (Zoom)

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

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

Meeting Attendees

RAC Member Attendees:

Anahi Segovia Rodriguez, Verde
Andrea Kreiner, Oregon Association of Conservation Districts
Bill Richardson, Rocky Mountain Elk Foundation
Brandon McMullen, Harney County Planning Director
Damien Hall, Oregon Solar+Storage Industries
Dan Orzech, Oregon Clear Power
Dugan Marieb, Pine Gate Renewables
Elaine Albrich, Davis Wright Tremain
Jack Southworth, Oregon Cattlemen's Association
Kimberly Peacher, Department of the Navy
Laura Tabor, The Nature Conservancy
Marc Hudson, Oregon Agricultural Trust
Max Yoklic, New Sun Energy
Michael Eng, Lostine Fire Wise
Mike Totey, Oregon Hunters Association
Mike W. McArthur, Community Renewable Energy Association

Ex-Officio Attendees:

Tom Jackman, Oregon Department of Energy
Dan Hubner, Oregon Department of Forestry
Vernon Wolf, Oregon Department of State Lands
Chad Higgins, Oregon State University
Greg Jackle, Oregon Department of Fish and Wildlife
Ryan Krabill, Oregon Farm Bureau

DLCD Staff Attendees:

- Adam Tate, Oregon Department of Land Conservation and Development
- Dawn Marie-Hert, Oregon Department of Land Conservation and Development
- Jon Jinings, Oregon Department of Land Conservation and Development

Welcome, Opening Remarks, and Agenda Review

Jamie Damon, Kearns & West, introduced herself as a neutral third-party facilitator and facilitated introductions between RAC members. Jamie provided an overview of the meeting agenda and objectives.

Small Group Outcomes and Staff Updates

Max Yoklic shared outcomes from the small group meetings. The small group consisted of RAC members Elaine Albrich, Marc Hudson, Damien Hall, Andrew Mulkey, Commissioner James Williams, Brandon McMullen, Max Yoklic, and DLCD staff Jon Jinings and Adam Tate, with support from Jamie as facilitator. Max provided a high-level overview and characterization of the subgroup rule package work. The group primarily focused on Division 23-195, focusing on Subsections 2, 3, 4, 7, and Division 33. He noted that the working draft shared with the RAC includes policy questions highlighted in yellow for RAC discussion, the blue highlights sections convey technical language updates, and the purple and green highlighted sections need further review and follow up with agencies and TACs. Damien Hall provided brief remarks and expressed appreciation for the work the small group is doing to help strengthen the rules for streamlining the application of them on the ground.

Jamie facilitated questions and comments from RAC members.

- **Dugan Marieb:** I am curious about concrete examples of how this process might work. Is there a checklist that could help the group understand how this work happens in person?
 - **Damien:** I think the updated rules should make this process clearer. By separating the processes for areas versus sites, the two processes are made clearer.
 - **Max:** You could work through the rules section by section, as a checklist, and ask, are you analyzing all the factors that the rules indicate you need to?
- **Dugan:** It is a little unclear to all of us how many counties are going to take the more programmatic approach
 - **Brandon McMullen:** The concept of dividing these into two very specific paths in which a county can look at prospective development is key and smart in the work that we are doing here. Counties will have different perspectives based off priorities, political feasibility, available resources, and their thinking and considerations for a long-range approach.
- **Michael Eng:** How are you (directed at Brandon) feeling about the level of effort and the staff resources required to process either pathway by a county?
 - **Brandon:** In eastern Oregon, you certainly have a different staffing level for each community. We don't know, but the site specific is a good option to have, because it does provide some opportunities for us to tackle these challenges as they come along.
- **Michael:** For site-based proposals, a lot of that work could be put on the proponent, and for the programmatic, that might require assistance from DLCD or others if it is a priority for the State.
 - **Brandon:** We are putting something together in this RAC that gets it to where a local community can do it on their own and that is an important aspect of this.

660-023-0195

The RAC walked through Division 23-0195 by each subsection and discussed the technical cleanup and policy questions.

Subsection 2

Microgrid. The RAC discussed keeping the microgrid definition, as it is referenced in the community benefits section of the rules. The RAC will circle back on this in the next meeting.

Subsection 3

Significant Photovoltaic Solar Resource Sites. The RAC discussed what is meant by “predominantly.” DLCD staff clarified that they have followed the example of the predominance test for high value farmland, which indicates more than 50%.

Unmitigated Sites. The RAC discussed the changes to the language as consistent with the area versus sites changes. Some RAC members had questions about the categorization of wildlife and discussed the counties’ and permit applicant’s level of responsibility for consultation with ODFW. The RAC agreed this language around cultural resources and wildlife habitat will need to be reviewed by staff at Oregon Department of Fish and Wildlife, in addition to the Oregon State Historic Preservation Office and the group of tribal representatives.

Mitigated Sites. RAC members had questions about wildlife habitat language, and DLCD indicated they would reach out to experts to ensure consistency with existing policies and language. The RAC discussed agricultural lands protected under Goal 3. DLCD clarified that the goal here is to avoid irrigated lands. RAC members indicated the language provides a pathway for development on non-irrigated soil that does not have water rights, even if it was potentially high value. The RAC agreed to bring this language back into the subgroup for further discussion and articulation.

Ineligible Sites. Some RAC members had questions about water rights processes, and the feasibility of the language as written. RAC members discussed the importance of this language in achieving the goal the RAC set out to accomplish. DLCD indicated they will work with Oregon Water Resources Department to dial in language around irrigated water rights, with additional language around drought and groundwater designations.

Voluntary Implementation: The RAC agreed to add language clarifying voluntary implementation and Post Acknowledgement Plan Amendment (PAPA) processes.

Subsection 4

Photovoltaic Solar Resource Areas. DLCD summarized areas and site rules and how the separation of sites versus areas is helpful for their application.

Voluntary Implementation. Some RAC members suggested this rule to require implementation concurrent with PAPA procedures with an additional requirement for more public meetings and community conversations when adopting a local program to establish resource areas. Other RAC members disagreed with the requirement for additional public hearings. The RAC discussed public meetings noticing requirements and the importance of timely notification and engagement of community members when this work is happening in their areas. RAC members agreed to omit the

additional meeting requirement and defer to the embedded PAPA process while leaving the additional public meeting discretion up to the counties.

Mitigation. The RAC discussed the use of the calculator to determine mitigation standards and the need to put in writing what the requirements are for mitigation. Some RAC members suggested describing what the calculator does in the rule – not attaching the tool to the rule and providing the calculator as tool on the DLCD website.

Community Benefits. When discussing the dollar amount per megawatt, some RAC members felt \$1 per megawatt was standard, while other RAC members expressed it was not enough. The RAC agreed they wanted to give counties more flexibility to negotiate what they need with an applicant, in addition to how counties can spend that money.

Subsection 7

Satisfactory Requirements. The RAC discussed the requirement for **an** applicant to contact and seek comments from the entities listed at paragraph (14)(d) at least 90 days prior to submitting a land use application. The RAC recalled hearing that Tribes need more than 90 days. Some RAC members disagreed and felt 90 days was too long. The RAC discussed allowing counties to stay consistent with their existing processes and notice requirements from previous legislation. A RAC member proposed a 45-day requirement. The RAC discussed separating designations for areas versus sites, with a 30-day requirement for sites, not areas, while allowing deference to a counties pre-existing requirement for seeking comments.

Division 33

DLCD summarized Division 33, the rule that implements Goal 3 with the purpose of protecting agricultural land in congruence with the legislative policy statement consistent with the statute. Some RAC members asked to clarify the relationship between these rules and the Energy Facility Siting Council (EFSC) process and how they would apply with EFSC goal requirements. DLCD flagged this for more intentional conversation in the meeting on December 18th. Some RAC members felt that the provision to require a study area should be a county-based decision and not be required in the rule. DLCD asked the RAC for specific feedback on:

- Sectioning rules specific to Eastern Oregon
 - Some RAC members agreed the grouping makes logistical sense.
- Size of parcels or projects
 - Some RAC members wanted to explore other ways to evaluate cumulative impacts.
 - RAC members requested to look at how these compare with EFSC limits.
- The provision of non-arable lands with no size threshold
- Farm forest compatibility criteria
 - Some RAC members expressed concerns around the term “predominant use” not accurately reflecting the predominant productivity of land in Eastern Oregon.
 - Some RAC members called for a clearer standard.

The RAC will continue to discuss these elements in the next meeting.

Preliminary Maps

The RAC reviewed the preliminary maps provided by DLCD. The goal of the maps is to be used by the RAC and DLCD as a tool to indicate potential eligible lands for solar development. DLCD shared that they were unable to map slopes, and asked the RAC to identify other data sets that

could help refine the maps. The RAC identified slopes, yield data, soil type, corridor widths, and how to better map AVA and low/high value farmland. Some RAC members expressed concerns around the accuracy and application of the maps and called for more narrative and direction around their purpose. They called for audience clarity, an extensive list of caveats and limitations, more information on why lands may be eligible/ineligible, and to make clear what data sets are being displayed. A RAC member asked RAC members representing industry how useful this would be to them. RAC members indicated this would not be helpful and that there is more data out there not seen on these maps. DLCD reflected that the RAC has not yet decided what they want to do with the maps.

Process and Next Steps

DLCD shared the LCDC meeting would be happening the next day, on December 6th, and that DLCD would be providing a report out, and that all RAC members were welcome to attend or watch. Jamie reflected that the RAC had two final meetings, one on December 18th and one on January 9th, and that the remaining sections that RAC could focus on are Divisions 33, 6, and 4. DLCD added that they would move forward with reviewing earmarked language with technical experts, and invited RAC members to attend office hours or schedule time with him or Adam Tate directly. The RAC asked DLCD for a list of questions and specific directions for RAC members to prepare for the next meeting.

Next steps:

- DLCD to meet with agency staff and TACS as needed to review language.
- DLCD to develop a list of questions and specific directions for RAC members to prepare for the next meeting.
- DLCD to finalize earmarked sections for input with ODFW and Tribes.

Meeting Adjourn

The meeting adjourned at 5:02 pm PT.



DRAFT RULES FOR RAC CONSIDERATION

Division 4 – Specific Questions.

1. Should the common practice of retaining the existing Exclusive Farm Use or Forestry zoning when an exception to Goal 3 or 4 is approved be codified? This revision would provide clarity and guidance, which could reduce risk. Page 2, Lines 13-17.

Division 6 -Specific Questions.

1. Should the threshold for a conditional use application for a photovoltaic solar power generation facility on Forestland be increased to something larger than 10-acres to something more commensurate with what is available in an Exclusive Farm Use Zone? Page 1, Lines 14-17.
2. Should language be added to clarifying that a county will determine which standards to apply to a photovoltaic solar power generation proposed in an agriculture/forest zone based on the predominant use of the tract? If the predominant use is found to be farming or ranching the Division 33 standards will apply. If the predominant use is found to be forestry the Division 6 standards will apply. Page 5, Lines 15-17.

Division 23 – Overview of Revisions.

DLCD Staff has prepared revisions to the draft of OAR 660-023-0195 in order to respond to the discussion from the December 5, 2024, RAC meeting, as well as additional conversations we have had with ODFW, OWRD, and internal DLCD discussions.

Many of the revisions reflect subtle adjustments, minor and technical changes, as well as updated citations. Primary changes have been made in the following areas:

Historical, Cultural, and Archaeological Resources. Language regarding Unmitigated Sites, Mitigated Sites, and Ineligible Sites in the following areas:

Page 3, Lines 29-36

Page 4, Lines 1-12

Page 5, Lines 4-12 & 15-31

Page 7, Lines 1-16

Page 9, Lines 5-29

Page 10, Lines 21-40

Page 11, Lines 1-15

Page 12, Lines 1-9

Page 13, Lines 1-9



These revisions are intended to describe existing practices followed by solar developers and to complement the requirements of ORS 215.446(3)(b) by providing guidance on the consideration of these resources. Please help us understand if we are accurately capturing current requirements.

Language regarding irrigation. These revisions attempt to improve on existing language and identify when lands that are constrained in their ability to exercise an appurtenant water right may be eligible for possible development opportunities rather than remain in an “Ineligible” category:

Page 6, Lines 19-39

Page 12, Lines 12-26

We have recently learned that Representative Owens and others are working on possibilities in the Harney Basin, which we are trying to account for. Please let us know if you are aware of these efforts.

Agricultural Mitigation. We have borrowed language from RAC member, Marc Hudson, in an attempt to describe the purpose and components of the mitigation calculator:

Page 15, Lines 15-37

Page 16, Lines 1-15

Please let us know if this description is helpful.

Historic, Cultural, and Archaeological Resources Mitigation. This language works together with the revisions described above to provide clarity on what it means to adequately mitigate for possible impacts to these resources. This section relies heavily on provisions for sites on the National Register of Historic Places, local programs (to the extent they may exist) and SHPO Archaeological Permits.

Page 16, Lines 21-38

Please help us understand if these revisions are on the mark.

Program to Achieve the Goal - Advanced Outreach Prior to Submitting an Application. We have adjusted this language in response to the discussion and recommendation by RAC members at last Thursday’s meeting. This requirement would apply only to “Sites”, not be necessary where the county has a pre-application requirement that included certain entities, and reduced the timeframe to 30-days:

Page 18, Lines 18-24.

Please help us understand if we have accurately responded to the direction of the RAC.

Scheduled Review. We have made some adjustments here that we would call your attention to:

Page 19, Lines 19-24.

Please let us know if these revisions make sense.



Division 33 – Specific Questions.

1. Should all of the provisions for both eastern and western Oregon be tucked into Section (38), per the current draft, or should provisions for each part of the state have their own Section?
2. In order to be able to approve larger projects without an exception, the acreage thresholds in Division 33 need to be adjusted upward. Do the sizes proposed in the current draft make sense? Pg 2, Lines 22 & 26, Page 4, Lines 22 & 26, Page 6, Lines 9 & 12.
3. Following up on question 2., above does it make sense to leave open an acreage threshold for Nonarable Lands when a county has established “Photovoltaic Solar Resource Areas?” Page 6, Line 9.
4. Existing rules require a cumulative impacts type assessment “study area” when certain triggers are met on High-Value and Arable lands. Should these tests be applicable to projects subject to the “Low Conflict” siting opportunities created by OAR 660-023-0195? If so, should the size of the study areas be increased as shown in the current draft? Page 3, Lines 23-29 and Page 5, Lines 14-18.
5. Does it make sense to offer a more straight forward approach to addressing the longstanding “Farm and Forest Compatibility Criteria¹” on Nonarable lands when a county has established “Photovoltaic Solar Resources Areas?” Page 9, Lines 18-26.
6. Do the additional approval standards make sense (soil health, wildfire, temporary workforce housing) make sense? Page 8, Lines 31-35 and Page 9, Lines 11-17.
7. Should language be added to clarifying that a county will determine which standards to apply to a photovoltaic solar power generation proposed in an agriculture/forest zone based on the predominant use of the tract? If the predominant use is found to be farming or ranching the Division 33 standards will apply. If the predominant use is found to be forestry the Division 6 standards will apply. Page 10, Lines 27-29.

¹ ORS 215.296(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

660-004-0018

Planning and Zoning for Exception Areas

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

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

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

(b) That meet the following requirements:

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

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

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

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

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

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 or 660-014-0090 with regard to urban development on rural land.

(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, OAR 660-014-0040, or OAR 660-014-0090, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.

(c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

(d) When a local government approves an exception for a photovoltaic solar power generation facility under OAR 660-004-0020 through OAR 660-004-0022 the subject property shall remain zoned for exclusive farm use, forest use or mixed farm and forest; whichever is applicable. The local government shall also continue to apply the relevant approval criteria included at OAR 660-033-0130(38), OAR 660-033-0130(45) or OAR 660-006-0025(4).

Bold and Underlined Language is not in the current rule

Stuff in Track Changes is new to this draft.

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

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

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

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

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

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

660-006-0050

Uses Authorized in Agriculture/Forest Zones

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

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

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

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

660-023-0195

Photovoltaic Solar Energy Resources in Eastern Oregon

(1) **Introduction and Intent.** This rule is designed to assist local governments in eastern Oregon to identify opportunities and reduce conflicts for the development of photovoltaic solar power energy generation facilities. This division provides regulatory relief for projects proposed to be sited in significant photovoltaic solar resource areas and sites, subject to the standards and requirements of this rule. Photovoltaic solar resource areas and sites are presumed to comply with Goal 3 when in compliance with this division. This division is intended to help achieve the successful development of photovoltaic solar energy generation in eastern Oregon that:

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

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

(c) Suitably account for potential conflicts with the values and resources identified under Section 35(2) of HB 3409 (2023) and this rule.

(2) **Definitions.** For purposes of this rule the definitions in ORS 197.015, the Statewide Planning Goals, OAR 660-023-0010, OAR 660-033-0020 and OAR 660-033-0130(38) apply. In addition, the following definitions apply:

(a) "Archaeological Resources" is a term that is synonymous with and has the same meaning as "archaeological site" as defined in OAR 660-023-0210(1)(a), which means a geographic locality in Oregon, including but not limited to submerged and submersible lands but not the bed of the sea within the state's jurisdiction, that contains archaeological objects as defined in ORS 358.905(1)(a) and the contextual associations of the objects with:

(A) Each other; or

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

(b) "Cultural Resources" is a term that is synonymous with and has the same meaning as "cultural areas" defined in OAR 660-023-0210(1)(b), which means archaeological sites, landscape features of cultural interest, and sites where both are present. Also referred to as "cultural resource site."

(c) "Eastern Oregon" means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of the state and the western boundary of Wasco County, thence southerly along the western

boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the state.

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

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

(f) "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.

(g) "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.

(h) "Oregon Renewable Energy Siting Assessment (ORESAs)" is a renewable energy mapping tool housed on Oregon Explorer.

(i) "Significant Photovoltaic solar resource areas" are lands that are particularly well suited for the siting of photovoltaic solar power generation facilities because they have been determined to be significant pursuant to subsection (4) of this rule. Multiple photovoltaic solar power generation facilities may be located within a photovoltaic solar resource area.

(j) "Significant Photovoltaic solar resource site" is a specific location that is particularly well suited for the siting of a photovoltaic solar power generation facility because it has been determined to be significant pursuant to subsection (3) of this rule. Multiple photovoltaic solar power generation facilities may be located within a photovoltaic solar resource site.

(k) "Transmission Line" is a linear utility facility by which a utility provider transmits or transfers electricity from a point of origin or generation or between transfer stations.

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

(3) Significant Photovoltaic Solar Resource Sites as defined in subsection (2)(i) and established through direct application of this rule without the need for a Post Acknowledgment Plan Amendment (PAPA).

(a) **Determination of Significance.** For purposes of this rule, lands under consideration as a significant photovoltaic solar resource site must be consistent with this subsection.

(A) **Quality, Quantity, and Location.** Significant Photovoltaic solar resource sites must contain the following characteristics:

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

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

(iii) Is located predominantly within 10 miles of a Transmission Line with a rating of 69 KV or above.

(B) **Unmitigated Sites.** Sites with the following characteristics are eligible for a determination of significance without the need for mitigation.

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

(1) comprised of soils with an agricultural capability class VII and VIII; or

(2) 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;

(ii) Lands characterized by ODFW as Category 5 or 6, or other areas of poor to no value as wildlife habitat or with little or no restoration potential based on field data provided by the applicant and developed in consultation with ODFW. The exact location or categorization of wildlife habitat may be refined during consideration of a site but must be done in consultation with ODFW.

(iii) Sites where the construction and operation of the photovoltaic solar power generation facility will not result in significant adverse impacts to Historic, Cultural or Archaeological Resources as defined in Section (2) because no such resources are present, or if resources are present, they will be avoided through project design to the extent that no additional mitigation is necessary. A determination regarding this subsection shall be based on information provided by an applicant that include, among other

things a records review, field survey, site inventory and cultural resources survey completed by a professional archaeologist as defined in ORS 97.740 that have been prepared in consultation with any federally recognized Indian Tribe that may be affected by the application, the State Historic Preservation Office (SHPO) and applicable local government. The results of a cultural resources survey, including the location of any cultural resources shall be kept confidential and not included in the local record. The county shall require evidence of SHPO concurrence prior to initiating construction as a condition of approval.

(C) **Mitigated Sites.** Sites with the following characteristics are eligible for a determination of significance subject to the mitigation requirements contained in this subsection

(i) Wildlife habitat characterized by ODFW as Category 2 that is not otherwise limited by subsection (3)(d) and wildlife habitat characterized by ODFW as Category 3 or 4 based on field data provided by the applicant and developed in consultation with ODFW. The exact location or categorization of Category 2, 3, or 4 wildlife habitat may be refined during consideration of a site but must be done in consultation with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a).

(ii) Wildlife Habitat: Eastern Oregon Deer Winter Range, Eastern Oregon Elk Winter Range, Big Horn Sheep Habitat, and Pronghorn Essential and Limited Habitat as identified by Oregon Renewable Energy Siting Assessment (ORESAS). The exact location of wildlife habitat identified by this subsection may be refined during consideration of a site but in consultation with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a).

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

(1) 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 if the site consists of at least 640 acres; or

(2) comprised of soils with an agricultural capability class III, IV, or V, without an appurtenant water right on January 1, 2024.

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

(iv) Sites that include Historic Resources as defined in Section (2). Necessary mitigation shall be identified and required pursuant to subsection (6)(a),(b) or (c), whichever is applicable.

(v) Sites that include landscape features of cultural interest that have been established by a county through the Post Acknowledgment Plan Amendment (PAPA) process and are considered Cultural Resources as defined in Section (2). Necessary mitigation shall be identified and required pursuant to subsection (6)(c).

(iv) Sites where the construction and operation of the photovoltaic solar power generation facility, taking into account mitigation, will not result in significant adverse impacts to Archaeological Resources as defined in Section (2) and identified in Section (6). A determination regarding this subsection shall be based on information provided by an applicant that include, among other things a records review, field survey, site inventory and cultural resources survey completed by a professional archaeologist as defined in ORS 97.740 that have been prepared in consultation with any federally recognized Indian Tribe that may be affected by the application, the State Historic Preservation Office (SHPO) and applicable local government. The results of a cultural resources survey, including the location of any cultural resources shall be kept confidential and not included in the local record. Necessary mitigation shall be identified and required pursuant to subsection (6)(d).

(D) Ineligible Sites. The following sites are not eligible for a determination of significance.

(i) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6)(a) and (b). The exact location of Significant Sage-Grouse Habitat may be refined during consideration of a specific project but must be done in consultation with ODFW.

(ii) Priority Wildlife Connectivity Areas (PWCA's) as designated by the Oregon Department of Fish and Wildlife (ODFW). Site specific consideration of PWCA's should be requested of local ODFW staff. Sites with PWCA's may in some cases be eligible for a determination of significance in consultation with ODFW.

(iii) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. The exact location of high use and very high use wildlife mitigation corridors may be refined during consideration of a site but must be done in consultation with ODFW.

(iv) Wildlife habitat characterized by ODFW as Category 1 based on field data provided by the applicant and developed in consultation with ODFW. The exact location and characterization of Category 1 wildlife habitat may be refined during consideration of a site but must be done in consultation with ODFW.

(v) Soils that are irrigated or not irrigated and classified prime, unique, Class I or Class II, unless such soils make up no more than five percent of a proposed Photovoltaic Solar Site and are present in an irregular configuration or configurations that prevents them from being independently managed for farm use.

(vi) High-Value Farmland as defined at ORS 195.300(10)(c) through(f) unless otherwise indicated.

(vii) Agricultural lands protected under Goal 3 with an appurtenant water right on January 1, 2024 This subsection does not apply if:

1. The ability to use the appurtenant water right to irrigate subject property becomes limited or prohibited due to a regulatory circumstance or action beyond the control of the water right holder., and, if possible the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes .

2. The appurtenant water right has been transferred to another portion of the subject property, tract or another property under a specific process designed to occur in advance of an eminent regulatory circumstance or action that will limit or prohibit the ability to use the appurtenant water right to irrigate the subject property. (Rep Owens situation?)

(viii) Sites where the construction and operation of the photovoltaic solar power generation facility will result in significant adverse impacts to Historic, Cultural or Archaeological Resources defined in Section (2) and identified under Section (6) that require an archaeological permit from the State Historic Preservation Office (SHPO) or where an archaeological permit from SHPO may not be obtained. A determination regarding this subsection shall be based

on information provided by an applicant that includes, among other things a records review, field survey, site inventory and cultural resources survey completed by a professional archaeologist as defined in ORS 97.740 that have been prepared in consultation with any federally recognized Indian Tribe that may be affected by the application, the State Historic Preservation Office (SHPO) and applicable local government. The results of a cultural resources survey, including the location of any cultural resources shall be kept confidential and not included in the local record.

(ix) Lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21.

(b) Implementation. Significant photovoltaic solar sites are to be established through direct application of this rule. Applications for photovoltaic solar sites are to be processed as individual land use applications and reviewed against the provisions of sections (5) through (8), as well as all other applicable provisions of law without the need for an individual Post Acknowledgement Plan Amendment.

(A) Counties may choose not to implement this rule for purposes of considering photovoltaic solar resource sites by adopting an ordinance through the typical Post-Acknowledgment Plan Amendment process pursuant to ORS 197.610 either prior to, or after the effective date of this rule.

(4) Photovoltaic Solar Resource Areas as defined in subsection (2)(i) and established through the adoption of a local program that includes an overlay zone and other ordinance provisions found to be consistent with the provisions of this rule that set forth applicable review procedures and criteria. A county may rely on project specific assessments when information regarding features and resource categories are not readily available.



(a) Determination of Significance. For purposes of this rule, lands under consideration as a potential photovoltaic solar resource area shall be considered significant when found consistent with this subsection.

(A) Quality, Quantity, and Location. A potential photovoltaic solar resource area must first be determined by the 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, the presence of all the following characteristics, will be considered to comply with the requirements of this rule:

(I) Topography with a slope that is predominantly 15% or less;

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

(III) Are located within 10 miles of a Transmission Line with a rating of 69 KV or above.

(B) Unmitigated Areas. Areas with the following characteristics are eligible for a determination of significance without the need for mitigation.

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

(1) comprised of soils with an agricultural capability class VII and VIII; or

(2) 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;

(ii) Areas characterized by ODFW as Category 5 or 6, or other areas of poor to no value as wildlife habitat or with little or no restoration potential based on field data and in consultation with ODFW. In the presence of easily obtainable data, the exact location or categorization 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 site specific assessment but must be done in consultation with ODFW.

(iii) Areas where the construction and operation of the photovoltaic solar power generation facility will not result in significant adverse impacts to Historic, Cultural or Archaeological Resources as defined in Section (2) because no such resources are present, or if resources are present, they will be avoided through project design to the extent that no additional mitigation is necessary. In the absence of easily obtainable data, a determination regarding the location of historic, cultural or archaeological resources may be deferred to a property specific assessment based on information provided by an applicant that include, among other things a records review, field survey, site inventory and cultural resources survey completed by a professional archaeologist as defined in ORS 97.740 that have been prepared in consultation with any federally recognized Indian Tribe that may be affected by the application, the State Historic Preservation Office (SHPO) and applicable local government. The results of a cultural resources survey, including the location of any cultural resources shall be kept confidential and

not included in the local record. The county shall require evidence of SHPO concurrence prior to initiating construction as a condition of approval

(C) **Mitigated Areas.** Areas with the following characteristics are eligible for a determination of significance subject to the mitigation requirements contained in this subsection

(i) Wildlife habitat characterized by ODFW as Category 2 that is not otherwise limited by subsection (3)(d) and wildlife habitat characterized by ODFW as Category 3 or 4. The exact location and categorization of Category 2, 3, or 4 wildlife habitat may be refined during consideration of a specific photovoltaic solar power generation facility 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. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a).

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

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

(1) 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 if the site consists of at least 640 acres; or



(2) comprised of soils with an agricultural capability class III, IV, or V, without an appurtenant water right on January 1, 2024.

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

(iv) Areas that include Historic Resources as defined in Section (2). Necessary mitigation shall be identified and required pursuant to subsection (6)(a),(b) or (c), whichever is applicable.

(v) Areas that include landscape features of cultural interest that have been established by a county through the Post Acknowledgment Plan Amendment (PAPA) process and are considered Cultural Resources as defined in Section (2). Necessary mitigation shall be identified and required pursuant to subsection (6)(c).

(vi) Areas where the construction and operation of the photovoltaic solar power generation facility, taking into account mitigation, will not result in significant adverse impacts to Archaeological Resources as defined in Section (2) and identified in Section (6). In the absence of easily obtainable data, a determination regarding the location of historic, cultural or archaeological resources may be deferred to a property specific assessment. A determination regarding this subsection shall be based on information provided by an applicant that include, among other things a records review, field survey, site inventory and cultural resources survey completed by a professional archaeologist as defined in ORS 97.740 that have been prepared in consultation with any federally recognized Indian Tribe that may be affected by the application, the State Historic Preservation Office (SHPO) and applicable local government. The results of a cultural resources survey, including the location of any cultural resources shall be kept confidential and not included in the local record. Necessary mitigation shall be identified and required pursuant to subsection (6)(d).

(D) Ineligible Areas. The following areas are not eligible for a determination of significance.

(i) Significant Sage-Grouse Habitat described at OAR 660-023-0115(6)(a) and (b). The exact location of Significant Sage-Grouse Habitat may be refined during consideration of a specific project but must be done in consultation with ODFW.

(ii) Priority Wildlife Connectivity Areas (PWCA's) as designated by the Oregon Department of Fish and Wildlife (ODFW). Site specific consideration of PWCA's should be requested of local ODFW staff. The exact location of PWCA's Sites with PWCA's may in some cases be eligible for a determination of significance in consultation with ODFW.

(iii) High Use and Very High Use Wildlife Migration Corridors designated by ODFW. The exact location of high use and very high use wildlife mitigation corridors may be refined during consideration of a site but must be done in consultation with ODFW.

(iv) Wildlife habitat characterized by ODFW as Category 1. In the presence of easily obtainable data, the exact location and characterization of Category 1 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 Category 1 wildlife habitat under this subsection may be deferred to a property specific assessment but must be done in consultation with ODFW.



(v) Soils that are irrigated or not irrigated and classified prime, unique, Class I or Class II unless such soils make up no more than five percent of a proposed Photovoltaic Solar Resource Area, and are present in an irregular configuration or configurations that prevents them from being independently managed for farm use.

(vi) High-Value Farmland as defined at ORS 195.300(10)(c) through (f) unless otherwise indicated.

(vii) Agricultural lands protected under Goal 3 with an appurtenant water right on January 1, 2024. This subsection do not apply if:

1. The ability to use the appurtenant water right to irrigate the subject property becomes limited or prohibited due to a regulatory circumstance or action that is beyond the control of the water right holder and, if possible, the appurtenant water right has been transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes.

2. The appurtenant water right has been transferred to another portion of the subject property, tract or another property under a specific process designed to occur in advance of an eminent regulatory circumstance or action that will limit or prohibit the ability to use the appurtenant water right to irrigate the subject property. (Rep Owens situation?)

(viii) Areas where the construction and operation of the photovoltaic solar power generation facility will result in significant adverse impacts to Historic, Cultural or Archaeological Resources defined in Section (2) and identified under Section (6) that require

an archaeological permit from the State Historic Preservation Office (SHPO) or where an archaeological permit from SHPO may not be obtained. In the absence of easily obtainable data, a determination regarding the location of historic, cultural or archaeological resources may be deferred to a property specific assessment. A determination regarding this subsection shall be based on information provided by an applicant that includes, among other things a records review, field survey, site inventory and cultural resources survey completed by a professional archaeologist as defined in ORS 97.740 that have been prepared in consultation with any federally recognized Indian Tribe that may be affected by the application, the State Historic Preservation Office (SHPO) and applicable local government. The results of a cultural resources survey, including the location of any cultural resources shall be kept confidential and not included in the local record.

(ix) Lands included within Urban Reserve Areas acknowledged pursuant to OAR chapter 660, division 21.

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

(b) Implementation.

(A) To implement this rule for the purposes of establishing photovoltaic solar resource areas a county shall follow the PAPA process pursuant to ORS 197.610. The adopted ordinance shall specify if the local government has elected to exercise any or all of the discretions offered with regard to excluded areas pursuant to subsection (4)(a)(D)(x), conflicting uses, ESEE analysis or other items.

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

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

(D) 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:

(i) The State Department of Fish and Wildlife;

(ii) The State Department of Energy;

(iii) The State Historic Preservation Officer;

(iv) The Oregon Department of Agriculture.

(v) The Oregon Department of Aviation;

(vi) The United States Department of Defense;

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

(viii) Federally recognized Indian tribes that may be affected by the application. Each county shall obtain a list of tribes with an ancestral connection to land within their jurisdiction from the Oregon Legislative Commission on Indian Affairs. A county satisfies the notice requirements of this rule when notice is sent to all tribes with an ancestral connection to the land within the jurisdiction of the county.

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

(d) Economic, Social, Environmental and Energy (ESEE) consequences. A local government may choose not to limit or prohibit conflicting uses on nearby or surrounding lands. 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.

(e) If a local government chooses to conduct an additional analysis regarding subsections(4)(c) or (d) , or both, it must follow the provisions of OAR 660-023-0040.

(5) Agricultural Mitigation. Mitigation required under subsections (3)(a)(C)(iii)(3) and (4)(a)(C)(iii)(3) is subject to the following standards:

(a) "Compensatory mitigation" means the replacement or enhancement of the impacted resource in **greater amounts** than predicted to be impacted by a development. Compensatory mitigation for agricultural land may be accomplished in one of the following ways:

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

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

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

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

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

(B) As an alternative to mitigation provided under subsection (5)(a)(A) (necessary compensatory mitigation for agricultural lands protected under Goal 3 may be accomplished by use of a one-time compensatory mitigation payment for the purpose of replacing economic value that is lost by the local community when agricultural land is converted to photovoltaic solar development. The compensatory mitigation payment is to be established pursuant to the calculator included as Attachment A. Use of the mitigation calculator, which is based on the following items, will be considered in all instances to comply with the requirements of this rule:

(i) Crop and Pasture Rent Rates gathered from the USDA NASS Quickstats database from the published irrigated, unirrigated crop and pasture rental rates.

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

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

(C) The compensatory mitigation payment established under subsection (5)(a)(B) may be received by the county, a unit of county government, a 501-c-3 not for profit organization operating in the county, a local Soil and Water Conservation District, or similar entity capable of utilizing the funds to provide uplift opportunities for the applicable agricultural sector.

(6) Historic, Cultural, and Archaeological Resources Mitigation The complete application accepted by the county provides a demonstration 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.), which shall be considered based on the requirements of OAR 660-023-0200;

(b) Considered eligible for listing National Register of Historic Places under the National Historic Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq) by SHPO when on nontribal lands or the Tribal Historic Preservation Officer when on tribal land. (P.L. 89-665, 54 U.S.C. 300101 et seq.), which shall be considered based on the requirements of OAR 660-023-0200;

(c) Inventoried in a local comprehensive plan including but not limited to landscape features of cultural interest, which shall be considered based on the requirements of the local program; or

(d) Evaluated as a significant or important archaeological object or archaeological site, as those terms are defined in ORS 358.905, which shall be mitigated pursuant to the terms and conditions of the applicable SHPO permit. **(7) Community Needs and Benefits**. All applications for a photovoltaic solar power generation facility within a photovoltaic solar resource area or site shall identify how the project will contribute to addressing community needs and benefits. Identified contributions, financial or otherwise, will be in addition to property tax revenues or payments in lieu of taxes.

(a) A county must approve a proposal submitted by the applicant when substantial evidence in the record demonstrates:

(A) The proposed contribution or contributions are meaningful and reasonable;

(B) The proposed contribution or contributions will serve to help improve a community's social health, well-being, and functioning; and

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

(b) Rather than the standards provided at subsection (7)(a), the requirement to address community needs and benefits may instead be accomplished by use of one of the following options, which will be considered in all instances to comply with the requirements of this rule:

(A) The applicant has conducted detailed public outreach activities in advance of submitting an application; and

(B) The applicant commits to contributing a one-time payment in an amount representing \$XX per nameplate MW prior to [construction]; or

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

(D) Creation of a Microgrid addressing identified community needs.

(8) Program to Achieve the Goal. Rather than using the standard and procedures in OAR 660-023-0030 through 660-023-0050 or OAR 660-023-0190 for energy sources, counties in Eastern Oregon may instead use the process in sections (3) and (4) of this rule to designate photovoltaic solar resource areas or establish photovoltaic solar resource sites.

(a) A local government may approve a photovoltaic solar power generation facility proposed within a photovoltaic solar resource area, or may approve a 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 may be shown by the ORESA mapping tool or equivalent map. Any application for a proposed site located beneath or within a Military Special Use Airspace or a Military Training Route with a proposed floor elevation of 500 feet above ground

level (AGL) or less shall include a glint and glare analysis for the applicable utilized military airspace. Any measures necessary to avoid possible conflicts with low flying aircraft as identified in the glint and glare analysis will be developed in coordination with the United States Department of Defense or Oregon Military Department as applicable, described in the application materials, and attached as conditions of approval to the local decision.

(B) An applicant pursuing approval for a Photovoltaic Solar Resource Site under section (3) has contacted and sought comments from the entities listed at subsection (4)(b)(D) at least 30 days prior to submitting a land use application. The requirements of this subsection do not apply when the county code requires a pre-application conference prior to submitting an application that includes at a minimum, those entities listed at subsection (4)(b)(D)(i),(vi), and (viii).

(C) All mitigation required by subsections (3) through (6) including mitigation for Historic, Cultural or Archaeological Resources, is identified and attached as a condition of approval.

(D) The applicable provisions of OAR 660-033-0130(38/45) have been satisfied.

(E) Any applicable local provisions have been satisfied.

b In addition to other sources, a local government may rely on data from online mapping tools, such as that data included in the Oregon Renewable Energy Siting Assessment (ORESAs), to inform determinations made under this rule subsections (3) and (4).(8) **Scheduled Review.** On or before January 1, 2027, the department will provide a report to the Land Conservation and Development Commission that:

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

(b) Identifies those counties who have chosen to establish Photovoltaic Solar Resource Areas pursuant to section (4) of this rule.

(c) Identifies the number of counties that have chosen not to implement this rule for purposes of considering photovoltaic solar resource sites pursuant to subsection (3)(b)(A).

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

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



1 **660-023-0190**
2 **Energy Sources**

3

4 * * *

5 (2) Local governments that adopt photovoltaic solar energy areas or sites pursuant to
6 OAR 660-023-0195 are not required to comply with the provisions of this subsection.

7 * * *



(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:

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

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

(c) “Agrivoltaics Development” means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.

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

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

(f) “Photovoltaic solar power generation facility” includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(g) If in eastern Oregon, photovoltaic solar power generation facilities may also include on-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility. On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a photovoltaic solar power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval of the project. Land used, occupied, or covered by temporary workforce housing does not count towards the acreage standards of this section

(h) For high-value farmland described at ORS 195.300(10), but not including ORS 195.300(10)(f)(C), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless an exception is justified pursuant to ORS 197.732 and OAR chapter 660, division 4, or the project is to be sited on lands considered a significant photovoltaic resource as identified at OAR 660-023-0195

(A) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195 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 a photovoltaic solar power generation facility shall not use, occupy, or cover more than 160 acres.

(B) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195 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 240 acres.

(i) For high-value farmland described at ORS 195.300(10)(f)(C) photovoltaic solar power generation facility may use, occupy, or cover more than 12 without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:

(A) Is not located within the boundaries of an irrigation district;

(B) 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;

(C) Is located within the service area of an electric utility described in ORS 469A.052(2);

(D) 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

(E) Does not qualify as high-value farmland under any other provision of law.

(j) For all high-value farmland described at ORS 197.300(10), the following provisions must be satisfied:

(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) unless otherwise provided for by OAR 660-023-0195(7)(c)(E);

(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

(C) A study area consisting of lands zoned for exclusive farm use shall be established. In western Oregon the study area shall include lands located within one mile measured from the center of the proposed project. **In eastern Oregon the study area shall include lands located within two and one-half miles measured from the center of the proposed project shall be established**

(i) If in western Oregon fewer than 48 acres or in **eastern Oregon fewer than 300 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 if in western Oregon or 300 acres if in eastern Oregon, 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.

(D) The applicable review standards of OAR 660-033-0138(38)(o) are met.

(k) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 20 acres unless an exception is justified pursuant to ORS 197.732 and OAR chapter 660, division 4, or the project is to be sited on lands considered a significant photovoltaic resource as identified at OAR 660-023-0195.

(A) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195 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 a photovoltaic solar power generation facility shall not use, occupy, or cover more than 1,280 acres.

(B) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195 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 2,560 acres.

(l) 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) unless otherwise provided for by OAR 660-023-0195(7)(c)(E);

(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 shall be established. In western Oregon the study area shall include lands located within one mile measured from the center of the proposed project. **In eastern Oregon the study area shall include lands located within five miles measured from the center of the proposed project.**

(i) If in western Oregon fewer than 80 acres or **in eastern Oregon fewer than 2,000 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 in western Oregon or at least 2,000 acres in eastern Oregon, 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 applicable review standards of OAR 660-033-130(38)(o) are met.

(m) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres unless an exception is justified pursuant to ORS 197.732 and OAR chapter 660, division 4 or the project is to be sited on lands considered a significant photovoltaic resource as identified at OAR 660-023-0195.

(A) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195 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.

(B) For lands determined to be significant photovoltaic solar resources pursuant to OAR 660-023-0195 and a county has identified photovoltaic solar resource areas as defined at OAR 660-023-0195(2)(c) the amount of land used a photovoltaic solar power generation facility may use, occupy, or cover is not limited by this rule.

(n) 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) unless otherwise provided for by OAR 660-023-0195(7)(c)(E);

(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 not considered a significant photovoltaic resource as identified at OAR 660-023-0195 that contain a Goal 5 resource protected

1 under the county's comprehensive plan, and the plan does not address
2 conflicts between energy facility development and the resource, the
3 applicant and the county, together with any state or federal agency
4 responsible for protecting the resource or habitat supporting the resource,
5 will cooperatively develop a specific resource management plan to mitigate
6 potential development conflicts. If there is no program present to protect the
7 listed Goal 5 resource(s) present in the local comprehensive plan or
8 implementing ordinances and the applicant and the appropriate resource
9 management agency(ies) cannot successfully agree on a cooperative
10 resource management plan, the county is responsible for determining
11 appropriate mitigation measures; and

12 (F) If a proposed photovoltaic solar power generation facility is located on
13 lands sited on **land**s not considered a significant photovoltaic resource as
14 identified at OAR 660-023-0195 where, after site specific consultation with
15 an Oregon Department of Fish and Wildlife biologist, it is determined that the
16 potential exists for adverse effects to state or federal special status species
17 (threatened, endangered, candidate, or sensitive) or habitat or to big game
18 winter range or migration corridors, golden eagle or prairie falcon nest sites
19 or pigeon springs, the applicant shall conduct a site-specific assessment of
20 the subject property in consultation with all appropriate state, federal, and
21 tribal wildlife management agencies. A professional biologist shall conduct
22 the site-specific assessment by using methodologies accepted by the
23 appropriate wildlife management agency and shall determine whether
24 adverse effects to special status species or wildlife habitats are anticipated.
25 Based on the results of the biologist's report, the site shall be designed to
26 avoid adverse effects to state or federal special status species or to wildlife
27 habitats as described above. If the applicant's site-specific assessment
28 shows that adverse effects cannot be avoided, the applicant and the
29 appropriate wildlife management agency will cooperatively develop an
30 agreement for project-specific mitigation to offset the potential adverse
31 effects of the facility. Where the applicant and the resource management
32 agency cannot agree on what mitigation will be carried out, the county is
33 responsible for determining appropriate mitigation, if any, required for the
34 facility.

35 (G) The applicable review standards of OAR 660-033-130(38)**(c)**(D)-(H) are
36 met.

(D) The following standards must be met in order to approve a photovoltaic solar power generation facility:

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

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

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

(D) If located in either eastern Oregon or western Oregon, 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) If located in eastern Oregon, the presence of a photovoltaic solar power generation facility will not result in unnecessary risks to soil health. This provision may be satisfied by the submittal and county approval of a vegetation management plan prepared by an adequately qualified individual, showing how a healthy vegetative cover will be established and maintained and how a bare earth situation

1 will not occur. The approved plan shall be attached to the decision as a condition of
2 approval;

3 (F) If located in eastern Oregon, the photovoltaic solar power generation facility will
4 be designed, constructed and managed in a way that will promote the prevention
5 and mitigate the risk of wildfire. This provision may be satisfied by the submittal and
6 county approval of a wildfire plan prepared by an adequately qualified individual
7 that is consistent with the provisions identified at OAR 660-006-0029(1)(d) and OAR
8 660-006-0035. The approved plan shall be attached to the decision as a condition of
9 approval;

10 (G) If located in eastern Oregon, that considerations for the amount, type, and
11 location of temporary workforce housing have been made. This provision may be
12 satisfied by the submittal and county approval of a workforce housing plan prepared
13 by an adequately qualified individual, that demonstrates how temporary workforce
14 housing resulting in a benefit to the local community will be accommodated or that
15 such temporary housing is reasonably likely to occur. The plan need not obligate the
16 applicant to financially secure the temporary housing. The approved plan shall be
17 attached to the decision as a condition of approval.

18 (H) Notwithstanding any other rule in this division, a county may determine that ORS
19 215.296 and OAR 660-033-0130(5) for lands determined to be significant
20 photovoltaic solar resources pursuant to OAR 660-023-0195 and a county has
21 identified photovoltaic solar resource areas as defined at OAR 660-023-0195(2)(c)
22 are met when:

23 (i) The applicable provisions of OAR 660-033-0130(38)(n)(A)-(G) are found to
24 be satisfied; and

25 (ii) Any compensatory mitigation measures necessary to comply with the
26 provisions of OAR 660-023-0195 are required.

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

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

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

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

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

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

14 (r) Nothing in this section shall prevent a county from requiring a bond or other security
15 from a developer or otherwise imposing on a developer the responsibility for retiring the
16 photovoltaic solar power generation facility.

17 (s) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage
18 thresholds identified in subsections (h), (j) and (m) of this section.

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20 **Agriculture/Forest Zones**

21 (1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-
22 006-0050;

23 (2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR
24 660-006-0055; and

25 (3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-
26 006-0057.

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

30