

EASTERN OREGON SOLAR SITING RULEMAKING ADVISORY COMMITTEE MEETING PACKET #10



TO: Solar Siting Rulemaking Advisory Committee Members
FROM: Adam Tate, Renewable Energy Planner
SUBJECT: Rulemaking Advisory Committee (RAC) Meeting Packet #10

Dear Solar Siting Rulemaking Advisory Committee Members,

Thank you for bringing your amazing experience and expertise to this nearly yearlong rulemaking process, we are grateful for the time and energy you have dedicated to helping us. The end of the RAC process is nearly upon us. January 9th will be the last scheduled meeting of the RAC. In light of this we have moved from a half-day to a full-day meeting scheduled from 9:00 am till 5:00 pm if needed. This is to give us the time necessary to review, discuss and vote upon the final rule package and recommendations of the RAC for LCDC. Please come prepared to discuss and vote upon the rule package.

Following this RAC meeting, LCDC will have a public hearing on the rules at their January 23-24 meeting in Salem. Please note that LCDC has the ability to ask for one additional RAC meeting, and that the public comment period does not close till February 5th, 2025. Please let us know if you'd like to provide public comment for the LCDC meeting.

The RAC meeting will be on Thursday, January 9th from 9:00 am to 5:00 pm PT, held virtually over Zoom for all participants.

We will go over draft rule language for Divisions 4, 6, 23 and 33 that has been refined from the last RAC meeting, feedback from RAC members and from both internal discussions and discussions with our partner agencies. A further memo on specific questions for this RAC meeting will be forthcoming.

RAC Meeting Packet Contents:

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

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

Topic: DLCD: Eastern Oregon Solar Siting RAC Meeting #10

Time: Jan 9, 2024 09:00 AM Pacific Time (US and Canada)

Join Zoom Meeting

<https://kearnswest.zoom.us/j/82117048242?pwd=oAU7aC4YaJwCgCKCO2f00kV3AFAXru.1>

Meeting ID: 821 1704 8242

Passcode: 704257

Casaria Taylor will be providing support for the Zoom meeting.

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

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

[Oregon DLCD - YouTube](#)

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

Thank you,

Adam Tate

Renewable Energy

Planner

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AGENDA

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

Date and Time

January 09, 2025, from 9:00 am – 5:00 pm PT

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

Desired Outcomes and Purpose

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

Agenda

Time (PT)	Topic	Lead
9:00 – 9:10 am (10 min)	Welcome and roll call	Jamie Damon, Kearns & West Facilitator
9:10 – 9:20 am (10 min)	Cultural/Historical/Archeological Updates	DLCD
9:20 – 10:30 am (70 min)	Outstanding Sections <ul style="list-style-type: none">• Divisions 23, 33, 6, and 4• RAC discussion	All
10:30 – 10:40 am (10 min)	Break	All
10:40 am – 12:30 pm (110 min)	Outstanding Sections Continued <ul style="list-style-type: none">• Divisions 23, 33, 6, and 4• RAC discussion	All
12:30 – 1:00 pm (30 min)	Lunch Break	All



1:00 – 3:30 pm (150 min)	Rule Package Vote <ul style="list-style-type: none">• Round robin on level of support	All
3:30 – 3:40 pm (10 min)	Break	
3:40 – 4:40 pm (60 min)	Rule Package Vote / Final Considerations	All
4:40 – 5:00 pm (20 min)	Next Steps and Closing <ul style="list-style-type: none">• LCDC Meeting January 23-24• February work?	Jamie Damon, Kearns & West Facilitator
5:00 pm	Meeting Adjourn	

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

December 18, 2024, RAC Meeting #9

9am – 1pm

Location: Virtual (Zoom)

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

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

Meeting Attendees

RAC Member Attendees:

- Andrea Kreiner, Oregon Association of Conservation Districts
- April Snell, Oregon Water Resources Congress
- Bill Richardson, Rocky Mountain Elk Foundation
- Brandon McMullen, Harney County Planning Director
- Damien Hall, Oregon Solar+Storage Industries
- Dan Orzech, Oregon Clear Power
- Dugan Marieb, Pine Gate Renewables
- Emily Griffith, Renewable Northwest
- Greg Corbin, Green Diamond Resource Company
- 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
- Thad Eakin, Oregon Wheat Growers League
- Travis Sellers, Pendleton Building and Construction Trades Council

Ex-Officio Attendees:

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

DLCD Staff Attendees:

- Adam Tate, Oregon Department of Land Conservation and Development
- Gordon Howard, Oregon Department of Land Conservation and Development
- Jon Jinings, Oregon Department of Land Conservation and Development

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.

Report Outs

Jon Jinings, Department of Land Conservation and Development (DLCD), shared that DLCD staff met with Oregon Department of Fish and Wildlife (ODFW) staff to confirm rule language regarding wildlife habitat location, characterization, and mitigation. DLCD staff also met with Oregon Water Resources Department (OWRD) staff to confirm rule language regarding water regulations. DLCD staff met internally and refined language regarding historic, archaeological, and cultural resources, to be further reviewed by the State Historic Preservation Office (SHPO) and Tribal partners.

Commissioner Mark Bennett, Land Conservation and Development Commission (LCDC) shared that LCDC met on December 6, 2024 and was supportive of the RAC's request to have additional time. He reflected that DLCD staff have done good mapping work and that LCDC is interested in learning more about the opt-in / opt-out component.

Jon shared that the maps have been updated to include slope, resulting in a 45% reduction in acreage from 3.9 million to 2.2 million. He noted they expect acreage to continue to drop as areas are refined, and staff anticipate only 5-10% of the 2.2 million will have all the necessary components.

Jamie facilitated a discussion among RAC members regarding maps.

- **Continued acreage reduction.** RAC members reflected that the acreage numbers will continue to be reduced as additional rule components are applied, such as wildlife, cultural resources, and substrate. RAC members shared that it is important for LCDC to know that the areas mapped are not enough to support the state's clean energy goals.
- **Aggregation of land.** RAC members reflected that the thinner areas shown on the maps, such as ridgelines, will likely not be developed, as building projects on larger connected tracts of land is more economical.
- **Agrivoltaics.** A RAC member highlighted that dual-use exemption for agrivoltaics may be an advantage due to agricultural land characteristics.
- **Substrate.** RAC members wondered if mapping substrate or geologic layers would be helpful. RAC members who were developers reflected that substrate properties can be a development issue. Sometimes it may make sense to drill if it is close to transmission, and other times it may make a project too expensive to build.
- **Additional mapping layers.** RAC members shared it could be helpful to map components that cannot be mitigated such as sage grouse, wildlife corridors, category one habitat, national historic registered cultural resources, and altitude.
- **County involvement.** A RAC member shared that county planners understand that the use of the map is to portray where solar resource development may be possible. County planners can put together more specific maps with site-specific data. RAC members highlighted the importance of discussing the schedule and process for presenting these rules to the counties.

Division 6

The RAC reviewed the Division 6 language and questions DLCD staff posed on [page 10 of the meeting packet](#).

Jamie facilitated a discussion among RAC members regarding Division 6.

660-006-0025

- **Properties maintaining zone designations.** RAC members expressed support for the property to maintain its underlying zone designation and were okay with cross-references to OAR 660-033-0130(38) and (if necessary) the new OAR 660-023-0195.
- **Acreage references in subsections (j) and (k).** RAC members discussed if 10 and 240 acres were the correct amounts for preclusion. Some RAC members wanted to ensure that the amount was correct to avoid unintended consequences such as developers clear-cutting forest areas to place solar facilities. Some RAC members reassured the RAC that would not occur as that does not make economic sense. Other RAC members stated they do not have enough information to weigh in.

660-006-0050

- **Predominant use test.** RAC members generally supported the direction of the language. Some members suggested updating the language from “predominant use of the tract” to the “predominant use of the parcel”.

Division 33

The RAC reviewed the Division 33 language and questions DLCD staff posed [on page 12 of the meeting packet](#).

Jamie facilitated a discussion among RAC members regarding Division 33.

- **Separation of Eastern Oregon and Western Oregon.** The RAC asked to see a version of the language with cross-references and adequate time to review the updated language.
- **Acreage thresholds.** RAC members discussed if the acreage thresholds in Division 33 need to be adjusted. After reflecting on previous Energy Facility Siting Council (EFSC) discussions, cumulative impacts, county incentives, and high-value farmland definitions, the RAC needed more time to think about acreage thresholds.
- **Cumulative impacts.** RAC members reflected that cumulative impacts are important to consider, but cumulative impact standards can be difficult to measure. Some RAC members reminded the group that the goal is to have a fast-track option for siting. One RAC member suggested a cross reference to Division 23-195.
- **Additional approval standards and criteria.** Some RAC members reflected that these are reasonable requirements for analysis, others cautioned against having too many which would slow down the fast-track option for siting. One RAC member noted that Division 23-195 would have more burdensome requirements.

Next Steps and Closing

Jamie shared that there are three weeks until the next meeting which will be focused on wrapping up the rule language as much as possible. She asked for RAC members to connect with DLCD staff

with any outstanding questions and to provide feedback on the questions that DLCD staff asked the RAC.

Next steps:

- DLCD to provide updated maps.
- The RAC to consider acreage references in 660-006-0025 subsections (j) and (k).
- The RAC to consider if the acreage thresholds in Division 33 need to be adjusted
- DLCD to draft and share an updated Division 33 with cross references regarding Eastern Oregon and Western Oregon.

Meeting Adjourn

The meeting adjourned at 1:00 pm PT.

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.

1 (4) "Reasons" Exceptions:

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

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

8 (c) When a local government includes land within an unincorporated community for which an
9 exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-
10 004-0022 was previously adopted, plan and zone designations must limit the uses, density, public
11 facilities and services, and activities to only those that were justified in the exception or OAR 660-
12 022-0030, whichever is more stringent.

13 (d) When a local government approves an exception for a photovoltaic solar power generation
14 facility under OAR 660-004-0020 through OAR 660-004-0022 the subject property shall remain
15 zoned for exclusive farm use, forest use or mixed farm and forest; whichever is applicable. The
16 local government shall also continue to apply the relevant approval criteria included at OAR 660-
17 033-0130(38), OAR 660-033-0130(45) or OAR 660-006-0025(4).

660-006-0025

Uses Authorized in Forest Zones

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

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

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

660-023-0195

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, culturally significant landscape features, 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)(j) 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 culturally significant landscape features 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 PWCAs 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 situation that is beyond the control of the water right holder including but not limited to: prolonged drought, critical groundwater designations or other state regulatory action, reduced federal contract allocations, and other similar regulatory circumstances. 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's habitat mitigation policy 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 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 culturally significant landscape features 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 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 PWCAs s Sites with PWCAs 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 situation that is beyond the control of the water right holder including but not limited to: prolonged drought, critical groundwater designations or other state regulatory action, reduced federal contract allocations, and other similar regulatory circumstances. The appurtenant water right shall be transferred to another portion of the subject property, tract or another property and maintained for agricultural purposes; or

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

1 \$.66 for every \$1 sold. [https://www.coic.org/wp-](https://www.coic.org/wp-content/uploads/2020/01/economicimpact_localfoods_centraloregon.pdf)
2 content/uploads/2020/01/economicimpact_localfoods_centralorego
3 n.pdf

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

14 (C) The compensatory mitigation payment established under subsection
15 (5)(a)(B) may be received by the county, a unit of county government, a
16 501-c-3 not for profit organization operating in the county, a local Soil and
17 Water Conservation District, or similar entity capable of utilizing the funds
18 to provide uplift opportunities for the applicable agricultural sector.

19 **(6) Historic, Cultural, and Archaeological Resources Mitigation** The complete
20 application accepted by the county provides a demonstration that the construction and
21 operation of the renewable energy facility, taking into account mitigation, will not result
22 in significant adverse impacts to historic, cultural and archaeological resources that are:

23 (a) Listed on the National Register of Historic Places under the National Historic
24 Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.), which shall be
25 considered based on the requirements of OAR 660-023-0200;

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

31 (c) Inventoried in a local comprehensive plan including but not limited to culturally
32 significant landscape features which shall be considered based on the
33 requirements of the local program; or

34 (d) Evaluated as a significant or important archaeological object or archaeological site,
35 as those terms are defined in ORS 358.905, which shall be mitigated pursuant to the
36 terms and conditions of the applicable SHPO permit.**(7) Community Needs and**
37 **Benefits**. All applications for a photovoltaic solar power generation facility within a
38 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 \$1,000 per nameplate MW prior to [construction]; or

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

(D) 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.

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

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

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

8



660-023-0190
Energy Sources

* * *

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

* * *



OAR 660-033-0130

(45)(a) A proposal to site a photovoltaic solar photovoltaic solar power generation facility in **Eastern Oregon** shall be subject to the following definitions and provisions:

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

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

(C) “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.

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

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

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

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

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

(b) 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

1 photovoltaic solar power generation facility shall not use, occupy, or cover more
2 than 160 acres.

3
4 (B) For lands determined to be significant photovoltaic solar resources pursuant to
5 OAR 660-023-0195 and a county has identified photovoltaic solar resource areas as
6 defined at OAR 660-023-0195(2)(c) a photovoltaic solar power generation facility
7 shall not use, occupy, or cover more than 240 acres.

8
9 (c) For high-value farmland described at ORS 195.300(10)(f)(C) photovoltaic solar power
10 generation facility may use, occupy, or cover more than 12 without taking an exception
11 pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:

12
13 (A) Is not located within the boundaries of an irrigation district;

14
15 (B) Is not at the time of the facility's establishment, and was not at any time during
16 the 20 years immediately preceding the facility's establishment, the place of use of
17 a water right permit, certificate, decree, transfer order or ground water registration
18 authorizing the use of water for the purpose of irrigation;

19
20 (C) Is located within the service area of an electric utility described in ORS
21 469A.052(2);

22
23 (D) Does not exceed the acreage the electric utility reasonably anticipates to be
24 necessary to achieve the applicable renewable portfolio standard described in ORS
25 469A.052(3); and

26
27 (E) Does not qualify as high-value farmland under any other provision of law.

28
29 (d) For all high-value farmland described at ORS 197.300(10), the following provisions must
30 be satisfied:

31
32 (A) Except for electrical cable collection systems connecting the photovoltaic solar
33 generation facility to a transmission line, the project is not located on those high-
34 value farmland soils listed in OAR 660-033-0020(8)(a) unless otherwise provided for
35 by OAR 660-023-0195(3)(a)(D)(v) or (4)(a)(D)(v);
36

(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. **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 **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 300 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(D) The review standards of OAR 660-033-0130(45)(i) are met.

(e) 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.

(f) 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. The **study area shall include lands located within five miles measured from the center of the proposed project.**

(i) If **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 2,000 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(E) The applicable review standards of OAR 660-033-130(45)(i) are met.

(g) 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

1 applications for individual photovoltaic solar resource sites a photovoltaic solar
2 power generation facility shall not use, occupy, or cover more than 1,920 acres.
3

4 (B) For lands determined to be significant photovoltaic solar resources pursuant to
5 OAR 660-023-0195 and a county has identified photovoltaic solar resource areas as
6 defined at OAR 660-023-0195(2)(c) the amount of land used a photovoltaic solar
7 power generation facility may use, occupy, or cover is not limited by this rule.
8

9 (h) The governing body or its designate must find that the following criteria are satisfied in
10 order to approve a photovoltaic solar power generation facility on nonarable land:
11

12 (A) Except for electrical cable collection systems connecting the photovoltaic solar
13 generation facility to a transmission line, the project is not located on those high-
14 value farmland soils listed in OAR 660-033-0020(8)(a) unless otherwise provided for
15 by OAR 660-023-0195(3)(a)(D)(v) and (4)(a)(D)(v);
16

17 (B) The project is not located on those high-value farmland soils listed in OAR 660-
18 033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:
19

20 (i) Siting the project on nonarable soils present on the subject tract would
21 significantly reduce the project's ability to operate successfully; or
22

23 (ii) The proposed site is better suited to allow continuation of an existing
24 commercial farm or ranching operation on the subject tract as compared to
25 other possible sites also located on the subject tract, including sites that are
26 comprised of nonarable soils;
27

28 (C) No more than 12 acres of the project will be sited on high-value farmland soils
29 described at ORS 195.300(10);
30

31 (D) No more than 20 acres of the project will be sited on arable soils;
32

33 (E) If a photovoltaic solar power generation facility is proposed to be developed on
34 lands not considered a significant photovoltaic resource as identified at OAR 660-
35 023-0195 that contain a Goal 5 resource protected under the county's
36 comprehensive plan, and the plan does not address conflicts between energy
37 facility development and the resource, the applicant and the county, together with
38 any state or federal agency responsible for protecting the resource or habitat

1 supporting the resource, will cooperatively develop a specific resource
2 management plan to mitigate potential development conflicts. If there is no
3 program present to protect the listed Goal 5 resource(s) present in the local
4 comprehensive plan or implementing ordinances and the applicant and the
5 appropriate resource management agency(ies) cannot successfully agree on a
6 cooperative resource management plan, the county is responsible for determining
7 appropriate mitigation measures; and
8

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

31 (G) The applicable review standards of OAR 660-033-130(45)(**ii**)(D)-(H) are met.
32

33 **(i)** The following standards must be met in order to approve a photovoltaic solar power
34 generation facility:
35

36 (A) The proposed photovoltaic solar power generation facility will not create
37 unnecessary negative impacts on agricultural operations conducted on any portion

1 of the subject property not occupied by project components. Negative impacts
2 could include, but are not limited to, the unnecessary construction of roads dividing
3 a field or multiple fields in such a way that creates small or isolated pieces of
4 property that are more difficult to farm, and placing photovoltaic solar power
5 generation facility project components on lands in a manner that could disrupt
6 common and accepted farming practices;
7

8 (B) The presence of a photovoltaic solar power generation facility will not result in
9 unnecessary soil erosion or loss that could limit agricultural productivity on the
10 subject property. This provision may be satisfied by the submittal and county
11 approval of a soil and erosion control plan prepared by an adequately qualified
12 individual, showing how unnecessary soil erosion will be avoided or remedied. The
13 approved plan shall be attached to the decision as a condition of approval;
14

15 (C) Construction or maintenance activities will not result in unnecessary soil
16 compaction that reduces the productivity of soil for crop production. This provision
17 may be satisfied by the submittal and county approval of a plan prepared by an
18 adequately qualified individual, showing how unnecessary soil compaction will be
19 avoided or remedied in a timely manner through deep soil decompaction or other
20 appropriate practices. The approved plan shall be attached to the decision as a
21 condition of approval;
22

23 (D) Construction or maintenance activities will not result in the unabated
24 introduction or spread of noxious weeds and other undesirable weed species. This
25 provision may be satisfied by the submittal and county approval of a weed control
26 plan prepared by an adequately qualified individual that includes a long-term
27 maintenance agreement. The approved plan shall be attached to the decision as a
28 condition of approval;
29

30 (E) The presence of a photovoltaic solar power generation facility will not result in
31 unnecessary risks to soil health. This provision may be satisfied by the submittal
32 and county approval of a vegetation management plan prepared by an adequately
33 qualified individual, showing how a healthy vegetative cover will be established and
34 maintained and how a bare earth situation will not occur. The approved plan shall be
35 attached to the decision as a condition of approval;
36

37 (F) The photovoltaic solar power generation facility will be designed, constructed
38 and managed in a way that will promote the prevention and mitigate the risk of

wildfire. This provision may be satisfied by the submittal and county approval of a wildfire plan prepared by an adequately qualified individual that is consistent with the provisions identified at OAR 660-006-0029(1)(d) and OAR 660-006-0035. The approved plan shall be attached to the decision as a condition of approval;

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

(H) Notwithstanding any other rule in this division, a county may determine that ORS 215.296 and OAR 660-033-0130(5) 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) are met when:

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

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

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

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

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

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

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

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

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

(n) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (b), (e) and (g) of this section.

660-033-0145

Agriculture/Forest Zones

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

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

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

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

OAR 660-033-0130(38) – Existing Language	OAR 660-033-0130(45) – Possible Language specific to EO
<p>(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:</p> <p>(a) “Arable land” means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.</p> <p>(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.</p> <p>(c) “Dual-use development” means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.</p> <p>(d) “Nonarable land” means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.</p> <p>(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.</p>	<p>(45)(a) A proposal to site a photovoltaic solar photovoltaic solar power generation facility in Eastern Oregon shall be subject to the following definitions and provisions:</p> <p>(A) “Agrivoltaics development” means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.</p> <p>(B) “Arable land” means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.</p> <p>(C) “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.</p> <p>(D) “Eastern Oregon” means that portion of the State of Oregon lying east of a line beginning at the intersection of the northern boundary of the state and the western boundary of Wasco County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the state.</p> <p>(E) “Nonarable land” means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.</p>

(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.

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

(G) “Photovoltaic solar power generation facility” includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances, **including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility. 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)**

	<p>and shall not no effect on the original approval of the project. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.</p>
<p>(g) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless:</p> <p>(A) The provisions of paragraph (h)(H) are satisfied; or</p> <p>(B) A county adopts, and an applicant satisfies, land use provisions authorizing projects subject to a dual-use development plan. Land use provisions adopted by a county pursuant to this paragraph may not allow a project in excess of 20 acres. Land use provisions adopted by the county must require sufficient assurances that the farm use element of the dual-use development plan is established and maintained so long as the photovoltaic solar power generation facility is operational or components of the facility remain on site. The provisions of this subsection are repealed on January 1, 2022.</p>	<p>(b) 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</p> <p>(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.</p>

<p>(h) The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10).</p> <p>(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;</p> <p>(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied. The approved plan shall be attached to the decision as a condition of approval;</p> <p>(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil</p>	<p>(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.</p> <p>(c) 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:</p> <p>(A) Is not located within the boundaries of an irrigation district;</p> <p>(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;</p> <p>(C) Is located within the service area of an electric utility described in ORS 469A.052(2);</p> <p>(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</p> <p>(E) Does not qualify as high-value farmland under any other provision of law.</p> <p>(d) For all high-value farmland described at ORS 197.300(10), the following provisions must be satisfied:</p>
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<p>decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;</p> <p>(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;</p> <p>(E) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);</p> <p>(F) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:</p> <p>(i) Non high-value farmland soils are not available on the subject tract;</p> <p>(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</p> <p>(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</p>	<p>(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(3)(a)(D)(v) or (4)(a)(D)(v);</p> <p>(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:</p> <p>(i) Non high-value farmland soils are not available on the subject tract;</p> <p>(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</p> <p>(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</p> <p>(C) A study area consisting of lands zoned for exclusive farm use shall be established. The study area shall include lands located within two and one-half miles measured from the center of the proposed project shall be established</p> <p>(i) If 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.</p>
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<p>(G) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:</p> <p>(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.</p> <p>(ii) When at least 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.</p> <p>(H) A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:</p> <p>(i) Is not located within the boundaries of an irrigation district;</p>	<p>(ii) When at least 300 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.</p> <p>(D) The review standards of OAR 660-033-0130(45)(i) are met.</p>
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<p>(ii) Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;</p> <p>(iii) Is located within the service area of an electric utility described in ORS 469A.052(2);</p> <p>(iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and</p> <p>(v) Does not qualify as high-value farmland under any other provision of law; or</p>	
<p>(i) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 20 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:</p> <p>(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);</p> <p>(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:</p>	<p>(e) 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.</p> <p>(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.</p>

<p>(i) Nonarable soils are not available on the subject tract;</p> <p>(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or</p> <p>(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;</p> <p>(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);</p> <p>(D) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:</p> <p>(i) If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.</p> <p>(ii) When at least 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power</p>	<p>(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.</p> <p>(f) 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:</p> <p>(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);</p> <p>(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:</p> <p>(i) Nonarable soils are not available on the subject tract;</p> <p>(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or</p> <p>(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;</p>
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generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(E) The requirements of paragraphs (h)(A), (B), (C) and (D) are satisfied.

(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. The **study area shall include lands located within five miles measured from the center of the proposed project.**

(i) If **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 2,000 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(E) The applicable review standards of OAR 660-033-130(45)(i) are met.

<p>(j) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:</p> <p>(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);</p> <p>(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:</p> <p>(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or</p> <p>(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;</p> <p>(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);</p> <p>(D) No more than 20 acres of the project will be sited on arable soils;</p> <p>(E) The requirements of paragraph (h)(D) are satisfied;</p>	<p>(g) 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.</p> <p>(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.</p> <p>(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.</p> <p>(h) 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:</p> <p>(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(3)(a)(D)(v) and (4)(a)(D)(v);</p>
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<p>(F) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and</p> <p>(G) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as</p>	<p>(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:</p> <p>(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or</p> <p>(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;</p> <p>(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);</p> <p>(D) No more than 20 acres of the project will be sited on arable soils;</p> <p>(E) If a photovoltaic solar power generation facility is proposed to be developed on lands <u>not</u> considered a significant photovoltaic resource as identified at OAR 660-023-0195 that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate</p>
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<p>described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.</p>	<p>resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and</p> <p>(F) If a proposed photovoltaic solar power generation facility is located on lands sited on lands not considered a significant photovoltaic resource as identified at OAR 660-023-0195 where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.</p>
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	<p>(G) The applicable review standards of OAR 660-033-130(45)(i)(D)-(H) are met.</p>
<p>(k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.</p> <p>(l) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).</p> <p>(m) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.</p> <p>(n) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (g), (i) and (j) of this section.</p>	<p>(i) The following standards must be met in order to approve a photovoltaic solar power generation facility:</p> <p>(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;</p> <p>(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied. The approved plan shall be attached to the decision as a condition of approval;</p> <p>(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be</p>

	<p>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;</p> <p>(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;</p> <p>(E) The presence of a photovoltaic solar power generation facility will not result in unnecessary risks to soil health. This provision may be satisfied by the submittal and county approval of a vegetation management plan prepared by an adequately qualified individual, showing how a healthy vegetative cover will be established and maintained and how a bare earth situation will not occur. The approved plan shall be attached to the decision as a condition of approval;</p> <p>(F) The photovoltaic solar power generation facility will be designed, constructed and managed in a way that will promote the prevention and mitigate the risk of wildfire. This provision may be satisfied by the submittal and county approval of a wildfire plan prepared by an adequately qualified individual that is consistent with the provisions identified at OAR 660-006-0029(1)(d) and OAR 660-006-0035. The approved plan shall be attached to the decision as a condition of approval;</p>
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	<p>(G) That considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an adequately qualified individual, that demonstrates how temporary workforce housing resulting in a benefit to the local community will be accommodated or that such temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved plan shall be attached to the decision as a condition of approval.</p> <p>(H) Notwithstanding any other rule in this division, a county may determine that ORS 215.296 and OAR 660-033-0130(5) 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) are met when:</p> <p>(i) The applicable provisions of OAR 660-033-0130(38)(n)(A)-(G) are found to be satisfied; and</p> <p>(ii) Any compensatory mitigation measures necessary to comply with the provisions of OAR 660-023-0195 are required.</p>
	<p>(j) A permit approved for a photovoltaic solar power generation facility shall be valid until commencement of construction or for six years, whichever is less. A county may grant up to two extensions for a period of up to 24 months each when an applicant makes a written request for an extension of the development approval period that is submitted to the county prior to the expiration of the approval period.</p>

	<p>(k) A county may grant a permit described in subsection (j) a third and final extension for period of up to 24 months if:</p> <p>(A) An applicant makes a written request for an extension of the development approval period prior to the expiration of the second extension granted under subsection (f) of this section;</p> <p>(B) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and</p> <p>(C) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.</p> <p>(l) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).</p> <p>(m) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.</p> <p>(n) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (b), (e) and (g) of this section.</p>
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