



Jacob Ripper, AICP
Director, Permitting & Entitlement

NewSun Energy
550 NW Franklin Avenue, Suite 418
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August 20, 2026

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

Re: Request for Rulemaking – Amendment to OAR 660-023-0195, OAR 660-033-0130 and 660-033-0140 to Clarify Applicability of Permit Duration Provisions

Dear Director and Commission:

Pursuant to OAR 137-001-0070 and on behalf of NewSun Energy, I formally petition the Department to initiate rulemaking to amend OAR 660-023-0195 (Photovoltaic Solar Energy Resources in Eastern Oregon), OAR 660-033-0130 (Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses), and OAR 660-033-0140 (Permit Expiration Dates) as it relates to permitting photovoltaic facilities. Specifically, this petition requests clarification that the permit duration and extension provisions in OAR 660-033-130 (44)(j) and (k) apply to all photovoltaic solar power generation facilities approved under OAR Chapter 660, Division 33, and are not limited to projects reviewed under the eastern Oregon solar siting pathway in OAR 660-033-0130(44). The proposed amended rule text is provided as Attachment A.

RULE COMPLEXITY AND NEED FOR RULEMAKING

As currently written, the rule in OAR 660-033-0130 subsections (44)(j) and (k) provides that permits for photovoltaic solar facilities are valid until commencement of construction or for six years, whichever is less, with extensions available upon written request. Those provisions, however, appear within section (44), which applies only to a subset of projects in eastern Oregon and only where a county elects to use that review pathway. Although the permit validity period rule is not complex, its location within section (44) has created ambiguity and inconsistent application, particularly as to whether similar projects approved under section (38) or other applicable pathways are subject to comparable timelines. If eastern Oregon counties chose to opt-out of the new solar siting rules, it appears that section (44)(j) and (k) may not be available for any new solar facility land use permits.

It is our understanding, based on extensive participation in and observation of the rulemaking process underlying the adoption of OAR 660-033-0130(44), that the legislative and policy intent was to establish a consistent and predictable approval duration framework for photovoltaic solar facilities statewide in alignment with anticipated interconnection timelines. Limiting these provisions to counties that adopt and use section (44) creates an unintended disparity among

otherwise similarly situated projects. The result is regulatory uncertainty that can complicate financing and development timelines and discourage investment in jurisdictions that rely on the existing section (38) framework, or plan to adopt the new OAR 660-023-0195 framework.

From a land use perspective, permit duration should not depend on which procedural pathway an applicant and county choose to pursue. A defined approval period establishes clear expectations for applicants, local governments, and communities, and an incentive to move projects forward in a timely manner, regardless of the siting pathway.

To address this issue, I respectfully request that DLCD amend OAR 660-023-0195, OAR 660-033-0130, and OAR 660-033-0140 to do the following:

- Remove the permit duration and extension OAR reference provisions of OAR 660-023-0195(10).
- Remove the permit duration and extension provisions of OAR 660-033-0130(44) (j) and (k).
- Amend OAR 660-033-0140 with the same permit duration and extension provisions so that they apply to all photovoltaic solar power generation facilities reviewed under OAR 660-023-0195 and OAR 660-033-0130

ECONOMIC IMPACT ON BUSINESSES AND OPTIONS TO REDUCE IMPACT

This requested amendment is intended to improve local economic impacts by providing predictability and ensuring consistent statewide administration of permit duration. Uncertainty about whether duration and extension provisions apply to approvals outside section (44) can increase carrying costs, delay financing and contracting decisions, and create uneven risk allocation across jurisdictions. The proposed amendment provides a low-cost compliance option by clarifying applicability through straightforward rule text changes, rather than introducing new substantive siting criteria, additional application materials, or new timelines beyond those already contemplated by subsections (44)(j) and (k).

Thank you for your consideration of this request and for your continued work on improving the clarity and effectiveness of Oregon's land use regulations. I would welcome the opportunity to discuss this request further or provide additional information that may assist the Department in evaluating this proposed amendment.

Sincerely,

A handwritten signature in black ink that reads "Jacob Ripper". The signature is written in a cursive, flowing style.

Jacob Ripper, AICP
Director, Permitting & Entitlement
NewSun Energy

Encl:

Attachment A—Proposed Amendatory Rule Text for OAR 660-023-0195, OAR 660-033-0130, OAR 660-033-0140 (showing proposed deletions and additions)

660-023-0195

Photovoltaic Solar Energy Resources in Eastern Oregon

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

- (a) Makes meaningful contributions to the state's clean energy goals;
- (b) Is supported by coordination across all levels of interested parties, including but not limited to, local, state, federal, and tribal government;
- (c) Increases potential for local governments, Tribes, and local residents to share the benefits of solar development; and
- (d) Suitably accounts for potential conflicts with the values and resources identified under Oregon Laws 2023, chapter 442, section 35(2) compiled as a note after ORS197.732 and this rule.

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

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

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

(A) Each other; or

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

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

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

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

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

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

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

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

(j) "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not

include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

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

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

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

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

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

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

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

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

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

(B) The county must provide mailed notice of the meeting(s) to Tribes, all incorporated cities within the county, and property owners of lands likely to be determined significant photovoltaic solar resources and within a two-mile radius of such areas. The county must also provide mailed notice to any physical address assigned to property located within the

lands requiring notice as shown in county assessor records that are not the same as the property owner's address.

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

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

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

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

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

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

(B) The Oregon Department of Energy;

(C) The State Historic Preservation Officer;

(D) The Oregon Department of Agriculture.

(E) The Oregon Department of Aviation;

(F) The United States Department of Defense;

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

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

(e) When designating a significant photovoltaic solar resource area, a county may choose not to identify conflicting uses as would otherwise be required by OAR 660-023-0030

through 660-023-0050. In the alternative, a county may choose to conduct a more detailed analysis that may lead to the identification of conflicting uses.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Lands characterized by ODFW as Category 5 or 6, or other areas of poor to no value as wildlife habitat or with little or no restoration potential based on field data provided by the applicant and developed in consultation with ODFW. The county may refine the exact location or categorization of wildlife habitat during consideration of a photovoltaic solar power generation facility but must consult ODFW.

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

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

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

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

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

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

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

(B) Wildlife habitat characterized by ODFW as Category 2 that is not otherwise limited by subsection (k) and wildlife habitat characterized by ODFW as Category 3 or 4 based on field

data provided by the applicant and developed in consultation with ODFW. The county may refine the exact location or categorization of Category 2, 3, or 4 wildlife habitat during consideration of a photovoltaic solar power generation facility but must consult with ODFW. Mitigation for wildlife habitat described in this paragraph shall be consistent with the requirements of ORS 215.446(3)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Agricultural Mitigation:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) When provided information on known or potential archaeological sites, local government will use the information to inform land use decisions, recommendations to applicants, and permit conditions in a manner that preserves confidentiality and is consistent with state law. ORS 192.345(11) exempts most information concerning the location of archaeological sites and objects from public records disclosure, except when information on an Indian tribe's cultural or religious activities is requested by the governing body of a tribe. Requirements in this rule are intended to be consistent with ORS 192.345(11).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Meaningful and reasonable;

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

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

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

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

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

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

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

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

(8) Maximum Size of Photovoltaic Solar Power Generation Facilities:

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

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

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

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

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

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

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

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

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

(B) If at least 320 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities wholly or partially within the study area, the county must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area

(e)(A) The application will demonstrate that considerations for the amount, type, and location of temporary workforce housing have been made. This provision may be satisfied by the submittal and county approval of a workforce housing plan prepared by an individual with qualifications determined to be acceptable by the county demonstrating that such

temporary housing is reasonably likely to occur. The plan need not obligate the applicant to financially secure the temporary housing. The approved workforce housing plan shall be attached to the decision as a condition of approval.

(B) On-site and off-site facilities for temporary workforce housing for workers constructing a photovoltaic solar power generation facility must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete.

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

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

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

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

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

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

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

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

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

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

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

(n) Any applicable local provisions have been satisfied.

~~(10) Duration of Permit. A permit approved for a photovoltaic solar power generation facility shall be valid until commencement of construction or for six years, whichever is less. A county may grant up to two extensions for a period of up to 24 months each when an applicant submits a written request for an extension of the development approval period to the county prior to the expiration of the approval period. The county may consider additional extensions in the manner provided in OAR 660-033-0130(44)(i)(K).~~

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

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

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

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

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

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

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

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

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xi) The Metolius Area of Critical State Concern identified as Area 1 and Area 2 in the management plan adopted by the Land Conservation and Development Commission, as referenced in ORS 197.416.

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

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

- (i) Topography with a slope that is predominantly 15 percent or less;
- (ii) An estimated Annual Solar Utility-Scale Capacity Factor of 19 percent or greater; and
- (iii) Predominantly within 10 miles of a transmission line with a rating of 69 KV or above.

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

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

single project or as multiple facilities wholly or partially within the study area, the county must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Any applicable local provisions have been satisfied.

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

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

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

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

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

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

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

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

660-033-0140

Permit Expiration Dates

(1) Except as provided for in sections ~~(5)~~ ~~and (7)~~ of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

(2) A county may grant one extension period of up to 12 months if:

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

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

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

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

(3) Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

(4) Except for “residential development” as defined in section (6), additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

(5)(a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.

(b) An extension of a permit described in subsection (5)(a) of this rule is valid for two years. A county may approve no more than five additional one-year extensions of a permit if:

(A) The applicant makes a written request for the additional extension prior to the expiration of the extension;

(B) The applicable residential development statute has not been amended following the approval of the permit, except the amendments to ORS 215.750 by Oregon Laws 2019, chapter 433, section 1; and

(C) An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.

(6) As used in section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.317, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).

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

(b) A county may grant a permit described in subsection (7) a third and final extension for a period of up to 24 months if:

(i) An applicant submits a written request for an extension of the development approval period prior to the expiration of the second extension granted under subsection (7);

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

(iii) 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.

(8) As used in section (7) of this rules, “photovoltaic solar power generation facility” shall mean those facilities as described in OAR 660-023-0195, OAR 660-033-0130(38), and OAR 660-033-0130(44)
