

**Land Conservation and Development Department
Chapter 660
Division 33 Agricultural Land**

May 2019 Amendments – Final

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

* * *

(17) Permanent features of a power generation facility shall not ~~[preclude]~~ **use, occupy, or cover** more than 12 acres ~~[from use as a commercial agricultural enterprise]~~ unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval.

* * *

(22) Permanent features of a power generation facility shall not ~~[preclude]~~ **use, occupy, or cover** more than 20 acres ~~[from use as a commercial agricultural enterprise]~~ unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval.

* * *

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

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

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

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

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

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

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

(g) [(f)] For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not ~~[preclude]~~ **use, occupy, or cover** more than 12 acres ~~[from use as a commercial agricultural enterprise]~~ unless ~~[an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4 or the requirements of paragraph (G) are met. The governing body or its designate must find that]:~~

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

(B) A county adopts, and an applicant satisfies, land use provisions authorizing projects subject to a dual-use development plan. Land use provisions adopted by a county pursuant to this paragraph may not allow a project in excess of 20 acres. Land use provisions adopted by the county must require sufficient assurances that the farm use element of the dual-use development plan is established and maintained so long as the photovoltaic solar power generation facility is operational or components of the facility remain on site. The provisions of this subsection are repealed on January 1, 2022.

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

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

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

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

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

(E) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

(F) [~~E~~] The project is not located on **those** high-value farmland **soils listed in OAR 660-033-0020(8)(b)-(e)** or arable soils unless it can be demonstrated that:

- (i) Non high-value farmland soils are not available on the subject tract;
- (ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or
- (iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils; and

(G) [~~F~~] A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

- (i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.
- (ii) When at least 48 acres of photovoltaic solar power generation **facilities** have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar [~~energy~~] **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 [~~energy~~] **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, [~~or~~] acquire water rights, or [~~will reduce~~] **diminish** the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(H) [~~G~~] A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:

- (i) Is not located within the boundaries of an irrigation district;
- (ii) Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;
- (iii) Is located within the service area of an electric utility described in ORS 469A.052(2);
- (iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and
- (v) Does not qualify as high-value farmland under any other provision of law; or

(i) ~~[(g)]~~ For arable lands, a photovoltaic solar power generation facility shall not ~~[preclude]~~ **use, occupy, or cover** more than 20 acres ~~[from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4]~~. The governing body or its designate must find that **the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:**

(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a):

(B) ~~[(A)]~~ 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) ~~[(B)]~~ No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10) ~~[unless an exception is taken pursuant to 197.732 and OAR chapter 660, division 4]~~;

(D) ~~[(C)]~~ A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.

(ii) When at least 80 acres of photovoltaic solar power generation **facilities** have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities[,] within the study area[,] the local government or its designate must find that the photovoltaic solar ~~[energy]~~ **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 ~~[energy]~~ **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) ~~[(D)]~~ The requirements of OAR ~~[660-033-0130(38)(f)]~~ **660-033-0130(38)(h)**(A), (B), (C) and (D) are satisfied.

(j) ~~[(h)]~~ For nonarable lands, a photovoltaic solar power generation facility shall not ~~[preclude]~~ **use, occupy, or cover** more than 320 acres ~~[from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4]~~. The governing body or its designate must find that **the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:**

(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

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

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

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other

possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(C) [~~(B)~~] No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(D) [~~(C)~~] No more than 20 acres of the project will be sited on arable soils[~~unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4~~];

(E) [~~(D)~~] The requirements of OAR [~~660-033-0130(38)(f)(D)~~] **660-033-0130(38)(h)(D)** are satisfied;

(F) [~~(E)~~] If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

(G) [~~(F)~~] If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

~~[(G) The provisions of paragraph (F) are repealed on January 1, 2022.]~~

(k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

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

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

(n) ~~[(+)]~~ If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections ~~[(+)]~~ **(g)**, ~~[(g)]~~ **(i)** and ~~[(h)]~~ **(j)** of this section.