

**Temporary Amendments to OAR 660-033-0130**  
**Adopted by the Land Conservation and Development Commission**  
**Effective January 29, 2019**

1 \* \* \*

2  
3 (17) Permanent features of a power generation facility shall not [~~preclude~~] **use, occupy, or**  
4 **cover** more than 12 acres [~~from use as a commercial agricultural enterprise~~] unless an exception is  
5 taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility  
6 may include on-site and off-site facilities for temporary workforce housing for workers  
7 constructing a power generation facility. Such facilities must be removed or converted to an  
8 allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is  
9 complete. Temporary workforce housing facilities not included in the initial approval may be  
10 considered through a minor amendment request. A minor amendment request shall be subject  
11 to 660-033-0130(5) and shall have no effect on the original approval.

12  
13 \* \* \*

14  
15 (22) Permanent features of a power generation facility shall not [~~preclude~~] **use, occupy, or**  
16 **cover** more than 12 acres [~~from use as a commercial agricultural enterprise~~] unless an exception is  
17 taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility  
18 may include on-site and off-site facilities for temporary workforce housing for workers  
19 constructing a power generation facility. Such facilities must be removed or converted to an  
20 allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is  
21 complete. Temporary workforce housing facilities not included in the initial approval may be  
22 considered through a minor amendment request. A minor amendment request shall be subject  
23 to 660-033-0130(5) and shall have no effect on the original approval.

24  
25 \* \* \*

26  
27 (38) A proposal to site a photovoltaic solar power generation facility shall be subject to the  
28 following definitions and provisions:

29  
30 (a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently  
31 cultivated, predominantly comprised of arable soils.

32  
33 (b) "Arable soils" means soils that are suitable for cultivation as determined by the governing  
34 body or its designate based on substantial evidence in the record of a local land use application,  
35 but "arable soils" does not include high-value farmland soils described at ORS 195.300(10)  
36 unless otherwise stated.

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

3  
4 **(d) [(e)] “Nonarable land” means land in a tract that is predominantly not cultivated and**  
5 **predominantly comprised of nonarable soils.**

6  
7 **(e) [(d)] “Nonarable soils” means soils that are not suitable for cultivation. Soils with an NRCS**  
8 **agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in**  
9 **all cases. The governing body or its designate may determine other soils, including soils with a**  
10 **past history of irrigation, to be nonarable based on substantial evidence in the record of a local**  
11 **land use application.**

12  
13 **(f) [(e)] “Photovoltaic solar power generation facility” includes, but is not limited to, an**  
14 **assembly of equipment that converts sunlight into electricity and then stores, transfers, or**  
15 **both, that electricity. This includes photovoltaic modules, mounting and solar tracking**  
16 **equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic**  
17 **solar power generation facilities also include electrical cable collection systems connecting the**  
18 **photovoltaic solar generation facility to a transmission line, all necessary grid integration**  
19 **equipment, new or expanded private roads constructed to serve the photovoltaic solar power**  
20 **generation facility, office, operation and maintenance buildings, staging areas and all other**  
21 **necessary appurtenances. For purposes of applying the acreage standards of this section, a**  
22 **photovoltaic solar power generation facility includes all existing and proposed facilities on a**  
23 **single tract, as well as any existing and proposed facilities determined to be under common**  
24 **ownership on lands with fewer than 1320 feet of separation from the tract on which the new**  
25 **facility is proposed to be sited. Projects connected to the same parent company or individuals**  
26 **shall be considered to be in common ownership, regardless of the operating business structure.**  
27 **A photovoltaic solar power generation facility does not include a net metering project**  
28 **established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff**  
29 **project established consistent with ORS 757.365 and OAR chapter 860, division 84.**

30  
31 **(g) [(f)] For high-value farmland described at ORS 195.300(10), a photovoltaic solar power**  
32 **generation facility shall not ~~preclude~~ **use, occupy, or cover** more than 12 acres ~~from use as a~~**  
33 **commercial agricultural enterprise] unless ~~an exception is taken pursuant to ORS 197.732 and~~**  
34 **~~OAR chapter 660, division 4 or the requirements of paragraph (G) are met. The governing body~~**  
35 **~~or its designate must find that]:~~**

36  
37 **(A) The provisions of paragraph (h)(H) are satisfied; or**

38  
39 **(B) A county adopts, and an applicant satisfies, land use provisions authorizing**  
40 **projects subject to a dual-use development plan. Land use provisions adopted by a**  
41 **county pursuant to this paragraph may not allow a project in excess of 20 acres. Land**  
42 **use provisions adopted by the county must require sufficient assurances that the farm**  
43 **use element of the dual-use development plan is established and maintained so long**

1 **as the photovoltaic solar power generation facility is operational or components of**  
2 **the facility remain on site. The provisions of this subsection are repealed on January**  
3 **1, 2022.**  
4

5 **(h) The following criteria must be satisfied in order to approve a photovoltaic solar power**  
6 **generation facility on high-value farmland described at ORS 195.300(10).**  
7

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

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

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

32 (D) Construction or maintenance activities will not result in the unabated introduction  
33 or spread of noxious weeds and other undesirable weed species. This provision may be  
34 satisfied by the submittal and county approval of a weed control plan prepared by an  
35 adequately qualified individual that includes a long-term maintenance agreement. The  
36 approved plan shall be attached to the decision as a condition of approval;  
37

38 **(E) Except for electrical cable collection systems connecting the photovoltaic solar**  
39 **generation facility to a transmission line The project is not located on those high-value**  
40 **farmland soils listed in OAR 660-033-0020(8)(a);**  
41

1 **(F)** [~~E~~] The project is not located on those high-value farmland **soils listed in OAR 660-**  
2 **033-0020(8)(b)-(e)** or arable soils unless it can be demonstrated that:

3  
4 (i) Non high-value farmland soils are not available on the subject tract;

5  
6 (ii) Siting the project on non high-value farmland soils present on the subject  
7 tract would significantly reduce the project's ability to operate successfully; or

8  
9 (iii) The proposed site is better suited to allow continuation of an existing  
10 commercial farm or ranching operation on the subject tract than other possible  
11 sites also located on the subject tract, including those comprised of non high-  
12 value farmland soils; and

13  
14 **(G)** [~~F~~] A study area consisting of lands zoned for exclusive farm use located within one  
15 mile measured from the center of the proposed project shall be established and:

16  
17 (i) If fewer than 48 acres of photovoltaic solar power generation facilities have  
18 been constructed or received land use approvals and obtained building permits  
19 within the study area, no further action is necessary.

20  
21 (ii) When at least 48 acres of photovoltaic solar power generation **facilities** have  
22 been constructed or received land use approvals and obtained building permits,  
23 either as a single project or as multiple facilities within the study area, the local  
24 government or its designate must find that the photovoltaic solar [~~energy~~]  
25 **power** generation facility will not materially alter the stability of the overall land  
26 use pattern of the area. The stability of the land use pattern will be materially  
27 altered if the overall effect of existing and potential photovoltaic solar [~~energy~~]  
28 **power** generation facilities will make it more difficult for the existing farms and  
29 ranches in the area to continue operation due to diminished opportunities to  
30 expand, purchase or lease farmland or acquire water rights, or will reduce the  
31 number of tracts or acreage in farm use in a manner that will destabilize the  
32 overall character of the study area.

33  
34 **(H)** [~~G~~] A photovoltaic solar power generation facility may be sited on more than 12  
35 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an  
36 exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:

37  
38 (i) Is not located within the boundaries of an irrigation district;

39  
40 (ii) Is not at the time of the facility's establishment, and was not at any time  
41 during the 20 years immediately preceding the facility's establishment, the place  
42 of use of a water right permit, certificate, decree, transfer order or ground water  
43 registration authorizing the use of water for the purpose of irrigation;

44

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

3  
4 (iv) Does not exceed the acreage the electric utility reasonably anticipates to be  
5 necessary to achieve the applicable renewable portfolio standard described in  
6 ORS 469A.052(3); and

7  
8 (v) Does not qualify as high-value farmland under any other provision of law; or  
9

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

15  
16 **(A) Except for electrical cable collection systems connecting the photovoltaic solar**  
17 **generation facility to a transmission line, the project is not located on those high-value**  
18 **farmland soils listed in OAR 660-033-0020(8)(a);**

19  
20 **(B) [(A)]** The project is not located on **those** high-value farmland soils **listed in OAR 660-**  
21 **033-0020(8)(b)-(e)** or arable soils unless it can be demonstrated that:

22  
23 (i) Nonarable soils are not available on the subject tract;

24  
25 (ii) Siting the project on nonarable soils present on the subject tract would  
26 significantly reduce the project's ability to operate successfully; or

27  
28 (iii) The proposed site is better suited to allow continuation of an existing  
29 commercial farm or ranching operation on the subject tract than other possible  
30 sites also located on the subject tract, including those comprised of nonarable  
31 soils;

32  
33 **(C) [(B)]** No more than 12 acres of the project will be sited on high-value farmland soils  
34 described at ORS 195.300(10) [~~unless an exception is taken pursuant to 197.732 and~~  
35 ~~OAR chapter 660, division 4~~];

36  
37 **(D) [(C)]** A study area consisting of lands zoned for exclusive farm use located within one  
38 mile measured from the center of the proposed project shall be established and:

39  
40 (i) If fewer than 80 acres of photovoltaic solar power generation facilities have  
41 been constructed or received land use approvals and obtained building permits  
42 within the study area no further action is necessary.  
43

1 (ii) When at least 80 acres of photovoltaic solar power generation **facilities** have  
2 been constructed or received land use approvals and obtained building permits,  
3 either as a single project or as multiple facilities, within the study area the local  
4 government or its designate must find that the photovoltaic solar [~~energy~~]  
5 **power** generation facility will not materially alter the stability of the overall land  
6 use pattern of the area. The stability of the land use pattern will be materially  
7 altered if the overall effect of existing and potential photovoltaic solar [~~energy~~]  
8 **power** generation facilities will make it more difficult for the existing farms and  
9 ranches in the area to continue operation due to diminished opportunities to  
10 expand, purchase or lease farmland, acquire water rights or diminish the number  
11 of tracts or acreage in farm use in a manner that will destabilize the overall  
12 character of the study area; and

13  
14 **(E) [(D)]** The requirements of OAR [~~660-033-0130(38)(f)~~] **660-033-0130(38)(h)**(A), (B), (C)  
15 and (D) are satisfied.

16  
17 **(j) [(h)]** For nonarable lands, a photovoltaic solar power generation facility shall not [~~preclude~~]  
18 **use, occupy, or cover** more than 320 acres [~~from use as a commercial agricultural enterprise~~  
19 ~~unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4~~]. The  
20 governing body or its designate must find that **the following criteria are satisfied in order to**  
21 **approve a photovoltaic solar power generation facility on nonarable land:**

22  
23 **(A) Except for electrical cable collection systems connecting the photovoltaic solar**  
24 **generation facility to a transmission line, the project is not located on those high-value**  
25 **farmland soils listed in OAR 660-033-0020(8)(a);**

26  
27 **(B) [(A)]** The project is not located on **those** high-value farmland soils **listed in OAR 660-**  
28 **033-0020(8)(b)-(e)** or arable soils unless it can be demonstrated that:

29  
30 (i) Siting the project on nonarable soils present on the subject tract would significantly  
31 reduce the project's ability to operate successfully; or

32  
33 (ii) The proposed site is better suited to allow continuation of an existing commercial  
34 farm or ranching operation on the subject tract as compared to other possible sites also  
35 located on the subject tract, including sites that are comprised of nonarable soils;

36  
37 **(C) [(B)]** No more than 12 acres of the project will be sited on high-value farmland soils  
38 described at ORS 195.300(10);

39  
40 **(D) [(C)]** No more than 20 acres of the project will be sited on arable soils [~~unless an~~  
41 ~~exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4~~];

42  
43 **(E) [(D)]** The requirements of OAR [~~660-033-0130(38)(f)(D)~~] **660-033-0130(38)(h)(D)** are  
44 satisfied;

1  
2 **(F)** ~~(E)~~ If a photovoltaic solar power generation facility is proposed to be developed on  
3 lands that contain a Goal 5 resource protected under the county's comprehensive plan,  
4 and the plan does not address conflicts between energy facility development and the  
5 resource, the applicant and the county, together with any state or federal agency  
6 responsible for protecting the resource or habitat supporting the resource, will  
7 cooperatively develop a specific resource management plan to mitigate potential  
8 development conflicts. If there is no program present to protect the listed Goal 5  
9 resource(s) present in the local comprehensive plan or implementing ordinances and  
10 the applicant and the appropriate resource management agency(ies) cannot successfully  
11 agree on a cooperative resource management plan, the county is responsible for  
12 determining appropriate mitigation measures; and  
13

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

34 ~~[(G) The provisions of paragraph (F) are repealed on January 1, 2022.]~~  
35

36 **(k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this**  
37 **section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.**  
38

39 **(l)** ~~(i)~~ The county governing body or its designate shall require as a condition of approval for a  
40 photovoltaic solar power generation facility, that the project owner sign and record in the deed  
41 records for the county a document binding the project owner and the project owner's  
42 successors in interest, prohibiting them from pursuing a claim for relief or cause of action  
43 alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).  
44

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

4

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

7