

RULE LANGUAGE**COMMENTARY**

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

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

(b) Is supported by strong 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 account for potential conflicts with the values and resources identified under Section 35(2) of HB 3409 (2023) and this rule.

(2) **Definitions.** For purposes of this rule the definitions in ORS 197.015, OAR 660-006-0005, OAR 660-023-0010, OAR 660-033-0020, and OAR 660-033-0130(38) apply. 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% of the hours of the year.

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

(A) Each other; or

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

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

Added after consultation with the Confederated Tribes of Warm Springs and State Historic Preservation Office (SHPO).

Added after consultation with the Confederated Tribes of Warm Springs and SHPO.

No Changes to Section (2)

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- 1 (d) "Eastern Oregon" means that portion of the State of Oregon lying
2 east of a line beginning at the intersection of the northern boundary of
3 the state and the western boundary of Wasco County, thence
4 southerly along the western boundaries of the counties of Wasco,
5 Jefferson, Deschutes and Klamath to the southern boundary of the
6 state.
7
- 8 (e) "Historic Resources" are those buildings, structures, objects, sites,
9 or districts that potentially have a significant relationship to events or
10 conditions of the human past.
11
- 12 (f) "Microgrid" means a local electric grid with discrete electrical
13 boundaries, acting as a single and controllable entity and able to
14 operate in grid-connected or island mode.
15
- 16 (g) "Military Special Use Airspace" is airspace of defined dimensions
17 identified by an area on the surface of the earth wherein activities must
18 be confined because of their nature, or wherein limitations may be
19 imposed upon aircraft operations that are not a part of those activities
20 Limitations may be imposed upon aircraft operations that are not a
21 part of the airspace activities. Military special use airspace includes
22 any associated underlying surface and subsurface training areas.
23
- 24 (h) "Military Training Route" means airspace of defined vertical and
25 lateral dimensions established for the conduct of military flight training
26 at indicated airspeeds in excess of 250 knots.
27
- 28 (i) "Oregon Renewable Energy Siting Assessment (ORESAS)" is a
29 renewable energy mapping tool housed on Oregon Explorer.
30
- 31 (j) "Photovoltaic solar power generation facility" includes, but is not
32 limited to, an assembly of equipment that converts sunlight into
33 electricity and then stores, transfers, or both, that electricity. This
34 includes photovoltaic modules, mounting and solar tracking
35 equipment, foundations, inverters, wiring, storage devices and other
36 components. Photovoltaic solar power generation facilities also include
37 electrical cable collection systems connecting the photovoltaic solar
38 generation facility to a transmission line, all necessary grid integration
39 equipment, new or expanded private roads constructed to serve the
40 photovoltaic solar power generation facility, office, operation and
41 maintenance buildings, staging areas and all other necessary
42 appurtenances, including but not limited to on-site and off-site facilities
43 for temporary workforce housing for workers constructing a
44 photovoltaic solar power generation facility. For purposes of applying
45 the acreage standards of this section, a photovoltaic solar power
46 generation facility includes all existing and proposed facilities on a
47 single tract, as well as any existing and proposed facilities determined
48 to be under common ownership on lands with fewer than 1320 feet of
49 separation from the tract on which the new facility is proposed to be
50 sited. Projects connected to the same parent company or individuals
51 shall be considered to be in common ownership, regardless of the
52 operating business structure. A photovoltaic solar power generation
53 facility does not include a net metering project established consistent
54 with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-
55 Tariff project established consistent with ORS 757.365 and OAR
56 chapter 860, division 84.

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1 (k) "Significant Photovoltaic solar resource area" is an area consisting
 2 of lands that are particularly well suited for the siting of photovoltaic
 3 solar power generation facilities because they have been determined
 4 to be significant pursuant to section (4) of this rule. Multiple
 5 photovoltaic solar power generation facilities may be located within a
 6 photovoltaic solar resource area.

7
 8 (l) "Transmission Line" is a linear utility facility by which a utility
 9 provider transmits or transfers electricity from a point of origin or
 10 generation or between transfer stations.

11
 12 (m) "Tribe" as defined in ORS 182.162(2), means a federally
 13 recognized Indian tribe in Oregon, except where the definition in ORS
 14 97.740 applies by statute.

15
 16 **(3) Standard Process.** Counties may amend their acknowledged
 17 comprehensive plans to address photovoltaic solar resources using
 18 the standards and procedures in OAR 660-023-0030 through 660-023-
 19 0050.

20
 21 **(4) Significant Photovoltaic Solar Resource Areas.** Rather than
 22 using the standard process described at subsection (3) above,
 23 counties in eastern Oregon may instead choose the following process
 24 to establish significant photovoltaic solar resource areas.

25
 26 (a) Counties may establish significant photovoltaic solar resource
 27 areas through the adoption of a local program that includes a map,
 28 comprehensive plan policies and inventory, and implementing land use
 29 regulations found to be consistent with the provisions of this rule.

30
 31 (b) To implement this rule for the purpose of establishing significant
 32 photovoltaic solar resource areas a county shall follow the post-
 33 acknowledgment plan amendment process pursuant to OAR chapter
 34 660, division 18.

35
 36 (c) Prior to conducting a hearing to consider establishing a significant
 37 photovoltaic solar resource area or areas a county will hold one or
 38 more public meetings to solicit input ~~from county residents.~~

39
 40 (A) The public meeting(s) must occur in areas of the county that
 41 include lands likely to be determined significant photovoltaic solar
 42 resources.

43
 44 (B) The county must provide mailed notice of the meeting(s) to **Tribes**
 45 **and** property owners of lands likely to be determined significant
 46 photovoltaic solar resources and within a two-mile radius of such
 47 areas. The county must also provide mailed notice to any physical
 48 address assigned to property located within the lands requiring notice
 49 as shown in county assessor records that are not the same as the
 50 property owner's address.

51
 52 (C) Public meetings conducted pursuant to this section should use
 53 best practices for community engagement identified in documents
 54 such as "Putting the People in Planning A guide for local governmental
 55 agencies in Oregon June 30, 2019."

56

No Changes to Section (3)

*Changed after consultation with the
 Confederated Tribes of Warm
 Springs.*

*Added after consultation with the
 Confederated Tribes of Warm
 Springs.*

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

5
 6 (E) Local program elements prepared for an eventual public hearing
 7 should be drafted in accordance with input received at the public
 8 meeting(s) and consistent with the provisions of this rule.

9
 10 (d) In addition to submitting the notice of the proposed amendment to
 11 the Director of the Department of Land Conservation and
 12 Development (DLCD) required by ORS 197.610(1), the county shall
 13 provide notice of the Post-Acknowledgement Plan Amendment to:

14
 15 (A) The State Department of Fish and Wildlife;

16
 17 (B) The State Department of Energy;

18
 19 (C) The State Historic Preservation Officer;

20
 21 (D) The Oregon Department of Agriculture.

22
 23 (E) The Oregon Department of Aviation;

24
 25 (F) The United States Department of Defense;

26
 27 (G) The Oregon Legislative Commission on Indian Services (LCIS);
 28 and

29
 30 (H) Federally recognized Indian tribes that may be affected by the
 31 application. Each county shall obtain a list of tribes with an ancestral
 32 connection to land within their jurisdiction from the Oregon Legislative
 33 Commission on Indian Affairs and shall send notice to all tribes in the
 34 commission's response.

35
 36 (e) When designating a significant photovoltaic solar resource area, a
 37 county may choose not to identify conflicting uses as would otherwise
 38 be required by OAR 660-023-0030 through 660-023-0050. In the
 39 alternative, a county may choose to conduct a more detailed analysis
 40 that may lead to the identification of conflicting uses.

41
 42 (f) If a county chooses to identify conflicting uses under subsection
 43 (4)(e) of this rule, a county may choose not to limit or prohibit
 44 conflicting uses on nearby or surrounding lands. In the alternative, a
 45 county may choose to conduct a more detailed analysis of economic,
 46 social, environmental and energy (ESEE) consequences that could
 47 lead to a decision to limit or prohibit conflicting uses within a significant
 48 photovoltaic solar resource area.

49
 50 (g) If a county chooses to conduct an additional analysis of economic,
 51 social, environmental and energy (ESEE) consequences as described
 52 in subsection (4)(f) of this rule, it must follow the provisions of OAR
 53 660-023-0040.

54
 55
 56

Added for clarification

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1 (h)(A) Unless otherwise indicated, to qualify as a significant
2 photovoltaic solar resource area, an area must be comprised of lands
3 which have the following characteristics:
4
5 (i) Topography with a slope that is predominantly 15% or less;
6
7 (ii) An estimated Annual Solar Utility-Scale Capacity Factor of 19
8 percent or greater; and.
9
10 (iii) Location within 10 miles of a transmission line with a rating of 69
11 KV or above.
12
13 (B) A county may determine, based on facts and evidence in the
14 record, that additional lands lacking one or more of the characteristics
15 identified by subsection (4)(h)(A) of this rule, are suitable for
16 designation as significant photovoltaic solar resource areas;
17
18 (C) A county may determine that lands t including the characteristics
19 identified by subsection (4)(h)(A) of this rule are not necessary to
20 designate as significant photovoltaic solar resource areas.
21
22 (D) It is not necessary for a county to consider resources or features
23 beyond those described in subsections (5)(h)(A)-(C) when adopting
24 significant photovoltaic solar resource areas. Instead, final project
25 eligibility, including the determination of any necessary mitigation
26 requirements, shall be based on information provided by an applicant
27 pursuing approval of a photovoltaic solar energy generation facility and
28 considered in conjunction with subsections (5)(I), (j) and (k) below.
29
30 (I) No mitigation is required for the following features photovoltaic solar
31 power generation facility within an acknowledged significant
32 photovoltaic solar resource area when located on:
33
34 (A) Agricultural lands protected under Goal 3 that are:
35
36 (i) comprised of soils as classified by the U.S. Natural Resources
37 Conservation Service (NRCS) with an agricultural capability class VII
38 and VIII; or
39
40 (ii) comprised of soils as classified by the U.S. Natural Resources
41 Conservation Service (NRCS) with an agricultural capability class VI
42 and do not have the ability to produce 300 pounds of herbaceous
43 biomass per acre per year. The ability to produce herbaceous
44 biomass is determined from data available on the Rangeland Analysis
45 Platform and is calculated by averaging the amounts of per acre
46 herbaceous biomass attributed to each year for all of the years for
47 which data is provided.
48
49 (B) Lands characterized by ODFW as Category 5 or 6, or other areas
50 of poor to no value as wildlife habitat or with little or no restoration
51 potential based on field data provided by the applicant and developed
52 in consultation with ODFW. The exact location or categorization of
53 wildlife habitat may be refined during consideration of a photovoltaic
54 solar power generation facility but must be done in consultation with
55 ODFW.
56

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1 (C) Lands where the construction and operation of the photovoltaic
2 solar power generation facility will not result in significant adverse
3 impacts to Historic, Cultural or Archaeological Resources because no
4 such resources are present, or if resources are present, they will be
5 avoided through project design to the extent that no additional
6 mitigation is necessary, as provided in section (5) of this rule.
7
8 (D) Notwithstanding subsections (4)(i)(A) through (C) of this rule, a
9 county may find that lands within solar photovoltaic resource areas
10 described in subsections (4)(i)(a) through (4)(c) of this rule require
11 additional mitigation measures as specified by the county;
12
13 (j) Mitigation is required for a photovoltaic solar power generation
14 facility within an acknowledged significant photovoltaic solar resource
15 area when located on lands that include one or more of the following
16 features :
17
18 (A) Agricultural lands protected under Goal 3 that are:
19
20 (i) comprised of soils with an agricultural capability class VI as
21 classified by the U.S. Natural Resources Conservation Service
22 (NRCS) and have the ability to produce greater than 300 pounds of
23 herbaceous biomass per acre per year if the subject property consists
24 of at least 640 acres. The ability to produce herbaceous biomass is
25 determined from data available on the Rangeland Analysis Platform
26 and is calculated by averaging the amounts of herbaceous biomass
27 per acre attributed to each year for all of the years for which data is
28 provided; or
29
30 (ii) comprised of soils with an agricultural capability class III, IV, or V as
31 classified by the U.S. Natural Resources Conservation Service
32 (NRCS), without an appurtenant water right on January 1, 2024.
33
34 (iii) Mitigation for agricultural lands described in this subsection must
35 be consistent with the requirements of section (5) of this rule.
36
37 (B) Wildlife habitat characterized by ODFW as Category 2 that is not
38 otherwise limited by section (4)(k) and wildlife habitat characterized by
39 ODFW as Category 3 or 4 based on field data provided by the
40 applicant and developed in consultation with ODFW. The exact
41 location or categorization of Category 2, 3, or 4 wildlife habitat may be
42 refined during consideration of a photovoltaic solar power generation
43 facility but must be done in consultation with ODFW. Mitigation for
44 wildlife habitat described in this paragraph shall be consistent with the
45 requirements of ORS 215.446(3)(a).
46
47 (C) Wildlife Habitat: Eastern Oregon Deer Winter Range, Eastern
48 Oregon Elk Winter Range, Big Horn Sheep Habitat, and Pronghorn
49 Essential and Limited Habitat as identified by Oregon Renewable
50 Energy Siting Assessment (ORESAs). The exact location of wildlife
51 habitat identified by this subsection may be refined during
52 consideration of a photovoltaic solar power generation facility but in
53 consultation with ODFW. Mitigation for wildlife habitat described in this
54 paragraph shall be consistent with the requirements of ORS
55 215.446(3)(a).
56

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1 (D) Priority Wildlife Connectivity Areas where the ODFW makes a
2 finding, based on site specific conditions, that mitigation for wildlife
3 habitat consistent with the requirements of ORS 215.446(3)(a)
4 reduces impacts from the photovoltaic solar power generation facility
5 to a level acceptable to ODFW.
6

7 (E) Lands where the construction and operation of the photovoltaic
8 solar power generation facility may result in significant adverse
9 impacts to Historic, Cultural or Archaeological Resources as defined in
10 Section (2) but the project incorporates necessary mitigation measures
11 pursuant to section (5) of this rule.
12

13 (F) Notwithstanding subsections (4)(j)(A) through (E) of this rule, a
14 county may find that individual locations within solar photovoltaic
15 resource areas described in subsections (4)(j)(A) through (E) of this
16 rule have impacts that are too significant to be mitigated and thus are
17 not eligible for approval under the provisions of this section.
18

19 (k) Lands with any of the following features are not eligible for
20 photovoltaic solar power generation facility development under the
21 provisions of this rule:
22

23 (A) Significant Sage-Grouse Habitat described at OAR 660-023-
24 0115(6)(a) and (b). The exact location of Significant Sage-Grouse
25 Habitat may be refined during consideration of a specific project but
26 must be done in consultation with the Oregon Department of Fish and
27 Wildlife (ODFW).
28

29 (B) Priority Wildlife Connectivity Areas (PWCA's) as designated by the
30 ODFW that do not qualify under subsection (4)(j)(D) of this rule.
31 (C) High Use and Very High Use Wildlife Migration Corridors
32 designated by ODFW. The exact location of high use and very high
33 use wildlife mitigation corridors may be refined during consideration of
34 a photovoltaic solar energy facility but must be done in consultation
35 with ODFW.
36

37 (D) Wildlife habitat characterized by ODFW as Category 1 based on
38 field data provided by the applicant and developed in consultation with
39 ODFW. The exact location and characterization of Category 1 wildlife
40 habitat may be refined during consideration of a photovoltaic solar
41 energy facility but must be done in consultation with ODFW.
42

43 (E) Soils that are irrigated or not irrigated and classified prime, unique,
44 Class I or Class II as classified by the U.S. Natural Resources
45 Conservation Service (NRCS), unless such soils make up no more
46 than five percent of a proposed Photovoltaic Solar Site and are
47 present in an irregular configuration or configurations that prevent
48 them from being independently managed for farm use.
49

50 (F) High-Value Farmland as defined at ORS 195.300(10)(c) through (f)
51 that does not qualify for an exemption pursuant to the provisions of
52 subsection (4)(k)(G) and that is not otherwise limited by the provisions
53 of subsection (4)(k)(E).
54

55 (G) Agricultural lands protected under Goal 3 with an appurtenant
56 water right on January 1, 2024. This subsection does not apply if the

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1 ability to use the appurtenant water right to irrigate subject property
2 becomes limited or prohibited due to a situation that is beyond the
3 control of the water right holder including but not limited to: prolonged
4 drought, critical groundwater designations or other state regulatory
5 action, reduced federal contract allocations, and other similar
6 regulatory circumstances. If retained, the appurtenant water right has
7 been transferred to another portion of the subject property, tract or
8 another property and maintained for agricultural purposes.
9
10 (H) Lands where the construction and operation of the photovoltaic
11 solar power generation facility will result in significant adverse impacts
12 to Historic, Cultural or Archaeological Resources that cannot be
13 mitigated pursuant to the provisions of section 5 of this rule.
14
15 (I) Lands included within Urban Reserve Areas acknowledged
16 pursuant to OAR chapter 660, division 21.
17
18 **(5) Agricultural Mitigation:**
19
20 (a) For the purposes of this subsection, “compensatory mitigation”
21 means the replacement or enhancement of the impacted resource in
22 equal or greater amounts than predicted to be impacted by a
23 development.
24
25 (b) Compensatory mitigation for agricultural land may be accomplished
26 in one of the following ways:
27
28 (A) A county may approve a method, or methods proposed by the
29 applicant when substantial evidence in the record demonstrates that
30 the proposed compensatory mitigation will:
31
32 (i) Be suitably durable to last until the impact has been removed or no
33 longer exists;
34
35 (ii) Proximate by being located in the same county or an adjacent
36 county or counties as the proposed impact; and either
37
38 (iii) Result in no net loss of the agricultural productivity of the local
39 agricultural community; or
40
41 (iv) Provide an uplift to the relevant agricultural economy.
42
43 (B) As an alternative to mitigation provided under subsection (5)(a)(A)
44 necessary compensatory mitigation for agricultural lands protected
45 under Goal 3 may be accomplished by use of a one-time
46 compensatory mitigation payment made for the purpose of replacing
47 economic value that is lost by the local community when agricultural
48 land is used for photovoltaic solar development. The compensatory
49 mitigation payment is to be established pursuant to the methodology
50 included as Attachment A. An applicant providing the established
51 compensatory mitigation payment will be considered in all instances to
52 comply with the requirements of this section.
53
54 (C) The compensatory mitigation payment established under
55 subsection (5)(a)(B) may be received by the county, a unit of county
56

No Changes to Section (5)

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1	government, a 501-c-3 not for profit organization operating in the	
2	county, a local Soil and Water Conservation District, or similar entity	
3	capable of utilizing the funds to provide uplift opportunities for the	
4	applicable agricultural sector.	
5		
6	(6) Historic, Cultural, and Archaeological Resources: The	<i>Added for clarity and to include language directly from HB 3409.</i>
7	proposed photovoltaic solar power generation facility shall avoid,	
8	minimize, or mitigate potential significant adverse impacts to historic,	
9	cultural, and archeological resources pursuant to the requirements of	
10	ORS 215.446(3)(b), OAR 660-023-0200, and OAR 660-023-0210, and	
11	this section.	
12		
13	(a) Prior to the submittal of an application for development of a	
14	photovoltaic solar power generation facility within a renewable	
15	photovoltaic solar energy area, an applicant shall compile information	
16	on the subject location that includes, among other things a records	
17	review, field survey, site inventory and cultural resources survey	
18	completed by a professional archaeologist as defined in ORS 97.740	
19	and is eligible to receive an archaeological permit based on the most	<i>Added after meeting with SHPO.</i>
20	current SHPO archaeological guidelines.	
21		
22	(b) The applicant shall transmit the information compiled pursuant to	
23	subsection (6)(a) to the State Historic Preservation Office (SHPO) and	
24	any Tribe that may be affected by the application and applicable	
25	county at least 60 days prior to submitting the application to the	
26	county.	
27		
28	(c) The applicant shall provide written notice that does not transmit the	<i>Added after consultation with the Confederated Tribes of Warm Springs and SHPO.</i>
29	information compiled pursuant to subsection (6)(a) to the applicable	
30	county, DLCD, and ODFW at least 60 days prior to submitting the	
31	application to the county.	
32		<i>Removed in favor of new (d)</i>
33	(c) The information compiled, including the location of any cultural	
34	resources shall be kept confidential and not included in the local	
35	record.	
36		<i>Borrowed from Cultural Resources Rule to offer additional clarity, as well as consistency between rules. Also provides the benefit of having been reviewed by that Rules Advisory Committee and adopted by LCDC.</i>
37	(d) When provided information on known or suspected archaeological	
38	site, local government will use the information to inform land use	
39	decisions, recommendations to applicants, and permit conditions in a	
40	manner that preserves confidentiality and is consistent with state law.	
41	ORS 192.345(11) exempts most information concerning the location of	
42	archaeological sites and objects from public records disclosure, except	
43	when information on an Indian tribe's cultural or religious activities is	
44	requested by the governing body of a tribe. Requirements in this rule	
45	are intended to be consistent with ORS 192.345(11).	
46		
47	(A) A professional archaeologist representing either a local	
48	government or an applicant may access data relevant to a	
49	proposed land use action or permit application, consistent with	
50	privileges assigned by state statute and administrative rule.	
51		
52	(B) In the acquisition and publishing of data exempt from	
53	disclosure, local governments may:	
54		
55		
56		

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1	(i) Acquire and publish aggregated data in a spatial format to	
2	indicate relative likelihood of inadvertent discovery within	
3	all or a portion of a local jurisdiction.	
4		
5	(ii) Acquire and publish data on a known archaeological site	
6	if the location of the site is approximated so that the	
7	precise location of the site is obscured.	
8		
9	(iii) Acquire and keep confidential information on a specific	
10	site that is used to inform permit conditions or other	
11	strategies for avoiding impacts to a significant site or	
12	support compliance with state statutes and rules	
13	governing excavation of a significant archaeological site.	
14		
15	(e) Based upon any the information compiled and submitted historic	Added after meeting with SHPO.
16	cultural, and archaeological resources inventoried in the local	
17	comprehensive plan, comments received including a letter of	
18	concurrence if any from SHPO, and comments received from any	
19	Tribe that may be affected by the application regarding the information	
20	compiled and submitted pursuant to subsection (6)(a), a county shall	
21	make one of the following determinations in its decision regarding the	
22	application:	
23		
24	(A) No historical, archaeological, or cultural resources are known	
25	to be present;	
26		
27	(B) Historical, archaeological, or cultural resources are known to	
28	be present, and will be avoided through project design to the	
29	extent that no additional mitigation is necessary;	
30		
31	(C) Historical, archaeological, or cultural resources are known to	
32	be present, and mitigation measures will reduce impacts so	
33	that there are no significant adverse impacts to historical,	
34	archaeological, or cultural resources;	
35		
36	(D) Historical, archaeological, or cultural resources are known to	Added after consultation with the
37	be present, and development will result in significant adverse	Confederated Tribes of Warm
38	impacts which cannot be mitigated and an archaeological	Springs.
39	permit from SHPO may not cannot be obtained.	
40		
41	(f) The county shall include any mitigation measures including but not	Added after meeting with SHPO.
42	limited to those required by any SHPO archeological permit needed,	
43	as conditions of approval in the final decision.	
44		
45	(g) An Archaeological and Human Remains Inadvertent Discovery	
46	Plan (IDP) shall be required in all instances.	
47		
48	(7) Community Benefits: All applications for a photovoltaic solar	
49	power generation facility within a photovoltaic solar resource area shall	
50	identify how the project will contribute to addressing community needs	
51	and benefits. Identified contributions, financial or otherwise, will be in	
52	addition to property tax revenues or payments in lieu of taxes.	
53		
54	(a) A county may approve a proposal submitted by the applicant when	
55	substantial evidence in the record demonstrates that the proposed	
56	contribution or contributions are:	

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1		
2	(A) Meaningful and reasonable;	
3		
4	(B) Will serve to help improve a community's social health, well-being,	
5	and functioning;	
6		
7	(C) Informed through one or more public meetings conducted for the	<i>Added after consultation with the</i>
8	purpose of encouraging community members and any Tribe that may	
9	be affected by the application to express needs and interests. Public	
10	meetings conducted pursuant to this subsection should use best	
11	practices for community engagement identified in documents such as	<i>Confederated Tribes of Warm</i>
12	"Putting the People in Planning A guide for local governmental	
13	agencies in Oregon June 30, 2019".	
14		
15		
16	(D) If a monetary payment, the contribution(s) is received by an	
17	organization identified by the county decision makers that may include	
18	the county or a unit of county government, tribal government, a 501-c-	
19	3 not for profit organization operating in the county, a local Soil and	
20	Water Conservation District, or similar entity capable of utilizing the	
21	funds to provide uplift opportunities for the community or communities	
22	that stand to have the most direct relationship with the subject project.	
23		
24	(b) Rather than the standards provided in subsection (6)(a), a county	
25	may require one of the following options to address community needs	
26	and benefits, which demonstrate compliance with the requirements of	
27	this section:	
28		
29	(A) The applicant has conducted detailed public outreach activities in	<i>Added after consultation with the</i>
30	advance of submitting an application that include providing written	
31	notice to any Tribe that may be affected by the application , property	
32	owners within 750 feet of the exterior boundaries of the subject	
33	property, as well as any physical address assigned to lands within 750	<i>Confederated Tribes of Warm</i>
34	feet of the exterior boundaries of the subject property as shown in	
35	county assessor records that are not the same as the property owner's	
36	address. Detailed public outreach activities shall also include at least	
37	one public open-house meeting conducted in person, or at least two	<i>Springs.</i>
38	public open-house meetings conducted from a virtual platform.	
39		
40	(B) The applicant commits to contributing a one-time payment in an	
41	amount representing \$1,000 per nameplate MW prior to construction	
42	to be received by an organization identified by the county decision	
43	makes that may include the county or a unit of county government,	
44	tribal government, a 501-c-3 not for profit organization operating in the	
45	county, a local Soil and Water Conservation District, or similar entity	
46	capable of utilizing the funds to provide uplift opportunities for the	
47	community or communities that stand to have the most direct	
48	relationship with the subject project; or	
49		
50	(C) The applicant commits to ensuring that emergency service	
51	providers are guaranteed a source of electricity during a power outage	
52	event through providing battery storage or some other method; or	
53		
54	(D) The applicant creates a Microgrid addressing identified community	
55	needs.	
56		

RULE LANGUAGE**COMMENTARY**

1	(8) Maximum Size of Photovoltaic Solar Power Generation	
2	Facilities	
3	(a) On high-value farmland that qualifies for an exemption pursuant to	No Changes to Section (8)
4	the provisions of subsection (4)(k)(G) of this section and that is not	
5	otherwise limited by the provisions of subsection (4)(k)(E) of this	
6	section, the facility may not use, occupy, or cover more than 240	
7	acres, not including lands devoted to temporary workforce housing.	
8		
9	(b) On arable land, the facility may not use, occupy or cover more than	
10	2,560 acres, not including lands devoted to temporary workforce	
11	housing.	
12		
13	(c) On non-arable land, the size of the facility is not limited by this rule.	
14	Instead, the maximum size of a photovoltaic solar power generation	
15	facility shall by the provisions of ORS 215.446.	
16		
17	(9) Additional Review Standards and Criteria. A county may	
18	approve a photovoltaic solar power generation facility within a	
19	significant photovoltaic solar resource area by determining that the	
20	following items have been satisfied:	
21		
22	(a) An application shall identify whether the proposed photovoltaic	
23	solar power generation facility is within a Military Special Use Airspace	
24	or a Military Training Route, as may be shown by the ORESA mapping	
25	tool or equivalent map. Any application located beneath or within a	
26	Military Special Use Airspace or a Military Training Route with a	
27	proposed floor elevation of 500 feet above ground level (AGL) or less	
28	shall include a glint and glare analysis for the applicable utilized	
29	military airspace. Any measures necessary to avoid possible conflicts	
30	with low flying aircraft as identified in the glint and glare analysis will	
31	be developed in coordination with the United States Department of	
32	Defense or Oregon Military Department as applicable, described in the	
33	application materials, and attached as conditions of approval to the	
34	county decision.	
35		
36	(b) The applicant has satisfied the information transmittal and notice	<i>Added based on revisions to</i> <i>Subsection (6)(b): transmit</i> <i>information to SHPO and Tribes 60</i> <i>days prior to filing application.</i>
37	requirements identified in subsections (6)(b) and (c).	
38		
39	(c) The applicant has contacted and sought comments from the	<i>And (6)(c) notice to county, DLCD</i> <i>and ODFW 60 days prior to filing</i> <i>application,</i>
40	entities listed in subsections (4)(d)(A) and (F) of this rule at least 30	
41	days prior to submitting a land use application. The requirements of	
42	this subsection do not apply when the county code requires a pre-	
43	application conference prior to submitting an application that includes	
44	at a minimum, those entities listed in subsections (4)(d)(A), (F), and	<i>Revised for consistency with Section</i> <i>(6)</i>
45	(H) of this rule.	
46		
47	(d) For a proposed photovoltaic solar power generation facility on high-	END OF CHANGES
48	value farmland or arable land, a study area consisting of lands zoned	
49	for exclusive farm use located within two miles measured from the	
50	exterior boundary of the subject property shall be established and:	
51	(A) If fewer than 320 acres of photovoltaic solar power generation	
52	facilities have been constructed or received land use approvals and	
53	obtained building permits wholly or partially within the study area, no	
54	further action is necessary.	
55		
56		

RULE LANGUAGE**COMMENTARY**

1 (B) When at least 320 acres of photovoltaic solar power generation
2 facilities have been constructed or received land use approvals and
3 obtained building permits, either as a single project or as multiple
4 facilities wholly or partially within the study area, the county must find
5 that the photovoltaic solar power generation facility will not materially
6 alter the stability of the overall land use pattern of the area. The
7 stability of the land use pattern will be materially altered if the overall
8 effect of existing and potential photovoltaic solar power generation
9 facilities will make it more difficult for the existing farms and ranches in
10 the area to continue operation due to diminished opportunities to
11 expand, purchase or lease farmland, acquire water rights, or diminish
12 the number of tracts or acreage in farm use in a manner that will
13 destabilize the overall character of the study area
14

15 (e)(A) The application will ensure that considerations for the amount,
16 type, and location of temporary workforce housing have been made.
17 This provision may be satisfied by the submittal and county approval
18 of a workforce housing plan prepared by an individual with
19 qualifications determined to be acceptable by the county
20 demonstrating that such temporary housing is reasonably likely to
21 occur. The plan need not obligate the applicant to financially secure
22 the temporary housing. The approved plan shall be attached to the
23 decision as a condition of approval.
24

25 (B) On-site and off-site facilities for temporary workforce housing for
26 workers constructing a photovoltaic solar power generation facility
27 must be removed or converted to an allowed use under OAR 660-033-
28 0130(19) or other statute or rule when project construction is
29 complete.
30

31 (C) Temporary workforce housing facilities not included in the initial
32 approval may be considered through a minor amendment request filed
33 after a decision to approve a photovoltaic solar power generation
34 facility. A minor amendment request shall be subject to OAR 660-033-
35 0130(5) and shall not have no effect on the original approval of the
36 project.
37

38 (f) The requirements of OAR 660-033-0130(38)(h)(A) through (D) have
39 been satisfied for proposed photovoltaic solar power generation
40 facilities on high-value farmland and arable land, and the requirements
41 of OAR 660-033-0130(38)(h)(D) have been satisfied for proposed
42 photovoltaic solar power generation facilities on nonarable land.
43

44 (g) A county may condition approval of a proposed photovoltaic solar
45 power generation facility to address other issues, including but not
46 limited to assuring that the design and operation of the facility will
47 promote the prevention and mitigate the risk of wildfire
48 .

49 (h) For a photovoltaic solar power generation facility located on arable
50 or nonarable lands, the project is not located on arable soils unless it
51 can be demonstrated that:
52

53 (A) Siting the project on nonarable soils present on the subject tract
54 would significantly reduce the project's ability to operate successfully;
55 or
56

RULE LANGUAGE**COMMENTARY**

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

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

8
9 (j) Notwithstanding any other rule in Division 33, a county may
10 determine that ORS 215.296 and OAR 660-033-0130(5) for a
11 proposed photovoltaic solar power generation facility on agricultural
12 land are met when the applicable provisions of this section are found
13 to be satisfied

14
15 (k) The county has identified and attached as conditions of approval all
16 mitigation required pursuant to this rule.

17
18 (l) The county shall require as a condition of approval for a
19 photovoltaic solar power generation facility, that the project owner sign
20 and record in the deed records for the county a document binding the
21 project owner and the project owner's successors in interest,
22 prohibiting them from pursuing a claim for relief or cause of action
23 alleging injury from farming or forest practices as defined in ORS
24 30.930(2) and (4).

25
26 (m) Nothing in this rule shall prevent a county from requiring a bond or
27 other security from a developer or otherwise imposing on a developer
28 the responsibility for retiring the photovoltaic solar power generation
29 facility.

30
31 (n) Any applicable local provisions have been satisfied.

32
33 **(10) Duration of Permit.** A permit approved for a photovoltaic solar
34 power generation facility shall be valid until commencement of
35 construction or for six years, whichever is less. A county may grant up
36 to two extensions for a period of up to 24 months each when an
37 applicant makes a written request for an extension of the development
38 approval period that is submitted to the county prior to the expiration of
39 the approval period. Additional extensions may be considered in the
40 manner identified at OAR 660-033-0130(45)(i).

41
42 **(11)) Use of ORESA:** In addition to other sources, a county may rely
43 on data from online mapping tools, such as that data included in the
44 Oregon Renewable Energy Siting Assessment (ORESAS), to inform
45 determinations made under this rule.

46
47 **(12) REVIEW OF RULE EFFECTIVENESS:** On or before July 1, 2027,
48 the department will provide a report to the Land Conservation and
49 Development Commission that:

50
51 (a) Is informed by coordination with parties consistent with those
52 interests represented on the Rules Advisory Committee established
53 pursuant to Section 37 of HB 3409 (2023).

54
55

RULE LANGUAGE

COMMENTARY

- 1
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- 6
- (b) Identifies those counties who have chosen to establish significant photovoltaic solar resource areas pursuant to section (4) of this rule and have not opted out of the provisions of OAR 660-033-0130(45)(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 section (4)(b) of this rule.
- (d) Describes how well the intent of this rule as stated in section (1) is being accomplished.
- (e) Includes recommended updates, if any, the department identifies as being necessary to better accomplish the intent of this rule as stated in section (1).
- (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 section (11)(a)-(e) as described above.