

1 **660-033-0120**

2 **Uses Authorized on Agricultural Lands**

3 The specific development and uses listed in the following table are allowed or may be allowed in the  
4 areas that qualify for the designation pursuant to this division. All uses are subject to the general  
5 provisions, special conditions, additional restrictions and exceptions set forth in this division. The  
6 abbreviations used within the schedule shall have the following meanings:

7 (1) A — Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing  
8 because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum  
9 standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130.  
10 Counties may prescribe additional limitations and requirements to meet local concerns only to the extent  
11 authorized by law.

12 (2) R — Use may be allowed, after required review. The use requires notice and the opportunity for a  
13 hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR  
14 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

15 (3) \* — Use not allowed.

16 (4) # — Numerical references for specific uses shown on the chart refer to the corresponding  
17 section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this  
18 rule does not establish criteria for the use.

19 HV	All	
20 <u>Farm</u>	<u>Other</u>	<u>Uses</u>

21 **Utility/Solid Waste Disposal Facilities**

22 R5, 17	R5, 22	Commercial utility facilities for the purpose 23 of generating power for public use by sale, 24 not including wind power generation 25 projects <b><u>or photovoltaic solar power</u></b> 26 <b><u>generation projects</u></b> .
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27 R5, 37	R5, 37	Wind power generation projects as 28 commercial utility facilities for the 29 purpose of generating power for public 30 use by sale.
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31 <b><u>R5, 38</u></b>	<b><u>R5, 38</u></b>	<b><u>Photovoltaic solar power generation</u></b> 32 <b><u>projects as commercial utility facilities</u></b> 33 <b><u>for the purpose of generating power for</u></b> 34 <b><u>public use by sale.</u></b>
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1 **660-033-0130**

2 **Minimum Standards Applicable to the Schedule of Permitted and**  
3 **Conditional Uses**

4 The following standards apply to uses listed in OAR 660-033-0120 where  
5 the corresponding section number is shown on the chart for a specific use  
6 under consideration. Where no numerical reference is indicated on the chart,  
7 this division does not specify any minimum review or approval criteria.  
8 Counties may include procedures and conditions in addition to those listed in  
9 the chart as authorized by law:

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

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

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

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

21 **(d) “Nonarable soils” are soils that are not suitable for cultivation. Soils**  
22 **with an NRCS agricultural capability class V-VIII and no history of**  
23 **irrigation shall be considered nonarable in all cases. Other soils,**  
24 **including soils with a past history of irrigation, may be determined by**  
25 **the governing body or its designate to be nonarable based on substantial**  
26 **evidence in the record of a local land use application.**

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

1 generation facility to a transmission line, all necessary grid integration  
2 equipment, new or expanded private roads constructed to serve the  
3 photovoltaic solar power generation facility, office, operation and  
4 maintenance buildings, staging areas and all other necessary  
5 appurtenances. For purposes of applying the acreage standards of this  
6 rule, a photovoltaic solar power generation facility includes all existing  
7 and proposed facilities on a single tract, as well as any existing and  
8 proposed facilities determined to be under common ownership, on lands  
9 with less than 1320-feet of separation from the tract on which the new  
10 facility is proposed to be sited. Projects connected to the same parent  
11 company or individuals shall be considered to be in common ownership  
12 regardless of the operating business structure. A photovoltaic solar  
13 power generation facility does not include a net metering project  
14 established consistent with ORS 757.300 (2011) and OAR Chapter 860,  
15 Division 39 (2011) or a Feed-in-Tariff project established consistent  
16 with ORS 757.365 (2011) and OAR Chapter 860, Division 84 (2011).

17 (f) For high-value farmland described at ORS 195.300(10) a  
18 photovoltaic solar power generation facility shall not preclude more  
19 than 12 acres from use as a commercial agricultural enterprise unless  
20 an exception is taken pursuant to ORS 197.732 and OAR chapter 660,  
21 division 4. The governing body or its designate must find that:

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

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

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

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

16 (E) The project is not located on high-value farmland soils unless it can  
17 be demonstrated that:

18 (i) Non high-value farmland soils are not available on the subject tract;  
19 or

20 (ii) Siting the project on non high-farmland soils present on the subject  
21 tract would significantly reduce the project's ability to operate  
22 successfully; or

23 (iii) The proposed site is better suited to allow continuation of an  
24 existing commercial farm or ranching operation on the subject tract  
25 than other possible sites also located on the subject tract, including  
26 those comprised of non high-value soils.

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

30 (i) If fewer than 48-acres of photovoltaic solar power generation  
31 facilities have been constructed or received land use approvals and  
32 obtained building permits within the study area no further action is  
33 necessary.

1 (ii) When at least 48-acres of photovoltaic solar power generation have  
2 been constructed or received land use approvals and obtained building  
3 permits, either as a single project or as multiple facilities, within the  
4 study area the local government or its designate must find that the  
5 photovoltaic solar energy generation facility will not materially alter the  
6 stability of the overall land use pattern of the area.

7 (iii) The stability of the land use pattern will be materially altered if the  
8 overall effect of existing and potential photovoltaic solar energy  
9 generation facilities will make it more difficult for the existing farms  
10 and ranches in the area to continue operation due to diminished  
11 opportunities to expand, purchase or lease farmland, acquire water  
12 rights or diminish the number of tracts or acreage in farm use in a  
13 manner that will destabilize the overall character of the study area.

14 (g) For arable lands a photovoltaic solar power generation facility shall  
15 not preclude more than 20 acres from use as a commercial agricultural  
16 enterprise unless an exception is taken pursuant to ORS 197.732 and  
17 OAR chapter 660, division 4. The governing body or its designate must  
18 find that:

19 (A) The project is not located on high-value farmland soils or arable  
20 soils unless it can be demonstrated that:

21 (i) Nonarable soils are not available on the subject tract; or

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

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

29 (B) No more than 12-acres of the project will be sited on high-value  
30 farmland soils described at ORS 195.300 unless an exception is taken  
31 pursuant to ORS 197.732 and OAR chapter 660, division 4.

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

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

5 **(ii) When at least 80-acres of photovoltaic solar power generation have**  
6 **been constructed or received land use approvals and obtained building**  
7 **permits, either as a single project or as multiple facilities, within the**  
8 **study area the local government or its designate must find that the**  
9 **photovoltaic solar energy generation facility will not materially alter the**  
10 **stability of the overall land use pattern of the area.**

11 **(iii) The stability of the land use pattern will be materially altered if the**  
12 **overall effect of existing and potential photovoltaic solar energy**  
13 **generation facilities will make it more difficult for the existing farms**  
14 **and ranches in the area to continue operation due to diminished**  
15 **opportunities to expand, purchase or lease farmland, acquire water**  
16 **rights or diminish the number of tracts or acreage in farm use in a**  
17 **manner that will destabilize the overall character of the study area.**

18 **(D) The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D)**  
19 **are satisfied.**

20 **(h) For nonarable lands a photovoltaic solar power generation facility**  
21 **shall not preclude more than 100-acres from use as a commercial**  
22 **agricultural enterprise unless an exception is taken pursuant to ORS**  
23 **197.732 and OAR chapter 660, division 4. The governing body or its**  
24 **designate must find that:**

25 **(A) The project is not located on high-value farmland soils or arable**  
26 **soils unless it can be demonstrated that:**

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

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

1 **(B) No more than 12-acres of the project will be sited on high-value**  
2 **farmland soils described at ORS 195.300.**

3 **(C) No more than 20-acres of the project will be sited on arable soils**  
4 **unless an exception is taken pursuant to ORS 197.732 and OAR chapter**  
5 **660, division 4.**

6 **(D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied; and**

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

20 **(F) If a proposed photovoltaic solar power generation facility is located**  
21 **on lands where the potential exists for adverse effects to State or**  
22 **Federal special status species (threatened, endangered, candidate, or**  
23 **sensitive), or to wildlife species of concern identified and mapped by**  
24 **ODFW (including big game winter range and migration corridors,**  
25 **golden eagle and prairie falcon nest sites, and pigeon springs), the**  
26 **applicant shall conduct a site specific assessment of the subject property**  
27 **in consultation with the appropriate state, federal, and/or tribal wildlife**  
28 **management agency. The site specific assessment shall be conducted by**  
29 **a professional biologist using methodologies accepted by the**  
30 **appropriate wildlife management agency and shall determine whether**  
31 **adverse effects to special status species or wildlife species of concern are**  
32 **anticipated. Based on the results of the biologist's report, the site shall**  
33 **be designed to avoid adverse affects to State or Federal special status**  
34 **species or to wildlife species of concern as described above. If the**  
35 **applicant's site specific assessment shows that adverse effects cannot be**  
36 **avoided, the applicant and the appropriate wildlife management agency**  
37 **will cooperatively develop an agreement for project-specific mitigation**

1 to offset the potential adverse effects of the facility. Where the applicant  
2 and the resource management agency cannot agree on what mitigation  
3 will be carried out, the county will be responsible for determining  
4 appropriate mitigation, if any, required for the facility.

5 (G) The provisions of section (C) are repealed on January 1, 2022.

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

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

17 (k) Any amendment to ORS 469.300(11)(a)(D) shall constitute good  
18 cause for the Land Conservation and Development Commission to re-  
19 evaluate the acreage thresholds identified at OAR 660-033-0130(38)(f),  
20 (g) and (h) above.