

DIVISION 5

INTERPRETATION OF GOAL 3
AGRICULTURAL LANDS

Purpose

660-05-000 The purpose of this rule is to implement Goal 3, Agricultural Lands and the Agricultural Land Use Policy pursuant to ORS 215.243.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 4-1982, f. & ef. 7-21-82

Definitions

660-05-005 (1) "Agricultural land" as defined in Goal 3 includes:

(a) Lands classified by the U.S. Soil Conservation Service (SCS) as predominately Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

(b) Other lands in different soil classes which are suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

(c) Land which is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

(2) "Commercial agricultural enterprise" consists of farm operations which will:

(a) Contribute in a substantial way to the area's existing agricultural economy; and

(b) Help maintain agricultural processors and established farm markets;

(c) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 4-1982, f. & ef. 7-21-82

Identifying Agricultural Land

660-05-010 (1) All land defined as "agricultural land" in section 660-05-005(1) shall be inventoried as agricultural land. Lands in other than capability classes I-IV/I-VI that are adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though these lands may not be cropped or grazed.

(2) When a jurisdiction is determining the predominant soil capability classifications of a tract of land it need only look to the land within the tract being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-05-005(1)(b). This inquiry requires the consideration of conditions existing outside the tract being inventoried. Even if a tract of land is not predominately class I-VI soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other

classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a tract of land is not agricultural land requires findings supported by substantial evidence which address each of the factors set forth in OAR 660-05-005(1).

(3) Goal 3 attaches no significance to the ownership of a tract of land when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership must be examined to the extent that a tract of land is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the tract of land.

(4) As used in sections (2) and (3) of this rule, "tract of land" means an area of land which is under review to determine whether it is agricultural land as defined in OAR 660-05-005(1). This area may be either proposed for partitioning or designation for uses not allowed by Goal 3.

(5) When inventoried lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

(6) Notwithstanding the definition of "farm use" in ORS 215.203(2)(a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3 "Agricultural Land" is applicable. However, profitability or gross farm income is a factor in determining whether a farm operation is part of the commercial agricultural enterprise, as stated in subsection 660-05-015(6)(b).

(7) More detailed data on soil capability than is contained in the U.S. Soil Conservation Service soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data must be related to the U.S. Soil Conservation Service land capability classification system.

(8) Land identified as "agricultural land" and subsequently zoned for exclusive farm use may be used for the nonfarm uses specified in ORS 215.213 or 215.283. OAR 660-04-000, the Goal 2 Exception Process, establishes how land identified as agricultural land may be zoned for other than exclusive farm use.

Stat. Auth.: ORS Ch. 197 & 215

Hist.: LCDC 4-1982, f. & ef. 7-21-82; LCDC 3-1986, f. & ef. 5-7-86

Minimum Lot Size Standard

660-05-015 (1) Goal 3 states, "such minimum lots sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area". This Goal phrase is the required minimum lot size standard to be used to determine appropriate lot sizes in EFU zones. It is applied when approving both the creation of new lots and farm dwellings on pre-existing lots.

(2) Goal 3 does not require a specific acre size (e.g., a 40-acre minimum lot size). Needs for agricultural acreage vary from large wheat ranches to small intensive farming operations. A specific minimum lot size adopted at the state level would be impractical.

(3) The Goal 3 minimum lot size standard can be applied in various ways, including but not limited to the following:

CHAPTER 660, DIVISION 5 - LAND CONSERVATION AND DEVELOPMENT COMMISSION

(a) To determine one specific acre size, which is used for both farm and nonfarm uses, or for only farm uses, with the size for nonfarm uses decided case-by-case;

(b) To determine different acre sizes, which are used for farm and nonfarm uses, different types of farms (crops and practices), or different areas of the county; or

(c) To determine performance standards, which are used to decide appropriate lot sizes for farm and nonfarm uses on a case-by-case basis.

(4) Counties should apply the Goal 3 standard on minimum lot sizes in the way which best meets their local needs. The application may vary for different farm areas within the county. The standard shall be applied in a way adequate to maintain appropriate lot sizes for the continuation of the existing commercial agriculture in the area.

(5) While a certain minimum lot size may be appropriate for the continuation of commercial agriculture (as required by Goal 3), it may not be adequate to comply with Goal 5 requirements to protect wildlife resources. Counties should refer to Goal 5 and OAR 660-16-000 for application requirements.

(6)(a) The minimum lot size(s) needed to maintain the existing commercial agricultural enterprise shall be determined by identifying the types and sizes of commercial farms in the area. When identifying commercial farms, entire commercial farms shall be included, not portions devoted to a particular type of agriculture. The identification of commercial farms may be conducted on a countywide or sub-county basis.

(b) Commercial agricultural operations to be identified should be determined based on type of products produced, value of products sold, yields, farming practices, and marketing practices.

(c) Local governments which apply Goal 3's minimum lot size standard on a case-by-case basis may satisfy the commercial agricultural identification requirement in subsection (6)(a) of this rule by identifying the sizes and other characteristics of existing commercial farms in an area which is large enough to represent accurately the existing commercial agricultural enterprise within the area containing the applicant's parcel.

(7) The minimum lot size standard in Goal 3 refers to an entire farm unit and should not be confused with individual tax lots. A single farm unit may consist of any number of contiguous tax lots (including tax lots separated only by a road or highway), which are managed jointly as a single farm unit. Inventories of tax lots are inappropriate because tax lots have little or no relationship to the operation of a commercial farm.

(8) The type and value of products produced and how they are marketed are key factors in identifying the existing commercial agricultural enterprise. Owner characteristics, such as percent of income from farming and primary occupation, do not necessarily define a commercial farm. Commercial agriculture in Oregon is supported, in part, by less than full-time farmers.

Stat. Auth.: ORS Ch. 197 & 215

Hist.: LCDC 4-1982, f. & ef. 7-21-82; LCDC 3-1986, f. & ef. 5-7-86

Application of the Minimum Lot Size Standard to the Creation of New Lots

660-05-020 (1) The Goal 3 standard on minimum lot sizes is applied to the creation of new lots to prevent

agricultural land from being divided into parcels or lots which will not contribute to the local commercial agricultural enterprise.

(2) The minimum lot size standard requires the distinction between farm and nonfarm parcels. Newly created lots that are as large or larger than those allowed by the minimum lot size standard are considered farm parcels. Newly created lots that are smaller than those allowed by the minimum lot size standard are considered nonfarm parcels.

(3) The size of new farm parcels must be appropriate for the continuation of the existing commercial agricultural enterprise within an area. The creation of commercial farm parcels smaller than those allowed by a minimum lot size on a case-by-case basis which comply with the Goal 3 minimum lot size standard is permissible when:

(a) The parcels are appropriate for the continuation of existing commercial farm operations within the area; and if

(b) The area's commercial agricultural enterprise consists of farm units made up of noncontiguous parcels of diverse size, rather than single, large tracts, the proposed parcels are of sufficient size to be profitably farmed as parts of larger farm operations.

(4) When applying section (3) of this rule, if there is credible evidence in such cases that the size of the proposed parcels is detrimental to the existing commercial agricultural enterprise in the area, the local jurisdiction must demonstrate that the benefits of the smaller parcel to the area's commercial agricultural economy outweigh the negative impacts to the larger commercial agricultural enterprises.

(5) For section (3) of this rule, it is not sufficient to find a small commercial agricultural enterprise as defined in OAR 660-05-005(2) within an area of both large and small commercial enterprises, and use the size of that enterprise as justification for allowing a major portion of a large holding to be divided into many small parcels. The goal requires maintenance of the existing commercial agricultural enterprise. Activities on the larger holdings must be considered as part of that enterprise. It is the activity on the larger holdings which must be maintained under Goal 3, together with those on the smaller parcels. The fact that other activities exists on smaller parcels does not mean that the commercial agricultural enterprise in the area is maintained by reducing all the parcels in the area to the size of the smallest common commercial agricultural denomination where other commercial agricultural enterprises are conducted on larger parcels. However, individual small parcels may be created under Goal 3 when consistent with section (3) of this rule.

(6) As used in this rule, "maintain" or "continue" do not mean that the new and remaining parcel sizes must have no adverse effects whatsoever on an area's commercial agricultural enterprise. Such an interpretation would probably halt most land divisions. "Maintain" and "continue" imply a balance. Land divisions often have both positive and negative effects on an area's commercial agricultural enterprise. Goal 3 requires that the new and remaining parcel sizes on balance, considering positive and negative effects, will keep the area's commercial agricultural enterprises successful, and not contribute to their decline.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 4-1982, f. & ef. 7-21-82; LCDC 3-1986, f. & ef. 5-7-86

Application of the Minimum Lot Size Standard to Pre-Existing Lots

660-05-025 (1) The Goal 3 standard on minimum lot

sizes is applied to approval of farm dwellings on pre-existing lots to prevent increased development from interfering with neighboring farms. The minimum lot size standard requires that a distinction be made between farm and nonfarm parcels. If the pre-existing lot meets the minimum lot size standard, a new dwelling can be reviewed to determine if it is a dwelling customarily provided in conjunction with farm use as required by ORS 215.213(1)(g) or 215.283(1)(f). If the lot does not meet the standard, the new dwelling will be considered a nonfarm residence. Otherwise, a nonfarm residence must be approved subject to the conditions set forth in ORS 215.213(3) or 215.283(3). The minimum lot size standard applies to each successive dwelling proposed to be located on an existing lot, except dwellings approved pursuant to ORS 215.213(1)(e) or 215.283(1)(e).

(2) Except as provided by the lot of record provisions of Section 9 through 11, Chapter 884, Oregon Laws 1981, new nonfarm dwellings on pre-existing lots cannot be allowed outright. Such an act would render the local EFU zone less restrictive than the state statute. Such a zone would not meet the requirements of Goal 3 and ORS Chapter 215.

Stat. Auth.: ORS Ch. 197 & 215
Hist.: LCDC 4-1982, f. & ef. 7-21-82; LCDC 3-1986, f. & ef. 5-7-86

Dwellings Customarily Provided in Conjunction With Farm Use

660-05-030 (1) ORS Chapter 215 authorizes six types of dwellings within an exclusive farm use zone:

- (a) Those for farm help (215.213(1)(e) and 215.283(1)(e));
- (b) Those customarily provided in conjunction with farm use (215.213(1)(g) or 215.283(1)(f));
- (c) Those for a mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship (215.213(1)(j) or (215.283(2)(L));
- (d) Those inconjunction with farm use or the propagation or harvesting of a forest product (215.213(2)(a));
- (e) Those not provided in conjunction with farm use (215.213(3) or 215.283(3)); and
- (f) Those not provided in conjunction with farm use on a lot of record (215.213(4)).

(2) The Goal 3 standard for minimum lot sizes is used to distinguish between farm and nonfarm parcels as it is applied according to OAR 660-05-015. Dwellings customarily provided in conjunction with farm use are authorized on parcels which are large enough to satisfy the Goal 3 minimum lot size standard (i.e., appropriate for the continuation of the existing commercial agricultural enterprise within the area). Dwellings proposed for new or existing parcels which do not satisfy the Goal 3 minimum lot size standard under OAR 660-05-020 are considered nonfarm dwellings and can only be approved according to ORS 215.213(3) or 215.283(3).

(3) Dwellings proposed for parcels which satisfy the Goal 3 minimum lot size standard cannot be approved

within an exclusive farm use zone without the county governing body or its designate first determining whether the dwelling satisfies the additional statutory standard in ORS 215.213(1)(g) or 215.283(1)(f). This standard requires a determination that the dwelling is "customarily provided in conjunction with farm use".

(4) ORS 215.213(1)(g) and 215.283(1)(f) authorize a farm dwelling in an EFU zone only where it is shown that the dwelling will be situated on a parcel currently employed for farm use as defined in ORS 215.203. Land is not in farm use unless the day-to-day activities on the subject land are principally directed to the farm use of the land. Where land would be principally used for residential purposes rather than for farm use, a proposed dwelling would not be "customarily provided in conjunction with farm use" and could only be approved according to ORS 215.213(3) or 215.283(3). At a minimum, farm dwellings cannot be authorized before establishment of farm uses on the land (see *Matteo v. Polk County*, 11 Or LUBA 259 (1984) affirmed without opinion by the Oregon Court of Appeals September 12, 1984, and *Matteo v. Polk County* LUBA No. 85-037, September 3, 1985).

Stat. Auth.: ORS Ch. 183, 197 & 215
Hist.: LCDC 3-1986, f. & ef. 5-7-86

Dwellings Not Customarily Provided in Conjunction With Farm Use

660-05-040 (1) Dwellings on nonfarm parcels are allowed only if they meet the conditions set forth in either ORS 215.213(3) or 215.283(3) and 215.236 and 215.263(4) for nonfarm residences.

(2) Nonfarm parcels are considered to be acreage homesites. They are not outright permitted uses in an EFU zone because they do not preserve agricultural land for commercial farm uses. Instead, they allow the land to be taken out of the county's commercial agricultural enterprise and may threaten the continuation of the remaining commercial operations within the area. Therefore, when a nonfarm parcel is created, it should be of the minimum acreage needed to accommodate the nonfarm dwelling and be consistent with ORS 215.263(4).

(3) The creation of acreage homesites on agricultural land cannot be justified simply on the basis that they relate to farm use in some peripheral sense. The primary purpose of such sites is to provide a homesite, although livestock may be kept and crops raised as a secondary, but important activity of the homesite. ORS Chapter 215 provides that homesites may be permitted in the EFU zones under only very strict conditions, so as to ensure compatibility with the farm practices used in the exclusive farm use area and to keep the exclusive farm use area free from development.

(4) The Goal 3 standard on minimum lot sizes is to be applied in addition to the statutory review criteria for divisions of land in an EFU zone pursuant to ORS 215.263.

Stat. Auth.: ORS Ch. 183, 197 & 215
Hist.: LCDC 3-1986, f. & ef. 5-7-86

OREGON ADMINISTRATIVE RULES
CHAPTER 660, DIVISION 5 — LAND CONSERVATION AND DEVELOPMENT

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660-05-000 [LCDC 4-1982, f. & ef. 7-21-82;
Repealed by LCDC 6-1992,
f. 12-10-92, cert. ef. 8-7-93]

Definitions

660-05-005 [LCDC 4-1982, f. & ef. 7-21-82;
Repealed by LCDC 6-1992,
f. 12-10-92, cert. ef. 8-7-93]

Identifying Agricultural Land

660-05-010 [LCDC 4-1982, f. & ef. 7-21-82;
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Dwellings not Customarily Provided in Conjunction with Farm Use

660-05-040 [LCDC 3-1986, f. & ef. 5-7-86;
Repealed by LCDC 6-1992,
f. 12-10-92, cert. ef. 8-7-93]