

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE

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I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the Land Conservation and Development Commission on March 1, 1990 to become effective upon filing
(Agency) (Date)

SECRETARY OF STATE

The within matter having come before the Land Conservation and Development Commission after (Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in OAR Bulletin: NO YES Date Published: February 15, 1990

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken:
(List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

PERM. or TEMP.

Adopted:
(New Rules)

Amended:
(Existing Rules)

OAR 660-06-027(1)(a); Forest Management Dwellings
in Forest Zones

Suspended:
(Temporary Only)

Repealed:
(Existing Rules)



as Administrative Rules of the Land Conservation and Development Commission (Agency)

DATED this 9th day of March, 19 90

By: Susan Brody
(Authorized Signer)
Title: Director

Statutory Authority: ORS Chapter 197 (specifically 197.040)

Subject Matter: The definition of "necessary for" with respect to the review and approval of forest management dwellings in forest zones.

Statement of Need Attached: Fical Impact Attached:

For Further Information Contact: Mike Rupp Phone: 373-0050



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BARBARA J. ...
SECRETARY OF STATE

AMENDMENTS TO
OAR 660 DIVISION 6

STATUTORY AUTHORITY

ORS Chapter 197 (specifically 197.040)

Statement and Finding of Need

1. In March 1988 the Oregon Supreme Court overturned the Commission's acknowledgment of Lane County's comprehensive plan in part regarding the conservation of forest lands (1,000 Friends v. LCDL/Lane County). The court addressed several issues, among them, the review and approval of dwellings on forest land. The case required the Commission to amend Goal 4 and OAR 660, Division 6.

Principal Documents Relied Upon

1. ORS Chapters 215, 197 and 183.
2. OAR 660, Divisions 1 (Procedural Rules, Including Model Rules of Procedure), and 6 (Goal 4 Forest Lands).
3. The Statewide Planning Goal 4 (OAR 660-15-000(4)).
4. The record of adoption before the Commission regarding the amendments to Goal 4 and OAR 660, Division 6 on January 25, 1990.

Fiscal Impact

The implementation of this amendment will require additional staff time by the Department to review the amendments to plan and land use regulations which they require. It will have no significant fiscal impact on state or federal agencies. It will have a negligible fiscal impact on county government. Minor revisions will be required to land use regulations for some counties regarding private agricultural and forest lands throughout Oregon.

It is estimated that the plan and ordinance revisions to adopt this proposed amendment to forest use zones would cost between \$0 and \$500 dollars per county because this amendment will be part of other Goal 4 and OAR 660, Division 6 work as well as other amendments necessary as part of periodic review.

This amendment will mean the replacement of an existing standard in OAR 660-06-027(1)(a). The new standard(s) may cause counties to spend more time and money in the administration of their land use program than under the current rule. However, the amendment should reduce the appeals or litigation of local decisions based on the current rule language.

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There will be no significant adverse economic impacts on small businesses on forest lands. The provisions to allow dwellings are designed to allow the continuation of forest management which is the principle business activity on forest lands.

SB:RE:re
<legal>

1 Forest Management Dwellings in Forest Zones

2 660-06-027(1) Forest management dwellings may be allowed
3 in forest zones provided the governing body makes findings
4 based on substantial evidence that the requirements of
5 OAR 660-06-027 are met. For the purpose of OAR 660-06-027,
6 necessary for and accessory to are defined as:

7 (a) "Necessary for" means the dwelling [~~is required~~
8 ~~for~~] will contribute substantially to effective and
9 efficient management of the forest land to be managed by the
10 resident(s) of the dwelling[+].

11 NOTE: (The Commission intends that this requirement
12 create a relationship between the approval of a dwelling
13 and the ongoing forest management of the land. It means
14 that the principal purpose for locating a dwelling on
15 forest lands is to enable the resident to conduct
16 efficient and effective forest management. A dwelling
17 is necessary where the occupant must spend an extensive
18 amount of time on forest management. This definition
19 precludes a dwelling which simply "enhances" forest
20 management. This definition also does not demand that a
21 dwelling be absolutely required for forest management or
22 that the production of trees is physically possible only
23 with a dwelling.)

24 (b) "Accessory to" means that the dwelling is
25 incidental and subordinate to the main forest use.

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1 (2) The governing body shall determine whether the
2 dwelling is necessary for and accessory to forest operations
3 including cultured Christmas trees as defined in
4 ORS 215.203(3). That determination shall be based at a
5 minimum on the following information provided by the
6 applicant. The applicant shall provide information
7 necessary to complete the form attached in Appendix A of
8 this rule or its equivalent regarding the condition and
9 productivity of the lands to be managed, the plan for
10 management of these lands including a chronological
11 description of commercial forest management activities to be
12 undertaken by the resident(s) or under contract and
13 estimates of yield, labor and expenses. Also, information
14 is required showing the site for the proposed dwelling and a
15 description of related fire safety measures. The
16 information must be sufficient to enable the Oregon
17 Department of Forestry within 45 days to determine that:

18 (a) The information describing the productivity and
19 current condition of the forest land to be managed is
20 complete and accurate; and

21 (b) Fulfillment of the forest management plan will
22 result in use of the parcel for the required management
23 purpose in terms of stocking, stand density, and harvest;
24 and

25

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1 (c) The siting and safety standards in OAR 660-06-029
2 and OAR 660-06-035 have been adequately addressed.

3 (3) There are no other dwellings on the property which
4 are vacant or currently occupied by persons not engaged in
5 forestry, which could be used as the principal forest
6 dwelling on the forest operation.

7 (4) The property qualifies for and is enrolled in one
8 of Oregon's forest tax programs.

9 (5) The dwelling will not significantly interfere
10 with, significantly increase the costs of, or impede forest
11 or farm management on adjacent forest and agricultural
12 lands.

13 (6) If road access to the dwelling is by a road owned
14 and maintained by a private party or by the Oregon
15 Department of Forestry, the Bureau of Land Management, or
16 the United States Forest Service, then the applicant shall
17 provide proof of a long-term road access use permit or
18 agreement. The road use permit may require the applicant to
19 agree to accept responsibility for road maintenance.

20 (7) The forest lands to be managed by the resident of
21 the proposed dwelling meet the stocking and survival
22 requirements of the Forest Practices Rules for the Eastern
23 (OAR 629-24-402), Northwest (OAR 629-24-502), or Southern
24 (OAR 629-24-602) Regions which ever is applicable, at the
25 time authorization for a permanent dwelling is requested.

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1 If the lands to be managed do not meet these stocking and
2 survival requirements, the governing body may approve a
3 temporary dwelling subject to the following requirements:

4 (a) The prospective resident(s) shall agree in writing
5 to remove the temporary dwelling and any accessory
6 structures within 60 days of the governing body's
7 determination pursuant to OAR 660-06-027(7) that the
8 property has not met the stocking and survival requirements
9 within five years of the date the temporary dwelling was
10 approved;

11 (b) The prospective resident(s) shall agree in writing
12 to pay all costs associated with the removal of the dwelling
13 and any accessory structures by the governing body if the
14 prospective resident(s) fails to comply with
15 OAR 660-06-027(7)(a). This written agreement with the
16 governing body shall include either a performance bond, cash
17 deposit, irrevocable letter of credit, promissory note,
18 written contract or other similar form of security equal to
19 costs determined by the governing body needed to remove
20 totally the temporary dwelling and accessory structures from
21 the parcel and any additional costs for legal proceedings;

22 (c) The governing body shall determine whether the
23 prospective resident(s) has complied with
24 OAR 660-06-027(7)(a) within 60 days of the end of the time
25 period prescribed in OAR 660-06-027(7)(a). If the

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1 prospective resident(s) has not complied with such
2 requirements, the governing body shall secure the removal of
3 the dwelling unless an extension is granted. An extension
4 of not more than two (2) years may be granted if the
5 governing body has substantial evidence on which the finding
6 can be made that, due to natural disaster or illness,
7 completion of the requirements in OAR 660-06-027(7)(a) was
8 not possible;

9 (d) The governing body shall enforce the terms of this
10 agreement if the prospective resident(s) fails to meet the
11 stocking and survival requirements of OAR 660-06-027(7)(a)
12 for the lands to be managed within five years unless the
13 temporary dwelling and accessory structures already have
14 been removed or unless an extension has been granted under
15 OAR 660-06-027(7)(c);

16 (e) When the governing body has determined that the
17 prospective resident(s) has complied with the requirements
18 of OAR 660-06-027(7)(a), the temporary dwelling may be
19 replaced by a permanently constructed dwelling.

20 (8) A written statement recorded with the deed or
21 written contract with the county or its equivalent is
22 obtained from the land owner which recognizes the rights of
23 adjacent and nearby land owners to conduct forest operations
24 consistent with the Forest Practices Act and Rules.

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1 (9) An application for a forest management dwelling is
2 not complete for the purpose of requiring a governing body
3 to take final action on the permit within 120 days, as
4 required by ORS 215.428, until all the required information
5 including the review and evaluation by the Oregon Department
6 of Forestry required by OAR 660-06-027(1) is submitted to
7 the governing body.

8 (10) It is the responsibility of the governing body to
9 make the final determination that the requirements of
10 OAR 660-06-027 have been met.

11 (11) Nothing in OAR 660-06-027 relieves governing
12 bodies from complying with other requirements contained in
13 the comprehensive plan or implementing ordinances such as
14 the requirements addressing other resource values
15 (e.g., Goal 5) which exist on forest lands.

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