



Oregon

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TO: Land Conservation and Development Commission (LCDC)

FROM: Lane Shetterly, Director
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SUBJECT: **Agenda Item 5 – October 4–6, 2006, LCDC meeting**

Public Hearing and Adoption of Amendments to Oregon Administrative Rule Chapter 660, Division 4

I. AGENDA ITEM SUMMARY

This item includes commission deliberation and possible adoption of proposed amendments to Oregon Administrative Rule (OAR) 660-004-0018. The proposed amendment is intended as a “housekeeping” update to reconcile the rule with amendments to other related rules.

For more information about this agenda item, contact Rob Hallyburton at (503) 373-0050, ext. 239, or email rob.hallyburton@state.or.us.

II. SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission adopt an amendment to OAR 660-004-0018(2) as follows (additions bold and underscored):

For “physically developed” and “irrevocably committed” exceptions to goals, **residential** plan and zone designations shall authorize a single numeric minimum lot size and **all plan and zone designations** shall limit uses, density, and public facilities and services to those: * * *

III. BACKGROUND

The department provided notice of proposed amendments to OAR 660-004-0018 on September 1, 2006. Draft amendment was provided at that time.

The issue is the “single numeric minimum lot size” language in the rule. This phrase was added in 1998 concurrently with amendments to Goal 11 and OAR 660, Division 11,

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regarding provision of water and sewer service to rural lands. Those amendments resulted in a lessening of restrictions on extension of services, particularly sewer, across and to areas outside urban growth boundaries. During those proceedings, the Commission found that the provision of water or sewer service to rural lands should not be a justification for increasing the allowed density or intensity of uses on that land. Accordingly, the Commission adopted the following rule provision:

Water Service to Rural Lands

OAR 660-011-0065 * * * (2) Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:

- (a) Allow an increase in a base density in a residential zone due to the availability of service from a water system;
- (b) Allow a higher density for residential development served by a water system than would be authorized without such service; or
- (c) Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.

No parallel provision was added to the rule on sewer service to rural lands because extension of rural sewer service was largely prohibited. The addition of the “single numeric minimum lot size” phrase to OAR 660-004-0018 was included to address this same issue of pressure for increased development created by the availability of utilities.

In 2000, the Commission adopted OAR 660-004-0040, the “Rural Residential Rule,” which addresses minimum lot sizes in rural residential zones, but this rule does not contain a specific requirement for a “single numeric minimum lot size.”

County codes have largely been updated to address the Rural Residential Rule, but most have not been updated to address the 1998 adoption of the Goal 11 rule amendments except as they apply to rural residential zones. County codes generally do not currently employ a single numeric minimum lot size in their rural commercial and industrial zones. The department has researched reports and other materials regarding the 1998 amendment and, while the record is inconclusive, staff believes the requirement was intended to apply only to rural residential zones, not rural commercial or industrial.

IV. PROPOSED AMENDMENT

The department recommends the following amendment to OAR 660-004-0018(2):

For “physically developed” and “irrevocably committed” exceptions to goals, **residential** plan and zone designations shall authorize a single numeric minimum lot size and **all plan and zone designations** shall limit uses, density, and public facilities and services to those:

- (a) That are the same as the existing land uses on the exception site;

- (b) That meet the following requirements:
 - (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and
 - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
 - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;
- (c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or
- (d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714

Another option is (deletions struck):

- (2) For "physically developed" and "irrevocably committed" exceptions to goals, plan and zone designations ~~shall authorize a single numeric minimum lot size and~~ shall limit uses, density, and public facilities and services to those* * *

While the latter option solves the issue for rural commercial and industrial zones, it also removes the requirement for rural residential zones. The proposed amendment is intended to be "housekeeping" (i.e., policy-neutral), and the second amendment option could be construed as a substantive change because rural residential zones would then be permitted to employ a "sliding" minimum lot size except as limited by OAR 660-011-0065(2) (Water Service to Rural Lands).