

1 Draft rule language to be added to OAR 660-004-0022 is shown in **bold underlined text**.

2 OAR **660-004-0022**

3 Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

4 An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or
5 for a use authorized by a statewide planning goal that cannot comply with the approval standards for
6 that type of use. The types of reasons that may or may not be used to justify certain types of uses not
7 allowed on resource lands are set forth in the following sections of this rule. Reasons that may allow an
8 exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060.

9 Reasons that may allow transportation facilities and improvements that do not meet the requirements
10 of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably
11 committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify
12 the establishment of new urban development on undeveloped rural land are provided in OAR 660-014-
13 0040. Reasons that may justify the establishment of temporary natural disaster related housing on
14 undeveloped rural lands are provided in OAR 660-014-0090.

15 (1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-
16 014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable
17 goals should not apply. Such reasons include but are not limited to the following: There is a
18 demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals
19 3 to 19; and either:

20 (a) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at
21 the proposed exception site and the use or activity requires a location near the resource. An exception
22 based on this paragraph must include an analysis of the market area to be served by the proposed use
23 or activity. That analysis must demonstrate that the proposed exception site is the only one within that
24 market area at which the resource depended upon can reasonably be obtained; or

25 (b) The proposed use or activity has special features or qualities that necessitate its location on or near
26 the proposed exception site.

27 (2) Rural Residential Development: For rural residential development the reasons cannot be based on
28 market demand for housing except as provided for in this section of this rule, assumed continuation of
29 past urban and rural population distributions, or housing types and cost characteristics. A county must
30 show why, based on the economic analysis in the plan, there are reasons for the type and density of
31 housing planned that require this particular location on resource lands. A jurisdiction could justify an
32 exception to allow residential development on resource land outside an urban growth boundary by
33 determining that the rural location of the proposed residential development is necessary to satisfy the
34 market demand for housing generated by existing or planned rural industrial, commercial, or other
35 economic activity in the area.

36 (3) Rural Industrial Development: For the siting of industrial development on resource land outside an
37 urban growth boundary, appropriate reasons and facts may include, but are not limited to, the
38 following:

- 1 (a) The use is significantly dependent upon a unique resource located on agricultural or forest land.
2 Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits,
3 water reservoirs, natural features, or river or ocean ports;
- 4 (b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or
5 incompatible in densely populated areas; or
- 6 (c) The use would have a significant comparative advantage due to its location (e.g., near existing
7 industrial activity, an energy facility, or products available from other rural activities), which would
8 benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such
9 a decision should include a discussion of the lost resource productivity and values in relation to the
10 county's gain from the industrial use, and the specific transportation and resource advantages that
11 support the decision.
- 12 (4) Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community
13 defined under OAR 660-022-0010(10) the requirements of subsections (a) through (c) of this section
14 apply:
- 15 (a) Appropriate reasons and facts may include findings that there is a demonstrated need for additional
16 land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration
17 that either:
- 18 (A) The use requires a location near a resource located on rural land; or
- 19 (B) The use has special features necessitating its location in an expanded area of an existing
20 unincorporated community, including:
- 21 (i) For industrial use, it would have a significant comparative advantage due to its location such as, for
22 example, that it must be near a rural energy facility, or near products available from other activities only
23 in the surrounding area, or that it is reliant on an existing work force in an existing unincorporated
24 community;
- 25 (ii) For residential use, the additional land is necessary to satisfy the need for additional housing in the
26 community generated by existing industrial, commercial, or other economic activity in the surrounding
27 area. The plan must include an economic analysis showing why the type and density of planned housing
28 cannot be accommodated in an existing exception area or urban growth boundary, and is most
29 appropriate at the particular proposed location. The reasons cannot be based on market demand for
30 housing, nor on a projected continuation of past rural population distributions.
- 31 (b) The findings of need must be coordinated and consistent with the comprehensive plan for other
32 exception areas, unincorporated communities, and urban growth boundaries in the area. For purposes
33 of this subsection, "area" includes those communities, exception areas, and urban growth boundaries
34 that may be affected by an expansion of a community boundary, taking into account market, economic,
35 and other relevant factors.
- 36 (c) Expansion of the unincorporated community boundary requires a demonstrated ability to serve both
37 the expanded area and any remaining infill development potential in the community, at the time of
38 development, with the level of facilities determined to be appropriate for the existing unincorporated
39 community.

- 1 (5) Expansion of Urban Unincorporated Communities: In addition to the requirements of section (4) of
2 this rule, the expansion of an urban unincorporated community defined under OAR 660-022-0010(9)
3 shall comply with OAR 660-022-0040.
- 4 (6) Willamette Greenway: Within an urban area designated on the approved Willamette Greenway
5 Boundary maps, the siting of uses that are neither water-dependent nor water-related within the
6 setback line required by section C.3.k of Goal 15 may be approved where reasons demonstrate the
7 following:
- 8 (a) The use will not have a significant adverse effect on the greenway values of the site under
9 consideration or on adjacent land or water areas;
- 10 (b) The use will not significantly reduce the sites available for water-dependent or water-related uses
11 within the jurisdiction;
- 12 (c) The use will provide a significant public benefit; and
- 13 (d) The use is consistent with the legislative findings and policy in ORS 390.314 and the Willamette
14 Greenway Plan approved by the commission under ORS 390.322.
- 15 (7) Goal 16 — Water-Dependent Development: To allow water-dependent industrial, commercial, or
16 recreational uses that require an exception in development and conservation estuaries, an economic
17 analysis must show that there is a reasonable probability that the proposed use will locate in the
18 planning area during the planning period, considering the following:
- 19 (a) Goal 9 or, for recreational uses, the Goal 8 Recreation Planning provisions;
- 20 (b) The generally predicted level of market demand for the proposed use;
- 21 (c) The siting and operational requirements of the proposed use including land needs, and as applicable,
22 moorage, water frontage, draft, or similar requirements;
- 23 (d) Whether the site and surrounding area are able to provide for the siting and operational
24 requirements of the proposed use; and
- 25 (e) The economic analysis must be based on the Goal 9 element of the County Comprehensive Plan and
26 must consider and respond to all economic needs information available or supplied to the jurisdiction.
27 The scope of this analysis will depend on the type of use proposed, the regional extent of the market
28 and the ability of other areas to provide for the proposed use.
- 29 (8) Goal 16 – Other Alterations or Uses: An exception to the requirement limiting dredge and fill or other
30 reductions or degradations of natural values to water-dependent uses or to the natural and
31 conservation management unit requirements limiting alterations and uses is justified, where consistent
32 with ORS chapter 196, in any of the circumstances specified in subsections (a) through (e) of this section:
- 33 (a) Dredging to obtain fill for maintenance of an existing functioning dike where an analysis of
34 alternatives demonstrates that other sources of fill material, including adjacent upland soils or
35 stockpiling of material from approved dredging projects, cannot reasonably be utilized for the proposed
36 project or that land access by necessary construction machinery is not feasible;

- 1 (b) Dredging to maintain adequate depth to permit continuation of the present level of navigation in the
2 area to be dredged;
- 3 (c) Fill or other alteration for a new navigational structure where both the structure and the alteration
4 are shown to be necessary for the continued functioning of an existing federally authorized navigation
5 project such as a jetty or a channel;
- 6 (d) An exception to allow minor fill, dredging, or other minor alteration of a natural management unit
7 for a boat ramp or to allow piling and shoreline stabilization for a public fishing pier;
- 8 (e) Dredge or fill or other alteration for expansion of an existing public non-water-dependent use or a
9 nonsubstantial fill for a private non-water-dependent use (as provided for in ORS 196.825) where:
- 10 (A) A Countywide Economic Analysis based on Goal 9 demonstrates that additional land is required to
11 accommodate the proposed use;
- 12 (B) An analysis of the operational characteristics of the existing use and proposed expansion
13 demonstrates that the entire operation or the proposed expansion cannot be reasonably relocated; and
- 14 (C) The size and design of the proposed use and the extent of the proposed activity are the minimum
15 amount necessary to provide for the use.
- 16 (f) In each of the situations set forth in subsections (a) to (e) of this section, the exception must
17 demonstrate that the proposed use and alteration (including, where applicable, disposal of dredged
18 materials) will be carried out in a manner that minimizes adverse impacts upon the affected aquatic and
19 shoreland areas and habitats.
- 20 (9) Goal 17 — Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to allow certain
21 uses in Coastal Shoreland areas consistent with subsections (a) through (e) of this section, where
22 applicable:
- 23 (a) For purposes of this section, “Coastal Shoreland Areas” include:
- 24 (A) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources and
25 historic and archaeological sites;
- 26 (B) Shorelands in urban and urbanizable areas, in rural areas built upon or irrevocably committed to
27 non-resource use and shorelands in unincorporated communities pursuant to OAR chapter 660, division
28 22 (Unincorporated Communities) that are suitable for water-dependent uses;
- 29 (C) Designated dredged material disposal sites; and
- 30 (D) Designated mitigation sites.
- 31 (b) To allow a use that is incompatible with Goal 17 requirements for coastal shoreland areas listed in
32 subsection (9)(a) of this rule, the exception must demonstrate:
- 33 (A) A need, based on Goal 9, for additional land to accommodate the proposed use;
- 34 (B) Why the proposed use or activity needs to be located on the protected site, considering the unique
35 characteristics of the use or the site that require use of the protected site; and

- 1 (C) That the project cannot be reduced in size or redesigned to be consistent with protection of the site
2 and, where applicable, consistent with protection of natural values.
- 3 (c) Exceptions to convert a dredged material disposal site or mitigation site to another use must also
4 either not reduce the inventory of designated and protected sites in the affected area below the level
5 identified in the estuary plan or be replaced through designation and protection of a site with
6 comparable capacity in the same area.
- 7 (d) Uses that would convert a portion of a major marsh, coastal headland, significant wildlife habitat,
8 exceptional aesthetic resource, or historic or archaeological site must use as little of the site as possible
9 and be designed and located and, where appropriate, buffered to protect natural values of the
10 remainder of the site.
- 11 (e) Exceptions to designate and protect, for water-dependent uses, an amount of shorelands less than
12 that amount required by Goal 17 Coastal Shoreland Uses Requirement 2 must demonstrate that:
- 13 (A) Based on the Recreation Planning requirements of Goal 8 and the requirements of Goal 9, there is no
14 need during the next 20-year period for the amount of water-dependent shorelands required by Goal 17
15 Coastal Shoreland Uses Requirement 2 for all cities and the county in the estuary. The Goal 8 and Goal 9
16 analyses must be conducted for the entire estuary and its shorelands, and must consider the water-
17 dependent use needs of all local government jurisdictions along the estuary, including the port
18 authority, if any, and be consistent with the Goal 8 Recreation Planning elements and Goal 9 elements
19 of the comprehensive plans of those jurisdictions; and
- 20 (B) There is a demonstrated need for additional land to accommodate the proposed use(s), based on
21 one or more of the requirements of Goals 3 to 18.
- 22 (10) Goal 18 — Fore-dune Breaching: A fore-dune may be breached when the exception demonstrates
23 that an existing dwelling located on the fore-dune is experiencing sand inundation and the sand grading
24 or removal:
- 25 (a) Does not remove any sand below the grade of the dwelling;
- 26 (b) Is limited to the immediate area in which the dwelling is located;
- 27 (c) Retains all graded or removed sand within the dune system by placing it on the beach in front of the
28 dwelling; and
- 29 (d) Is consistent with the requirements of Goal 18 “Beaches and Dunes” Implementation Requirement 1.
- 30 (11) Goal 18 — Fore-dune Development: An exception may be taken to the fore-dune use prohibition in
31 Goal 18 "Beaches and Dunes", Implementation Requirement. Reasons that justify why this state policy
32 embodied in Goal 18 should not apply shall demonstrate that:
- 33 (a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean
34 flooding and storm waves, or the use is of minimal value;
- 35 (b) The use is designed to minimize adverse environmental effects; and
- 36 (c) The exceptions requirements of OAR 660-004-0020 are met.

1 **(12) Goal 18 – Beachfront Protective Structures: An exception may be taken to the requirements of**
2 **Goal 18, implementation requirement 5 to permit beachfront protective structures for the primary**
3 **purpose of protecting and stabilizing ocean-fronting public roads and highways that were developed**
4 **on January 1, 1977. As used in this section, “public roads and highways” mean roadways that are**
5 **owned, operated, maintained, or any combination thereof by federal, tribal, state, county, or city**
6 **government or a special district as defined in ORS 197.015(19). Roads that dead end at the ocean**
7 **shore as defined in ORS 390.605(2) or otherwise generally run perpendicular to the ocean shore are**
8 **not eligible for this exception. Uses such as parking lots, waysides, and campgrounds are not roads**
9 **and are not eligible for this exception. Only a public body that owns, operates, or maintains the public**
10 **roadway may apply for an exception under this section. Reasons that justify why the requirements of**
11 **Goal 18, implementation requirement 5 should not apply shall include the following:**

12 **(a) Justification that the beachfront protective structure will provide a significant public benefit by**
13 **protecting and stabilizing the ocean-fronting public road or highway;**

14 **(b) Feasibility Assessment: Evaluation of alternatives to a beachfront protective structure that would**
15 **not require an exception and that shows there are no reasonable alternatives to the proposed activity**
16 **or project modifications that would better protect public rights, reduce or eliminate the detrimental**
17 **effects on the ocean shore, or avoid long-term costs to the public. This feasibility assessment shall**
18 **describe why alternatives are not achievable, or if tried, why they were not successful. Relevant**
19 **factors may include topographic limitations, environmental constraints, limits of area for relocation,**
20 **or cost. If, and only if, the feasibility assessment does not identify a viable option that would not**
21 **require an exception, then the assessment shall also include a description and justification of the**
22 **preferred erosion mitigation technique that does require an exception. This feasibility assessment**
23 **shall evaluate, at a minimum, the following alternatives:**

24 **(A) Hazard avoidance options, including removing, moving, or relocating the road or highway;**

25 **(B) Non-structural stabilization methods (e.g., foredune enhancement, beach nourishment, vegetation**
26 **plantings, cobble berms);**

27 **(C) Site modifications for the control of erosion such as vegetation management, drainage controls,**
28 **slope regrading, and structure reinforcements; and**

29 **(D) Bio-engineered structures (e.g., clay burritos and vegetated terraces).**

30 **(c) Demonstration that the proposed beachfront protective structure will:**

31 **(A) Minimize visual impacts;**

32 **(B) Maintain access to and along the ocean shore, including access to the Oregon Coast Trail;**

33 **(C) Minimize negative impacts on adjacent property;**

34 **(D) Minimize adverse impacts on water currents, erosion, and accretion patterns;**

35 **(E) Account for the impacts of local sea level rise and climate change for the design life of the**
36 **structure; and**

1 **(F) Avoid or mitigate long-term and recurring costs to the public. As used in this subsection, “mitigate”**
2 **means the reduction of adverse effects of a proposed beachfront protective structure on beach**
3 **habitats and beach access by evaluating, in the following order:**

4 **(i) Avoiding the effect altogether by not taking a certain action or parts of an action;**

5 **(ii) Minimizing the effect by limiting the degree or magnitude of the action and its implementation;**

6 **(iii) Rectifying the effect by repairing, rehabilitating, or restoring the affected ocean shore area;**

7 **(iv) Reducing or eliminating the effect over time by preservation and maintenance operations during**
8 **the life of the action by monitoring and taking appropriate corrective measures;**

9 **(v) Compensating for the effect by creating, restoring, enhancing, or preserving beach habitat, beach**
10 **access to and along the ocean shore, or both, and within the same general vicinity of the proposed**
11 **beachfront protective structure. Compensation should consider the Oregon Parks and Recreation**
12 **Department’s Ocean Shore Management Strategy.**

13 **(d) Assessment of how the exception requirements of OAR 660-004-0020 are met.**

14 **Statutory/Other Authority:** ORS 197.040

15 **Statutes/Other Implemented:** ORS 195.012, ORS 197.040, ORS 197.712, ORS 197.717 & ORS 197.732