

ledged Comprehensive Plan, the state agency or local government review shall address compatibility with the Acknowledged Comprehensive Plan when the activity or use is:

- (a) Prohibited by the plan;
- (b) Allowed outright by the plan;
- (c) Allowed by the plan but subject to standards regarding siting, design, construction and/or operation; or
- (d) Allowed by the plan but subject to future goal considerations by the local jurisdiction.

(3) Where the affected local government has an Acknowledged Comprehensive Plan the Statewide Planning Goals shall be a criteria for permit review after acknowledgment when the state agency finds one of the following exists:

(a) Local government or the Director has determined during periodic review that one or more factors under ORS 197.640(3)(a)(b) or (d) apply;

(b) The Acknowledged Comprehensive Plan and implementing ordinances do not address or control the activity under consideration;

(c) The Acknowledged Comprehensive Plan allows the activity or use but subject to future goal considerations by an agency; or

(d) The comprehensive plan or land use regulations are inconsistent with a state agency plan or program relating to land use that was not in effect at the time that the local government's plan was acknowledged; and, the plan or program is mandated by state statute or federal law, is consistent with the Goals and has objectives that cannot be achieved consistent with the comprehensive plan or land use regulations.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83;

LCDC 2-1984, f. & ef. 2-27-84

#### 660-031-0026

#### Compliance and Compatibility Review Procedures for Class A and B Permits

State Agency Coordination Agreements shall describe the process the agency will use to assure that permit approvals are in compliance with Statewide Planning Goals and compatible with Acknowledged Comprehensive Plans:

(1) Class A Permits: In their review of Class A permits state agencies shall:

(a) Include in the notice for the proposed permit a statement that the proposed activity and use are being reviewed for compliance with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan as part of the permit review;

(b) Insure that the notice for the proposed permit is distributed to the affected city(ies) or county(ies) and its citizen advisory committee;

(c) When there is a public hearing on a proposed permit, consider testimony on compliance of the proposed activity and use with the Statewide Planning Goals and compatible with the Acknowledged Comprehensive Plan;

(d)(A) Based on comments received from the public and other agencies, determine whether or not the proposed permit complies with the Statewide Planning Goals and is compatible with the Acknowledged Comprehensive Plan;

(B) If a state agency's existing process for administration of Class A permits is substantially equivalent to the process required by this section, the agency may request LCDC approval of its existing process as described in its agency coordination agreement.

(2) Class B Permits: In accordance with OAR 660-031-0020 and 660-031-0035(2), the review process shall assure either:

(a) That prior to permit issuance, the agency determines that the proposed activity and use are in compliance with Statewide Planning Goals and compatible with the applicable Acknowledged Comprehensive Plan; or

(b) That the applicant is informed that:

(A) Issuance of the permit is not a finding of compliance with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan, and

(B) The applicant must receive a land use approval from the affected local government. The affected local government must include a determination of compliance with the Statewide Planning Goals or compatibility with the Acknowledged Comprehensive Plan which must be supported by written findings as required in ORS 215.416(6) or 227.173(2). Findings for an activity or use addressed by the acknowledged comprehensive plan in accordance with OAR 660-031-0020, may simply reference the specific plan policies, criteria, or standards which were relied upon in rendering the decision and state why the decision is justified based on the plan policies, criteria or standards.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 2-1984, f. & ef. 2-27-84

#### 660-031-0030

#### Effect of a Determination of Noncompliance or Incompatibility

In accordance with OAR 660-001-0025 when a state agency or local government determines that a proposed activity or use is not in compliance with an applicable Statewide Planning Goal or not compatible with the Acknowledged Comprehensive Plan, the state agency shall deny the state permit and cite the inconsistency as the basis for denial. State agencies may defer approval or conditionally approve a permit when compliance with a Statewide Planning Goal or the Acknowledged Comprehensive Plan requires an action that can only be taken by the affected local government.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83;

LCDC 2-1984, f. & ef. 2-27-84

#### 660-031-0035

#### Reliance on the Local Government's Determination

(1) Class A Permits: When making findings, state agencies may use the affected local government's compatibility determination when the agency finds the affected local government has determined that the proposed activity and use are compatible or incompatible with its Acknowledged Comprehensive Plan.

(2) Class B Permits: State agencies may rely on the affected local government's determination of consistency with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan when the local government makes written findings demonstrating compliance with the goals or compatibility with the acknowledged plan in accordance with OAR 660-031-0026(2)(b)(B).

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83;

LCDC 2-1984, f. & ef. 2-27-84

#### 660-031-0040

#### Renewal Permits

A determination of compliance with the Statewide Planning Goals or compatibility with Acknowledged Comprehensive Plan is not required if the proposed permit is a renewal of an existing permit except when the proposed permit would allow a substantial modification or intensification of the permitted activity. Substantial modifications or intensification shall be defined in an agencies' State Agency Coordination Agreement under ORS 197.180.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

### DIVISION 33

#### AGRICULTURAL LAND

#### 660-033-0010

#### Purpose

The purpose of this division is to implement the requirements for agricultural land as defined by Goal 3.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700

Hist.: LCDC 6-1992, f. 12-10-92, cert. of. 8-7-93; LCDC 3-1994, f. & cert. of. 3-1-94

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660-033-0020

Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

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

(B) Land in other soil classes that is 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 that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

(b) Land in capability classes other than I - IV/I - VI that is 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 this land may not be cropped or grazed;

(c) "Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

(2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:

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

(B) Help maintain agricultural processors and established farm markets.

(b) 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.

(3) "Contiguous" means connected in such a manner as to form a single block of land.

(4) "Date of Creation and Existence". When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.

(5) "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

(6) "Exception Area" means an area no longer subject to the requirements of Goal 3 or 4 because the area is the subject of a site specific exception acknowledged pursuant to ORS 197.732 and OAR Chapter 660, Division 4.

(7) "Farm Use" as that term is used in ORS Chapter 215 and this division means "farm use" as defined in ORS 215.203.

(8)(a) "High-Value Farmland" means land in a tract composed predominantly of soils that are:

(A) Irrigated and classified prime, unique, Class I or II; or

(B) Not irrigated and classified prime, unique, Class I or II.

(b) In addition to that land described in subsection (a) of this section, high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa;

(c) In addition to that land described in subsection (a) of this section, high-value farmland, if in the Willamette Valley, includes tracts composed predominantly of the following soils in Class III

or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hullt, Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill;

(B) Subclassification IIIw, specifically, Concord, Conser, Cornelius, Variant, Dayton (thick surface) and Sifton (occasionally flooded);

(C) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and

(D) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Naroy, Noti and Whiteson.

(d) In addition to that land described in subsection (a) of this section, high-value farmland, if west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;

(B) Subclassification IIIw, specifically, Brennar and Chitwood;

(C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and

(D) Subclassification IVe, specifically, Coquille.

(e) In addition to that land described in subsection (a) of this section, high-value farmland includes tracts located west of U.S. Highway 101 composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIw, specifically, Ettersburg Silt Loam and Croftland Silty Clay Loam;

(B) Subclassification IIIe, specifically, Klooqueth Silty Clay Loam and Winchuck Silt Loam; and

(C) Subclassification IVw, specifically, Huffing Silty Clay Loam.

(f) The soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner submits a statement of agreement from the SCS that the soil class, soil rating or other soil designation should be adjusted based on new information;

(g) Soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the SCS in its most recent publication for that class, rating or designation before November 4, 1993.

(h) Lands designated as "marginal lands" according to the marginal lands provisions adopted before January 1, 1993, and according to the criteria in ORS 215.247 (1991), are excepted from this definition of "high-value farmlands";

(i) Any county that adopted marginal lands provisions before January 1, 1993, may continue to designate lands as "marginal lands" according to those provisions and criteria in ORS 215.247 (1991), as long as the county has not applied the provisions of ORS 215.705 to 215.750 to lands zoned for exclusive farm use.

(9) "Irrigated" means watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider.

(10) "Tract" means one or more contiguous lots or parcels in the same ownership.

(11) "Western Oregon" means that portion of the state lying west of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern

boundary of the State of Oregon.

(12) "Willamette Valley" is Benton, Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Lane County lying east of the summit of the Coast Range.

Stat. Auth.: ORS Ch. 183, 197.040, 197.245 & Ch. 215

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700-710

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94, LCDC 6-1994, f. & cert. ef. 6-3-94

#### 660-033-0030

##### Identifying Agricultural Land

(1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

(2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel 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 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class J-IV 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 lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1).

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

(4) When inventoried land satisfies 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.

(5) 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.

(6) 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 shall be related to the U.S. Soil Conservation Service land capability classification system.

Stat. Auth.: ORS Ch. 183, 197 & 215

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700-710

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93

#### 660-033-0080

##### Designation of High-Value Farmland

(1) The Commission may review comprehensive plan and land use regulations related to the identification and designation of high-value farmland under procedures set forth in ORS 197.251 or 197.628 through 197.644.

(2) Counties shall submit maps of high-value farmland described in OAR 660-033-0020(8) and such amendments of their plans and land use regulations as are necessary to implement the requirements of this division to the Commission for review. Counties shall submit high-value farmland maps no later than the time of the first periodic review after December 31, 1994. The submittal shall include the notice required by OAR Chapter 660, Division 18 or 25, whichever applies.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700-710

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94

#### 660-033-0090

##### Uses on High-Value Farmland

Uses on high-value farmland shall be limited to those specified in OAR 660-033-0120. Counties shall apply zones that qualify as exclusive farm use zones under ORS Chapter 215 to high-value farmland.

Stat. Auth.: ORS Ch. 183, 197 & 215

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283 & 215.700-710

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93

#### 660-033-0100

##### Minimum Parcel Size Requirements

(1) Counties shall establish minimum sizes for new parcels for land zoned for exclusive farm use. For land not designated rangeland, the minimum parcel size shall be at least 80 acres. For land designated rangeland, the minimum parcel size shall be at least 160 acres.

(2) A county may adopt a minimum parcel size lower than that described in section (1) of this rule by demonstrating to the Commission that it can do so while continuing to meet the requirements of ORS 215.243 and that parcel sizes below the 80 or 160 acre minimum sizes are appropriate to maintain the existing commercial agricultural enterprise within an area. This standard is intended to prevent division of farmland into parcels that are too small to contribute to commercial agriculture in an area. This standard does not require that every new parcel created be as large as existing farms or ranches in an area. The minimum parcel size may allow creation of parcels smaller than the size of existing farms or ranches. However, the minimum parcel size shall be large enough to keep commercial farms and ranches in the area successful and not contribute to their decline. Lots or parcels used, or to be used, for training or stabling facilities shall not be considered appropriate to maintain the existing commercial agricultural enterprise in any area where other types of agriculture occur.

(3) To determine a minimum parcel size under this rule, the county shall complete the following steps:

(a) Identify different agricultural areas within the county, if any;

(b) Determine the nature of the commercial agricultural enterprise in the county, or within areas of the county;

(c) Identify the type(s) and size(s) of farms or ranches that comprise this commercial agricultural enterprise; and

(d) Determine the minimum size for new parcels that will maintain this commercial agricultural enterprise.

(4) To determine whether there are distinct agricultural areas in a county, the county should consider soils, topography and landforms, land use patterns, farm sizes, ranch sizes and field sizes, acreage devoted to principal crops, and grazing areas and accepted farming practices for the principal crops and types of livestock.

(5) To determine the nature of the existing commercial agricultural enterprise within an area, a county shall identify the following characteristics of farms and ranches in the area: Type and size of farms and ranches, size of fields or other parts, acreage devoted to principal crops, the relative contribution of the different types and sizes of farms and ranches to the county's gross farm sales, and their contribution to local processors and established farm markets. The following sources may assist in a county's analysis: The most recent Census of Agriculture and special tabulations from the census developed by Oregon State University, the Oregon Department of Agriculture, the United States Department of Agriculture's Agricultural Stabilization and Conservation Service (ASCS), Soil and Water Conservation Districts, the Oregon State University Extension Service and the county assessor's office.

(6) To determine the minimum parcel size, a county shall evaluate available data and choose a size that maintains the existing commercial agricultural enterprise within the county or

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within each area of the county. In areas where the size of commercial farms and ranches is mixed, and the size of parcels needed to maintain those commercial farms and ranches varies, the county shall not choose a minimum parcel size that allows larger farms, lots or parcels to be divided to the size of the smallest farms, lots or parcels in the area. The activities of the larger as well as smaller holdings must be maintained.

(7) A minimum size for new parcels for farm use does not mean that dwellings may be approved automatically on parcels that satisfy the minimum parcel size for the area. New dwellings in conjunction with farm use shall satisfy the criteria for such dwellings set forth in OAR 660-033-0130(1).

(8) A minimum size for new parcels may be appropriate to maintain the existing agricultural enterprise in the area, but it may not be adequate to protect wildlife habitat pursuant to Goal 5. When farmland is located in areas of wildlife habitat, the provisions of Goal 5 continue to apply.

(9) A county may choose to establish a different minimum parcel size for distinct commercial agricultural areas of the county. The appropriate minimum lot or parcel size for each area shall reflect the type of commercial agriculture in the area, consistent with sections (3) - (6) of this rule.

(10) Counties may allow the creation of new parcels for nonfarm uses authorized by this division. Such new parcels shall be the minimum size needed to accommodate the use in a manner consistent with other provisions of law except as required under paragraph (11)(a)(D) of this rule.

(11)(a) Counties may allow the creation of new lots or parcels for dwellings not in conjunction with farm use. In the Willamette Valley, a new lot or parcel may be allowed if the originating lot or parcel is equal to or larger than the applicable minimum lot or parcel size, and:

(A) Is not stocked to the requirements under ORS 527.610 to 527.770;

(B) Is composed of at least 95 percent Class VI through VIII soils; and

(C) Is composed of at least 95 percent soils not capable of producing 50 cubic feet per acre per year of wood fiber; and

(D) The new lot or parcel will not be smaller than 20 acres.

(b) No new lot or parcel may be created for this purpose until the county finds that the dwelling to be sited on the new lot or parcel has been approved under the requirements for dwellings not in conjunction with farm use in ORS 215.283(5) and (6), 215.236 and OAR 660-033-0130(4).

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700-710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94

#### 660-033-0120

##### Uses Authorized on Agricultural Lands

The specific development and uses listed in Table 1 are permitted in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

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

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

(3) \* — Use not permitted.

(4) # — Numerical references for specific uses shown on the

chart refer to the corresponding section of OAR 660-33-130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183, 197, 215 & 197.175 - 197.185

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700-710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95

#### 660-033-0130

##### Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

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

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2) The use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.

(3)(a) A dwelling may be approved if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(i) Prior to January 1, 1985; or

(ii) By devise or by interstate succession from a person who acquired the lot or parcel prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(D) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule;

(E) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(D) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a); and

(C) A hearings officer of the State Department of Agriculture, under the provisions of ORS 183.413 to 183.497, determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity;

(ii) The dwelling will comply with the provisions of ORS 215.296(1);

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area.

(d) Notwithstanding the requirements of paragraph (3)(a)(D) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d); and

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size.

(C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(ii) The tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary.

(e) If land is in a zone that allows both farm and forest uses and is acknowledged to be in compliance with both Goals 3 and 4, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated; and

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11)(a) of this rule, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact

of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, it is not "generally unsuitable". A lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I - IV soils or, in Eastern Oregon, it is composed predominantly of Class I - VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) - (8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm

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or forest practices on lands devoted to farm or forest use.

(6) Such facility shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period which is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Aeronautics Division.

(8)(a) A lawfully established dwelling is a single-family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling;

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(10) A manufactured dwelling allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS Chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. When the hardships end, the governing bodies or their designate shall require the removal of such manufactured homes. Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) The housing shall also meet the requirements of ORS 197.685. For purposes of this rule, nine months means 273 days within any calendar year.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the **National Register of Historic Places**.

(13) Such uses may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-

012-0065.

(14) Home occupations may be authorized in existing dwelling and structures accessory to an existing dwelling. Home occupations may not be authorized in structures accessory to resource use. A home occupation located on high-value farmland may employ only residents of the home.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totalling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16) A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided.

(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR Chapter 660, Division 4.

(18) Existing facilities may be maintained, enhanced or expanded, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(19) A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(e) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; housing;

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., food and beverage service, pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to stimulate past activities and events. As used in this rule,

a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than exclusive farm use zone cannot accommodate the museum and related activities or if the museum, administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS Chapter 65. A Living History Museum is permitted only in counties that are subject to ORS 215.213 (Marginal Lands).

(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR Chapter 660, Division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on farms in the local agricultural area, including the sale of retail incidental items, if the sales of the incidental items make up no more than 25 percent of the total sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(24) An accessory farm dwelling may be considered customarily provided in conjunction with farm use if:

(a) It meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use is or will be required by the farm operator; and

(B) The accessory dwelling will be located:

(i) On the same lot or parcel as the dwelling of the principal farm dwelling; or

(ii) On the same tract as the principal farm dwelling when the lot or parcel on which the accessory dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the principal farm dwelling is not located, when the accessory farm dwelling is a manufactured dwelling and a deed restriction is filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. An accessory farm dwelling approved pursuant to this rule may not be occupied by a person or persons who will not be principally engaged in the farm use of the land and whose assistance in the management of the farm use is not or will not be required by the farm operator. The manufactured dwelling may remain if it is reappraised under these rules; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling; and

(b) In addition to the requirements in subsection (a) of this section, the principal farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the

1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 (1992 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the principal farm dwelling meets the standards and requirements of ORS 215.213(2)(a) or (b).

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100;

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.)

Stat. Auth.: ORS Ch. 183, 197.040, 197.245 & Ch. 215

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700-710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95

#### 660-033-0135

##### Dwellings in Conjunction with Farm Use

(1) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The parcel on which the dwelling will be located is at least:

(A) 160 acres and not designated rangeland; or

(B) 320 acres and designated rangeland; or

(C) As large as the minimum parcel size if located in a zoning district with an acknowledged minimum parcel size larger than indicated in paragraph (A) or (B) of this subsection.

(b) The subject tract is currently employed for farm use, as defined in ORS 215.203;

(c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale;

(d) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p), there is no other dwelling on the subject tract.

(2) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract; and

(b) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in subsection (a) of this section; and

(c) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in subsection (b) of this section; and

(d) The subject lot or parcel on which the dwelling is proposed is not less than ten acres in western Oregon or 20 acres in eastern Oregon; and

(e) Except as permitted in ORS 215.213(1)(r) and

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215.283(1)(p), there is no other dwelling on the subject tract; and

(f) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by subsection (c) of this section.

(3) In order to identify the commercial farm or ranch tracts to be used in section (2) of this rule, the gross sales capability or each tract in the study area including the subject tract must be determined, using the gross sales figures provided by the Commission pursuant to section (4) of this rule as follows:

(a) Identify the study area. This includes all the land in the tracts wholly or partially within one mile of the perimeter of the subject tract;

(b) Determine for each tract in the study area the number of acres in every land classification from the county assessor's data;

(c) Determine the potential earning capability for each tract by multiplying the number of acres in each land class by the gross sales per acre for each land class provided by the Commission pursuant to section (4) of this rule. Add these to obtain the potential earning capability for each tract;

(d) Identify those tracts capable of grossing at least \$10,000 based on the data generated in subsection (3)(c) of this rule;

(e) Determine the median size and median gross sales capability for those tracts capable of generating at least \$10,000 in annual gross sales to use in subsections (2)(a) and (b) of this rule.

(4) The Commission shall annually provide each Oregon county with a table of the estimated potential gross sales per acre for each assessor land class (irrigated and nonirrigated) required in section (3) of this rule. The table shall be prepared as follows:

(a) Determine up to three indicator crop types with the highest harvested acreage for irrigated and for nonirrigated lands in the county using the most recent OSU Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and State Agricultural Estimates", or other USDA/ Extension Service documentation;

(b) Determine the combined weighted average of the gross sales per acre for the three indicator crop types for irrigated and for nonirrigated lands, as follows:

(A) Determine the gross sales per acre for each indicator crop type for the previous five years (i.e., divide each crop type's gross annual sales by the harvested acres for each crop type);

(B) Determine the average gross sales per acre for each crop type for three years, discarding the highest and lowest sales per acre amounts during the five year period;

(C) Determine the percentage each indicator crop's harvested acreage is of the total combined harvested acres for the three indicator crop types;

(D) Multiply the combined sales per acre for each crop type identified under paragraph (B) of this subsection by its percentage of harvested acres to determine a weighted sales per acre amount for each indicator crop;

(E) Add the weighted sales per acre amounts for each indicator crop type identified in paragraph (D) of this subsection. The result provides the combined weighted gross sales per acre.

(c) Determine the average land rent value for irrigated and nonirrigated land classes in the county's exclusive farm use zones according to the annual "income approach" report prepared by the county assessor pursuant to ORS 308.345;

(d) Determine the percentage of the average land rent value for each specific land rent for each land classification determined in subsection (c) of this section. Adjust the combined weighted sales per acre amount identified in paragraph (b)(E) of this section using the percentage of average land rent (i.e., multiply the weighted average determined in paragraph (4)(b)(E) of this rule by the percent of average land rent value from subsection (4)(c) of this rule). The result provides the estimated potential gross sales per acre for each assessor land class that will be provided to each county to be used as explained under subsection (3)(c) of this rule.

(5) On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced in the last two years or

three of the last five years the lower of the following:

(A) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products; or

(B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; and

(b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p), there is no other dwelling on the subject tract; and

(c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this section;

(d) In determining the gross income required by subsection (a) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(6) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, a dwelling may be considered customarily provided in conjunction with farm use if it is not on a lot or parcel identified as high-value farmland and it meets the standards and requirements of ORS 215.213(2)(a) or (b).

(7) On land identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years; and

(b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p), there is no other dwelling on the subject tract; and

(c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this section;

(d) In determining the gross income required by subsection (a) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700-710 & 215.780

Hist.: LCDC 3-1994, f. & cert. ef. 3-1-94

### 660-033-0140

#### Permit Expiration Dates

(1) A discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

(2) A county may grant one extension period of up to 12 months if:

(a) An applicant makes a written request for an extension of the development approval period;

(b) The request is submitted to the county prior to the expiration of the approval period;

(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(3) Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

(4) Additional one year extensions may be authorized where applicable criteria for the decision have not changed.

Stat. Auth.: ORS Ch. 183, 197 & 215

Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93

### 660-033-0150

**Notice of Decisions in Agriculture Zones**

(1) Counties shall notify the department of all applications for dwellings and land divisions in exclusive farm use zones. Such notice shall be in accordance with the county's acknowledged comprehensive plan and land use regulations, and shall be mailed to the department's Salem office at least ten calendar days before any hearing or decision on such application.

(2) Notice of proposed actions described in section (1) of this rule shall be provided as required by procedures for notice contained in ORS 197.763 and 215.402 to 215.438.

(3) The provisions of sections (1) and (2) of this rule are repealed on September 6, 1995.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94

**660-033-0160****Effective Date**

The provisions of this division shall become effective upon filing.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94

**DIVISION 35****FEDERAL CONSISTENCY****660-035-0000****Purpose**

This administrative rule establishes state procedures for implementing the federal consistency requirements of the Federal Coastal Zone Management Act of 1972 as amended, Section 307(c).

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

**660-035-0010****Definitions**

For the purposes of this division the following definitions shall apply:

(1) "Acknowledged Comprehensive Plan" means a comprehensive plan and land use regulations or plan or regulation amendment which complies with the goals as provided in ORS 197.251, 197.640 to 197.649 and 197.625.

(2) "Applicant" means any individual or organization, except a federal agency, who applies for a federal license or permit or other form of permission which a federal agency is empowered to issue, to conduct an activity affecting land or water uses in the coastal zone.

(3) "Applicant Agency" means a state agency, city, county, special purpose district, or regional body which submits an application for federal financial assistance.

(4) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(5) "Associated Facilities" includes all forms of development:

(a) Which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or major part, to meet the needs of a federal action or federally permitted action; and

(b) Without which the federal action, as proposed, could not be conducted (15 CFR 930.21).

(6) "Certification of Consistency" means a declaration which is supported by the necessary data and information by an applicant or an OCS applicant that a proposed activity or development complies with the Oregon Coastal Management Program and that such activity shall be conducted in a manner consistent with the program.

(7) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

(8) "CZMA" means the federal Coastal Zone Management Act of 1972, as amended.

(9) "Commission" means the Land Conservation and Development Commission.

(10) "Consistency Determination" means a decision by a federal agency, supported with findings, that a proposed project will be conducted in a manner consistent to the maximum extent practicable with the OCMP unless compliance is prohibited based on existing law applicable to the federal agency.

(11) "Director" means the Director of the Department of Land Conservation and Development.

(12) "Department" means the Department of Land Conservation and Development.

(13) "Excluded federal land" means lands in federal ownership within the boundaries of the Oregon coastal zone. All lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the federal government are excluded from the definition of coastal zone. The exclusion of federal lands from the definition of coastal zone does not remove the requirement that actions on such lands be consistent with the Oregon Coastal Management Program if such actions directly affect the Oregon coastal zone.

(14) "Federal Activity" means any function performed by or on behalf of a federal agency in the exercise of its statutory responsibilities. The term federal activity does not include the issuance of a federal license or permit to an applicant or OCS applicant or the granting of federal assistance to an applicant agency (15 CFR 930.31).

(15) "Federal Agency" means any department, agency, or other organization within the executive branch of the federal government, or any wholly owned federal government corporation.

(16) "Federal Assistance" means assistance provided under a federal program to an applicant agency through a grant, contract, loan, subsidy, guarantee, insurance or other form of financial aid (15 CFR 930.91).

(17) "Federal Development Project" means a federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources (15 CFR 930.31).

(18) "IRD" means the Oregon Intergovernmental Relations Division in the Executive Department. IRD operates the State Clearinghouse process which provides for the evaluation, review and coordination of federally assisted programs.

(19) "OCMP" means the Oregon Coastal Management Program which was approved by OCRM in 1977 and all federally approved amendments thereto.

(20) "OCRM" means the federal Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(21) "OCS Plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act, and the regulations under that Act, and which describes in detail activities requiring federal licenses or permits (15 CFR 930.73).

(22) "OCS Applicant" means any individual, organization, or government entity who submits to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]