



Oregon

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December 29, 2010

TO: Land Conservation and Development Commission (LCDC)
FROM: Bob Rindy, Senior Policy Analyst
SUBJECT: **Agenda Item 5, January 12-13, 2011, LCDC Meeting**

PUBLIC HEARING AND POSSIBLE ADOPTION OF HOUSEKEEPING AMENDMENTS TO ADMINISTRATIVE RULES

Under this item the commission will hold a public hearing on proposed housekeeping amendments for rules provided as Attachments A through G. This item is a continuation of the public hearing opened at the December 2, 2010, LCDC meeting on this matter. At the conclusion of the December hearing the commission adopted housekeeping amendments to OAR 660, divisions 1 and 3, but continued the hearing for other rule divisions listed in the rulemaking notice (see notices under Attachment H). The department has not proposed amendments in some rule divisions that were listed in the notice (OAR 660, divisions 11, 27, and 30). After concluding public testimony the department recommends that the commission close the public hearing and adopt the rule amendments proposed in the attachments to this report.

All amendments proposed under this rulemaking are intended to be “housekeeping” amendments, including rule amendments or updates in response to legislation or case law, clarification of rule language, corrections to numbering and citations, and corrections to grammar and spelling. The term “housekeeping” is not defined by law or commission rule. In this context, and consistent with prior “housekeeping” amendments considered by the commission, this term is intended to include rule amendments that clarify wording, as well as amendments that update rules in response to legislation, court or LUBA opinions, and previous rulemaking, including citations that need to be synchronized in particular rules. The term “housekeeping” includes amendments to make other minor and technical corrections such as grammatical and spelling errors, even those that may not generally require a formal rule adoption under state law. In some cases, housekeeping will also adjust wording or formatting of a rule based on up-to-date rule-writing practices. In addition to the proposed amendments attached to this report, the commission may consider other housekeeping amendments to the rules listed in the notice based on testimony and comments received during the public comment period. Notices and the meeting agenda are also available on the DLCD website at <http://www.oregon.gov/LCD/rulemaking.shtml> - [UGB Amendment Processhttp://www.lcd.state.or.us/](http://www.lcd.state.or.us/).

For additional information regarding this item, please contact Bob Rindy at 503-373-0050, ext. 229; or by email bob.rindy@state.or.us.

I. BACKGROUND

In updating its 2009-2011 Policy Agenda, the commission directed the department to consider “housekeeping amendments” to LCDC rules in order to clarify and update rules as necessary, either in response to legislation, court and LUBA opinions, to update citations in existing rules, and to make minor and technical corrections such as grammatical and spelling errors. In general, LCDC conducts a “housekeeping” project to correct and update administrative rules approximately every two years. When the commission makes amendments to rules for the purpose described above it does not appoint a rules advisory committee, since the amendments are not intended to make substantive changes to the rules.

The department issued notice for this rulemaking in November of this year. The department’s notice indicated housekeeping amendments to rules in OAR 660, divisions 1, 3, 4, 6, 11, 18, 21, 23, 25, 27, 30 and 33. These divisions pertain to administrative procedures, acknowledgement review, goal exceptions, forest lands, public facilities planning, plan and land use regulation review, urban reserves, natural resources, periodic review, metro reserves, state agency coordination and exclusive farm uses. However, the department has not proposed amendments to the public facilities planning, natural resources, metro reserves, or state agency coordination rules at this time, either due to time constraints or because, in the opinion of staff, the rules did not need updating or clarification at this time.

At the December 2 meeting, LCDC adopted housekeeping amendments to the division 1 and 3 rules. These amendments are now in effect.

II. PROPOSED RULE AMENDMENTS

Below is a brief summary of proposed rule amendments shown in the attachments, and the department’s reasons for the amendments (due to the large number of minor and technical amendments, not all the rule amendments proposed for adoption are described here; many minor and technical amendments shown in the attachments are self-explanatory). The following changes to rules are proposed to rule divisions listed below, and certain rules in the divisions:

Division 4 - Goal 2 Exceptions Rules: Many rules under division 4 have not been updated since the early 1980’s, as evidenced by uncorrected citations. Many of these rules were written in the 1980’s, prior to current practices for rule construction. As such, several changes to rules in this division are proposed to adjust grammar or sentence structure, or in some cases wording and/or numbering and structure, to clarify the rule. Proposed amendments include the following:

- **Clarify the applicability of certain rules under OAR 660, division 4, to Goal 11, 12 and 14 exceptions.** The department proposes several changes in this division to make it clear that provisions in other divisions apply to certain types of goal exceptions (public facilities, transportation improvements, and certain uses of rural lands). These other rules were adopted subsequent to the initial adoption of division 4. Although the standards in these other rules substitute for certain standards or requirements in division 4, they are not intended to supersede ALL rules in division 4. The proposed amendments clarify the interplay between division 4 and other

divisions. Currently, the “purpose” section of the division 4 (exceptions) rules indicates that division 4 does not apply in two circumstances: First, exceptions governed by rules in OAR 660, division 14, regarding exceptions to Goal 14; and second, exceptions to transportation planning rules under OAR 660-012-0070. However, the rules do not currently reference similar standards for exceptions to Goal 11 that are provided in OAR 660-011-0060, adopted in the late 1990s, or standards for rural residential development that went into effect in 2000. The department suggests inserting a reference to these rules. In addition, the specific exceptions rules in divisions 11, 12, and 14 do not replace the general definitions, notice, standard of review, and planning and zoning requirements for exception areas set forth in division 4. Division 4 controls these aspects of a goal exception. As such, the proposed amendments to the purpose rules and other subsequent rules (on pages 1-8, 10 and 16 of Attachment A) are intended to clarify that division 4 still applies to these aspects of an exception, even where a substantive standard for a particular type of exceptions is provided in another rule divisions.¹

- **Re-adopt previously adopted rules that were inadvertently eliminated by a rule filing error in 2006.** On February 2, 2006 the commission adopted amendments to exceptions rules at OAR 660-004-0000(2) and OAR 660-004-0022 that are shown in bold and underlined on Attachment A. Records show that the department filed these with the Secretary of State on February 15, 2006, and they were published by the Secretary of State in the March 2006 Bulletin. However, a subsequent amendment to division 4 rules a short time later inadvertently omitted the amendments referred to above. As such, the amendments adopted in February 2006 do not currently appear in the published Oregon Administrative Rules, or in the hardbound volume of the Oregon Administrative Rules. To ensure that a correct version of these rules is displayed by the Secretary of State, the department recommends that the commission re-adopt, and the department re-file, these rules.

We should note that these rule amendments were required by House Bill 2438, enacted in 2005. That bill amended ORS 197.732 to direct the commission to adopt rules establishing “[t]hat an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use.” ORS 197.732(3)(a).

- **Other.**
 - On pages 4 and 5 of attachment A certain statewide goal names have been corrected or changed to reflect the current official goal names.
 - On page 6 line 27 it is suggested that the word “nonresource use” be replaced by “uses not allowed by the applicable goal.” The word “nonresource use” in this context may imply (incorrectly) that this refers to uses on “nonresource

¹ This is in part a response to issues raised (and partially resolved) in the Court of Appeals decision *VinCEP, et al v. Yamhill Co.*

land.” This is clearly not the case due to the citations in the rule, but amended wording would improve this rule.

- On pages 13 and 15, the current division 4 rules make reference to recreation planning under Goal 8, as a consideration in exceptions to Goals 16 or 17. The department believes these are references to Goal 8 as it existed prior to amendments in 1983 that add destination resort requirements to Goal 8, but leaving some recreation planning requirements. Coastal staff at the department believes the reference here should be to the remaining Recreational Planning requirements of Goal 8, but not to destination resort planning, in reflection of the goal as it existed at the time division 4 was adopted, prior to the Goal 8 amendments inserting destination resort requirements.
- OAR 660-004-0020(4) – change "The" to lower case.

Division 6 Forest Land Rules: The department proposes the following minor amendments to the forest land rules under OAR 660, division 6 (Attachment B):

- **Purpose** – The purpose statement has been expanded slightly consistent with purpose statements used in other DLCD rule divisions.
- **Definitions/Inventory** - The definitions section at OAR 660-006-0005(2) and (3) includes language on acceptable alternative sources of forest land productivity data. This description more logically belongs in the “Inventory” section at OAR 660-006-0010. The inventory section, in turn, intends and should more clearly indicate that it applies not only to initial inventories proposed by local governments zoning forest land, but also to inventories identifying forest land when rezonings are proposed (consistent with similar structure for farm land rules under division 33). Finally, an updated reference citation is needed here referring to the Oregon Department of Forestry’s updated guide for determining forest land productivity.
- **Authorized Uses** – Minor corrections to statutory references are proposed at OAR 660-006-0025(1)(d), (3)(h), and (4)(j) and (y).
- **Land Divisions in Forest Zones** – Minor changes are proposed at OAR 660-006-0026(2)(b), (c), and (d) and 660-006-0055(2)(c) simply for clarity and consistency with the rule and statutory intent.
- **Dwellings** – OAR 660-006-0027 is proposed to be renumbered and specific references made to statutory authorization for dwellings, to improve readability.
- **Youth Camps** – A clarification is proposed that would allow pre-existing youth camps to expand. New youth camps may expand under OAR 660-006-0031(2), and as such it is presumed that it was intended that pre-existing camps may also expand.

- **Fire-Fighting Standards** – A minor clarification of rule intent is proposed at OAR 660-006-0035.
- **Land Divisions in Agricultural/Forest Zones** – A minor clarification of statutory intent is proposed at OAR 660-006-0055(2)(b). The rule wording refers to “dwellings,” and the department believes the intent and context of this provision means “existing dwellings.” However, this should be clearer to the lay reader, and thus the proposed minor modification is proposed in Attachment B.

Division 18: Plan Amendment Procedural Rules: OAR 660, division 18, concerns the post acknowledgement plan amendment (PAPA) process under ORS 197.610 – 197.625 (Attachment C). The department proposes the following amendments to division 18:

- The reference to chapter 800, 2003 Oregon Laws, is proposed to be deleted. This statute required Business Oregon and the department to work with local government to plan twenty-five certified industrial sites. That task has been completed.
- OAR 660-018-0022 is expanded on to clarify when pre-adoption notice is not required, and what the consequences are of not providing pre-adoption notice (a person may appeal to LUBA even if they did not appear locally).
- OAR 660-018-0030 is amended to delete the requirement that the department report on participation in local proceedings concerning a plan amendment at least 20 days before the final hearing on adoption. The timing aspect of this rule is not possible to meet in practice.
- OAR 660-018-0035(4) is amended to clarify that if a plan amendment is more than 100 pages, the local government may submit it electronically.

Division 21 Urban Reserve Rules: Minor amendments are proposed (Attachment D):

- To clarify that this division interprets ORS 195.137 through 195.145 and Goal 14.
- In order to conform OAR references to resource land and nonresource land in 660-021-0010(2) and (3) to the same terms used in OAR 660-004-0005(2) and (3).
- To OAR 660-021-0020(2), to change "OAR 660, division 027" to "OAR chapter 660, division 27."
- To correct erroneous references to “the section” when “the rule” is correct, and to “the rule” when “this division” is the correct term.
- To clarify that, where the rules specify Urban Reserve Planning requires the adoption of intergovernmental agreements, the rule means these agreements must be in place prior to or at the time of reserve designation.

Division 25 Periodic Review: The department proposes the following amendments to rules for periodic review in OAR 660, division 25 (Attachment E):

- OAR 660-025-0010 (Purpose) is amended to clarify that the scope of review in periodic review includes applicable statewide land use planning goals, commission rules and land use statutes.
- OAR 660-025-0085 (Commission hearings and procedures in periodic review) is amended to clarify who may participate in commission hearings; what issues participants may argue about; and that the commission's review is normally on the record. Subsection (5)(f) is proposed for deletion because its effect is unclear and the commission's duties are controlled by statute.
- OAR 660-025-0150 (Director action and appeal or referral of director's decision) is amended to clarify:
 - What happens if the director does not issue an order within the required time limit when there is no valid objection; and
 - Who has standing to appeal a director's decision (this is different from who may participate in a commission hearing on an appeal or referral (if there is a valid appeal, then other persons (other persons who participated below, and entities (local governments) may participate in the appeal);

Division 33 (Agricultural Lands): The department proposes the following amendments to farm land rules (Attachments F & G):

- **OAR 660-033-0010 (Purpose)** – The purpose statement has amended to be consistent with Goal 3 and the purpose statements of other rule divisions.
- **OAR 660-033-0020 and 0030 (Definitions and Identifying Agricultural Land)** – A spelling correction and reordering of subsections are proposed for more logical flow at OAR 660-033-0020(8)(d), (f-h), and (j) and 660-0033-0030.
- **OAR 660-033-0120 (Uses on Agricultural Land)** – Amendments are proposed 0120(1) to make the rule consistent with the *Brentmar v. Jackson County* ruling by the Oregon Supreme Court. In *Brentmar*, the court ruled that counties must allow the uses specified in ORS 215.213(1) and 215.283(1). These uses are "allowed" uses under OAR 660-033-0120(1). In contrast, for the uses specified in ORS 215.213(2) and 215.283(2), counties may supplement state standards and criteria with local standards and criteria. The amendments are intended to clarify the court's decision and its application through the commission's rules. Three other minor technical corrections are proposed for Table 1 for consistency with HB 2117 (2007), recent RLUIPA rulemaking and consistency with statute at ORS 433.763.
- **Minimum Standards for Uses** – Several minor modifications are recommended to identify specific uses to which language refers, provide clarification, eliminate

duplication, make grammatical corrections, provide consistency between rule and statutory language or to clarify statutory intent, and to provide consistency with new Department of Environmental Quality rules at OAR 660-033-0130(3)(a), (4), (4)(a)(D)(ii), (6), (9)(a), (11), (13), (25), (29), (33) and (34).

- **Dwellings in Conjunction with Farm Use** – Minor amendments are proposed to make grammatical and lettering corrections, renumber or move text to provide for more logical flow, and to clarify statutory intent at OAR 660-033-0135(3), (4), (5), (5)(d)(ii), (6), (7), (7)(d)(ii), (9), (9)(a)(ii), (10)(f) and (11).

Clean up of rules that do not require notice

Under ORS 183.335(7), agencies may amend rules without prior notice or hearing if the amendment is solely for the purpose of:

- (a) Changing the name of an agency by reason of a name change prescribed by law;
- (b) Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division;
- (c) Correcting spelling;
- (d) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule;
- (e) Correcting statutory or rule references; or
- (f) Correcting addresses or telephone numbers referred to in the rules.

The following grammatical, spelling or reference corrections are proposed:

- OAR 660-004-0020(4) – change "The" to lower case.
- OAR 660-004-0022(7) – delete "X" between "Goal 16" and "Water".
- OAR 660-012-0015(6) – change "ORS 197.185(2)" to “ORS 195.020(2)” as that provision has been renumbered.

III. SUMMARY OF REQUIRED LCDC RULEMAKING CRITERIA AND PROCEDURES

The commission’s procedures for rulemaking derive from ORS Chapter 183 and are specified in LCDC’s procedural rules at OAR 660-001-0000. In general, prior to adoption of a rule, the commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rule. The commission must deliberate in public and, if the commission makes a decision to adopt any or all of the proposals, a majority of the commission must affirm the motion to adopt.

The commission is also guided by ORS 197.040, as follows:

“197.040 Duties of commission; rules.

(1) The Land Conservation and Development Commission shall:

....

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;

(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

(C) Assess the likely degree of economic impact on identified property and economic interests; and

(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

(c)(A) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 19, [and]

(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b). . .

(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule.”

IV. NOTICE OF RULEMAKING

The department issued formal rulemaking notice for publication in the November 2010 Secretary of State’s Bulletin, and has mailed notices to interested parties (See Attachment H).

The commission has also adopted “Citizen Involvement Guidelines for Policy Development” (the “CIG”) in order “... *to provide and promote clear procedures for public involvement in the development of Commission policy on land use,*” which LCDC has committed to follow “*to the extent practicable in the development of new or amended statewide planning goals and related administrative rules.*” The CIG recommends that, as part of a rulemaking process, the department “*shall, to the extent practicable:*

Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request;

Provide background information on the policy issues under discussion via posting on the Department’s website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.”

The department has followed the above guidelines with respect to the housekeeping rulemaking. We note that the CIG authorizes LCDC to “*choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.*” In this case (and in all previous LCDC “housekeeping”

rulemaking), a workgroup was not appointed because the rulemaking is policy neutral and minor and technical.

V. RECOMMENDATION

The department recommends the commission hold a public hearing on the proposed amendments described in this report, close the public hearing following testimony, and adopt the proposed rule amendments shown in the attachments to this report.

ATTACHMENTS

- A. Proposed amendments to OAR 660, division 4**
- B. Proposed amendments to OAR 660, division 6**
- C. Proposed amendments to OAR 660, division 18**
- D. Proposed amendments to OAR 660, division 21**
- E. Proposed amendments to OAR 660, division 25**
- F. Proposed amendments to OAR 660, division 33**
- G. Proposed amendments to OAR 660, division 33, supplemental chart**
- H. Notices of rulemaking**

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 4

INTERPRETATION OF GOAL 2 EXCEPTION PROCESS

1 **660-004-0000**

2 **Purpose**

3 (1) The purpose of this ~~rule~~ **division** is to **interpret the requirements of Goal 2 and**
4 **ORS 197.732 regarding exceptions. This rule** explains the three types of exceptions set
5 forth in Goal 2 “Land Use Planning, Part II, Exceptions.” [~~Except as provided for in OAR~~
6 ~~chapter 660, division 14, “Application of the Statewide Planning Goals to Newly~~
7 ~~Incorporated Cities and Urban Development on Rural Lands” and OAR chapter 660,~~
8 ~~division 12, “Transportation Planning”, section 0070, “Exceptions for Transportation~~
9 ~~Improvements on Rural Land”, this division interprets the exception process as it applies~~
10 ~~to statewide Goals 3 to 19.] **Rules in other divisions of OAR 660 provide substantive**
11 **standards for some specific types of goal exceptions. Where this is the case, the**
12 **specific substantive standards in the other divisions control over the more general**
13 **standards of this division. However, the definitions, notice, and planning and**
14 **zoning requirements of this division apply to all types of exceptions. The types of**
15 **exceptions that subject to specific standards in other divisions are:**~~

16 **(a) Standards for a demonstration of need for sanitary sewer service to rural lands**
17 **are provided in 660-011-0060(9);**

18 **(b) Standards for a demonstration of need for urban transportation improvements**
19 **on rural land are provided in OAR 660-012-0070;**

20 **(c) Standards to determine irrevocably committed exceptions pertaining to urban**
21 **development on rural land are provided in OAR 660-014-0030, and standards for**
22 **demonstration of need for urban development on rural land are provided in 660-**
23 **014-0040.**

24 (2) An exception is a decision to exclude certain land from the requirements of one or
25 more applicable statewide goals in accordance with the process specified in Goal 2, Part
26 II, Exceptions. The documentation for an exception must be set forth in a local
27 government’s comprehensive plan. Such documentation must support a conclusion that
28 the standards for an exception have been met. The conclusion shall be based on findings
29 of fact supported by substantial evidence in the record of the local proceeding and by a
30 statement of reasons [~~which~~] **that** explains why the proposed use not allowed by the
31 applicable goal, **or a use authorized by a statewide planning goal that cannot comply**

1 **with the approval standards for that type of use,**¹ should be provided for. The
2 exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

3 (3) The intent of the exceptions process is to permit necessary flexibility in the
4 application of the Statewide Planning Goals. The procedural and substantive objectives of
5 the exceptions process are to:

6 (a) Assure that citizens and governmental units have an opportunity to participate in
7 resolving plan conflicts while the exception is being developed and reviewed; and

8 (b) Assure that findings of fact and a statement of reasons supported by substantial
9 evidence justify an exception to a statewide goal.

10 (4) When taking an exception, a local government may rely on information and
11 documentation prepared by other groups or agencies for the purpose of the exception or
12 for other purposes, as substantial evidence to support its findings of fact. Such
13 information must be either included or properly incorporated by reference into the record
14 of the local exceptions proceeding. Information included by reference must be made
15 available to interested persons for their review prior to the last evidentiary hearing on the
16 exception.

17 Stat. Auth.: ORS 197.040

18 Stats. Implemented: ORS 195.012, 197.040, 197.712, 197.717, 197.732

19 Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f.
20 & ef. 2-10-84; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 6-2006, f. 7-13-06, cert. ef.
21 7-14-06

22 **660-004-0005**

23 **Definitions**

24 For the purpose of this division, the definitions in ORS 197.015 and the Statewide
25 Planning Goals shall apply. In addition, the following definitions shall apply:

26 (1) An "Exception" is a comprehensive plan provision, including an amendment to an
27 acknowledged comprehensive plan, that:

28 (a) Is applicable to specific properties or situations and does not establish a planning or
29 zoning policy of general applicability;

30 (b) Does not comply with some or all goal requirements applicable to the subject
31 properties or situations; and

¹ Note: This is the language that was adopted by LCDC, but subsequently was inadvertently eliminated by rule filing error in 2006.

1 (c) Complies with **ORS 197.732**, the provisions of this division **or, if applicable, the**
2 **provisions of OAR 660-011-0060, OAR 660-012-0070, 660-014-0030, or 660-014-**
3 **0040.**

4 (2) "Resource Land" is land subject to **one or more of** the statewide Goals listed in OAR
5 660-004-0010(1)(a) through (g) except subsections (c) and (d).

6 (3) "Nonresource Land" is land not subject to **one or more of** the statewide Goals listed
7 in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these
8 definitions is meant to imply that other goals, particularly Goal 5, do not apply to
9 nonresource land.

10 Stat. Auth.: ORS 197

11 Stats. Implemented ORS 197.015 & 197.732

12 Hist.: LCDC 5-1982, f. & ef 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 3-2004, f.
13 & cert. ef. 5-7-04

14

15 **660-004-0010**

16 **Application of the Goal 2 Exception Process to Certain Goals**

17 (1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement"
18 and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or
19 part of those statewide goals [~~which~~] **that** prescribe or restrict certain uses of resource
20 land, **restrict urban uses on rural land**, or limit the provision of certain public facilities
21 and services. These statewide goals include but are not limited to:

22 (a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is
23 not required for any of the farm or nonfarm uses **allowed** [~~permitted~~] in an exclusive
24 farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33,
25 "Agricultural Lands", **except as provided under OAR 660-004-0022 regarding a use**
26 **authorized by a statewide planning goal that cannot comply with the approval**
27 **standards for that type of use;**

28 (b) Goal 4 "Forest Lands"; however, an exception to Goal 4 "Forest lands" is not required
29 for any of the forest or nonforest uses **allowed** [~~permitted~~] in a forest or mixed
30 farm/forest zone under OAR chapter 660, division 6, "Forest Lands";

31 **(c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9);**

32 **(d[e]) Goal 14 "Urbanization" as provided for in [~~OAR chapter 660, division 14 and~~] the**
33 **applicable paragraph (l)(c)(A), (B), [~~or~~] (C) or (D) of this rule:**

34 (A) An exception is not required for the establishment of an urban growth boundary
35 around or including portions of an incorporated city;

1 (B) When a local government changes an established urban growth boundary applying
2 Goal 14 as it existed prior to the amendments adopted April 28, 2005, it shall follow the
3 procedures and requirements set forth in Goal 2 "Land Use Planning," Part II,
4 Exceptions. An established urban growth boundary is one ~~[which]~~ **that** has been
5 acknowledged ~~[by the Commission]~~ under ORS 197.251, 197.625 or 197.626. ~~[Revised~~
6 ~~f)]~~ Findings and reasons in support of an amendment to an established urban growth
7 boundary shall demonstrate compliance with the seven factors of Goal 14 and
8 demonstrate that the following standards are met:

9 (i) Reasons justify why the state policy embodied in the applicable goals should not apply
10 (This factor can be satisfied by compliance with the seven factors of Goal 14);

11 (ii) Areas ~~[which]~~ **that** do not require a new exception cannot reasonably accommodate
12 the use;

13 (iii) The long-term environmental, economic, social and energy consequences resulting
14 from the use at the proposed site with measures designed to reduce adverse impacts are
15 not significantly more adverse than would typically result from the same proposal being
16 located in areas requiring a goal exception other than the proposed site; and

17 (iv) The proposed uses are compatible with other adjacent uses or will be so rendered
18 through measures designed to reduce adverse impacts.

19 (C) When a local government changes an established urban growth boundary applying
20 Goal 14 as amended April 28, 2005, a goal exception is not required unless the local
21 government seeks an exception to any of the requirements of Goal 14 or other applicable
22 goals;

23 **(D) For an exception to Goal 14 to allow urban development on rural lands, a local**
24 **government must follow the applicable requirements of OAR 660-014-0030 or 660-**
25 **014-0040, in conjunction with applicable requirements of this division;**

26 ~~[(d) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060;]~~

27 (e) Goal 16 "Estuarine Resources";

28 (f) Goal 17 "Coastal Shorelands"; and

29 (g) Goal 18 "Beaches and Dunes."

30 (2) The exceptions process is generally not applicable to those statewide goals ~~[which~~
31 ~~establish planning procedures and standards that do not prescribe or restrict certain uses~~
32 ~~of resource land , or limit the provision of certain public facilities and services, because~~
33 ~~these goals contain]~~ **that provide** general planning guidance or **that include** their own
34 procedures for resolving conflicts between competing uses. However, exceptions to these

1 goals, although not required, are possible and exceptions taken to these goals will be
2 reviewed when submitted by a local jurisdiction. These statewide goals are:

3 (a) Goal 5 "Natural Resources, **Scenic and Historic Areas, and Open Spaces**";

4 (b) Goal 6 "Air, Water, and Land Resources Quality";

5 (c) Goal 7 "**Areas Subject to** Natural [~~Disasters and~~] Hazards";

6 (d) Goal 8 "Recreational needs";

7 (e) Goal 9 "Economic **Development**[~~y of the State~~]";

8 (f) Goal 10 "Housing" except as provided for in OAR 660-008-0035, "Substantive
9 Standards for Taking a Goal 2, Part II, Exception Pursuant to ORS 197.303(3)";

10 (g) Goal 12 "Transportation" except as provided for by OAR 660-012-0070, "Exceptions
11 for Transportation Improvements on Rural Land";

12 (h) Goal 13 "Energy Conservation";

13 (i) Goal 15 "Willamette **River** Greenway" except as provided for in OAR 660-004-
14 0022(6); and

15 (j) Goal 19 "Ocean Resources."

16 (3) An exception to one goal or goal requirement does not [~~assure~~] **ensure** compliance
17 with any other applicable goals or goal requirements for the proposed uses at the
18 exception site. Therefore, an exception to exclude certain lands from the requirements of
19 one or more statewide goals or goal requirements does not exempt a local government
20 from the requirements of any other goal(s) for which an exception was not taken.

21 Stat. Auth.: ORS 197

22 Stats. Implemented: ORS 197.732

23 Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f.
24 & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 2-1987, f. & ef. 11-10-87; LCDC
25 3-1988(Temp), f. & cert. ef. 8-5-88; LCDC 6-1988, f. & cert. ef. 9-29-88; LCDD 3-2004,
26 f. & cert. ef. 5-7-04; LCDD 4-2005, f. & cert. ef. 6-28-05; LCDD 3-2008, f. & cert. ef. 4-
27 18-08

28 **660-004-0015**

29 **Inclusion as Part of the Plan**

30 (1) A local government approving a proposed exception shall adopt, as part of its
31 comprehensive plan, findings of fact and a statement of reasons [~~which~~]**that** demonstrate
32 that the standards for an exception have been met. The applicable standards are those in
33 **this division**, Goal 2, Part II(c), OAR 660-004-0020(2), and 660-004-0022, **except as**

1 **provided in OAR 660-004-0000(1)(a) and (b) and other rules referenced by that**
2 **rule.** The reasons and facts shall be supported by substantial evidence that the standard
3 has been met.

4 (2) A local government denying a proposed exception shall adopt findings of fact and a
5 statement of reasons [~~which~~] **that** demonstrate that the standards for an exception have
6 not been met. However, the findings need not be incorporated into the local
7 comprehensive plan.

8 Stat. Auth.: ORS 197

9 Stats. Implemented ORS 197.732

10 Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

11 **660-004-0018**

12 **Planning and Zoning for Exception Areas**

13 (1) Purpose. This rule explains the requirements for adoption of plan and zone
14 designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve
15 a jurisdiction from remaining goal requirements and do not authorize uses, densities,
16 public facilities and services, or activities other than those recognized or justified by the
17 applicable exception. Physically developed or irrevocably committed exceptions under
18 OAR 660-004-0025 and 660-004-0028 **and OAR 660-014-0030** are intended to
19 recognize and allow continuation of existing types of development in the exception area.
20 Adoption of plan and zoning provisions that would allow changes in existing types of
21 uses, densities, or services requires the application of the standards outlined in this rule.

22 (2) For "physically developed" and "irrevocably committed" exceptions to goals,
23 residential plan and zone designations shall authorize a single numeric minimum lot size
24 and all plan and zone designations shall limit uses, density, and public facilities and
25 services to those:

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

27 (b) That meet the following requirements:

28 (A) The rural uses, density, and public facilities and services will maintain the land as
29 "Rural Land" as defined by the goals, and are consistent with all other applicable Goal
30 requirements; [~~and~~]

31 (B) The rural uses, density, and public facilities and services will not commit adjacent or
32 nearby resource land to [~~nonresource use~~] **uses not allowed by the applicable goal** as
33 [~~defined~~] **described** in OAR 660-004-0028; and

34 (C) The rural uses, density, and public facilities and services are compatible with adjacent
35 or nearby resource uses;

1 (c) [~~For which the uses, density, and public facilities and services~~] **For uses in**
2 **unincorporated communities, the uses** are consistent with OAR 660-022-0030,
3 "Planning and Zoning of Unincorporated Communities", if **the county chooses to**
4 **designate the community under the applicable provisions of OAR 660, division 22;**
5 ~~or~~]

6 (d) [That are] **For** industrial development uses[,] and accessory uses subordinate to the
7 industrial development, **the industrial uses may occur** in buildings of any size and
8 type[;] provided the exception area was planned and zoned for industrial use on January
9 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and
10 197.714.

11 (3) Uses, density, and public facilities and services not meeting section (2) of this rule
12 may be approved **on rural land** only under provisions for a reasons exception as outlined
13 in section (4) of th[e]is rule and **applicable requirements of OAR 660-004-0020 through**
14 **660-004-0022, OAR 660-011-0060 with regard to sewer service on rural lands, OAR**
15 **660-012-0070 with regard to transportation improvements on rural land, or OAR**
16 **660-014-0030 or 0040 with regard to urban development on rural land.**

17 (4) "Reasons" Exceptions:

18 (a) When a local government takes an exception under the "Reasons" section of ORS
19 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone
20 designations must limit the uses, density, public facilities and services, and activities to
21 only those that are justified in the exception[;].

22 (b) When a local government changes the types or intensities of uses or public facilities
23 and services within an area approved as a "Reasons" exception, a new "Reasons"
24 exception is required[;].

25 (c) When a local government includes land within an unincorporated community for
26 which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-
27 004-0020 through 660-004-0022 was previously adopted, plan and zone designations
28 must limit the uses, density, public facilities and services, and activities to only those that
29 were justified in the exception or OAR 660-022-0030, whichever is more stringent.

30 Stat. Auth.: ORS 197

31 Stats. Implemented: ORS 197.732

32 Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1986, f. & ef. 3-20-86; LCDD 4-1998, f.
33 & cert. ef. 7-28-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 8-2005, f. & cert. ef. 12-
34 13-05; LCDD 7-2006, f. 10-13-06, cert. ef. 10-23-06

35 **660-004-0020**

36 **Goal 2, Part II(c), Exception Requirements**

1 (1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to
2 use resource lands for uses not allowed by the applicable Goal or to allow public facilities
3 or services not allowed by the applicable Goal, the justification shall be set forth in the
4 comprehensive plan as an exception. **As provided in OAR 660-004-0000(1), rules in**
5 **other divisions may also apply.**

6 (2) The four [~~factors~~]**standards** in Goal 2 Part II(c) required to be addressed when taking
7 an exception to a Goal are **described in subsections (a) through (d) of this subsection,**
8 **including general requirements applicable to each of the factors:**

9 (a) "Reasons justify why the state policy embodied in the applicable goals should not
10 apply": The exception shall set forth the facts and assumptions used as the basis for
11 determining that a state policy embodied in a goal should not apply to specific properties
12 or situations, including the amount of land for the use being planned and why the use
13 requires a location on resource land;

14 (b) "Areas which do not require a new exception cannot reasonably accommodate the
15 use". **The exception must meet the following requirements:**

16 (A) The exception shall indicate on a map or otherwise describe the location of possible
17 alternative areas considered for the use, which do not require a new exception. The area
18 for which the exception is taken shall be identified;

19 (B) To show why the particular site is justified, it is necessary to discuss why other areas
20 which do not require a new exception cannot reasonably accommodate the proposed use.
21 Economic factors can be considered along with other relevant factors in determining that
22 the use cannot reasonably be accommodated in other areas. [~~Under the alternative factor~~]
23 **Under** this test the following questions shall be addressed:

24 (i) Can the proposed use be reasonably accommodated on nonresource land that would
25 not require an exception, including increasing the density of uses on nonresource land? If
26 not, why not?

27 (ii) Can the proposed use be reasonably accommodated on resource land that is already
28 irrevocably committed to nonresource uses[;] not allowed by the applicable Goal,
29 including resource land in existing [~~rural centers~~]**unincorporated communities**, or by
30 increasing the density of uses on committed lands? If not, why not?

31 (iii) Can the proposed use be reasonably accommodated inside an urban growth
32 boundary? If not, why not?

33 (iv) Can the proposed use be reasonably accommodated without the provision of a
34 proposed public facility or service? If not, why not?

35 (C) Th[is]e "alternative areas" standard [~~can~~] **may** be met by a broad review of similar
36 types of areas rather than a review of specific alternative sites. Initially, a local

1 government adopting an exception need assess only whether those similar types of areas
2 in the vicinity could not reasonably accommodate the proposed use. Site specific
3 comparisons are not required of a local government taking an exception[,] unless another
4 party to the local proceeding [can] describes [why there are] specific sites that can more
5 reasonably accommodate the proposed use. A detailed evaluation of specific alternative
6 sites is thus not required unless such sites are specifically described, with facts to support
7 the assertion that the sites are more reasonable, by another party during the local
8 exceptions proceeding.

9 (c) “The long-term environmental, economic, social and energy consequences resulting
10 from the use at the proposed site with measures designed to reduce adverse impacts are
11 not significantly more adverse than would typically result from the same proposal being
12 located in [~~other~~] areas requiring a Goal exception[-] **other than the proposed site**”. The
13 exception shall describe: the characteristics of each alternative area[s] considered by the
14 jurisdiction [~~for~~]**in** which an exception might be taken, the typical advantages and
15 disadvantages of using the area for a use not allowed by the Goal, and the typical positive
16 and negative consequences resulting from the use at the proposed site with measures
17 designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is
18 not required unless such sites are specifically described with facts to support the assertion
19 that the sites have significantly fewer adverse impacts during the local exceptions
20 proceeding. The exception shall include the reasons why the consequences of the use at
21 the chosen site are not significantly more adverse than would typically result from the
22 same proposal being located in areas requiring a goal exception other than the proposed
23 site. Such reasons shall include but are not limited to[,] **a description of:** the facts used to
24 determine which resource land is least productive[;], the ability to sustain resource uses
25 near the proposed use[;], and the long-term economic impact on the general area caused
26 by irreversible removal of the land from the resource base. Other possible impacts **to be**
27 **addressed** include the effects of the proposed use on the water table, on the costs of
28 improving roads and on the costs to special service districts;

29 (d) "The proposed uses are compatible with other adjacent uses or will be so rendered
30 through measures designed to reduce adverse impacts[-]"[:]. The exception shall describe
31 how the proposed use will be rendered compatible with adjacent land uses. The exception
32 shall demonstrate that the proposed use is situated in such a manner as to be compatible
33 with surrounding natural resources and resource management or production practices.
34 "Compatible" is not intended as an absolute term meaning no interference or adverse
35 impacts of any type with adjacent uses.

36 (3) If the exception involves more than one area for which the reasons and circumstances
37 are the same, the areas may be considered as a group. Each of the areas shall be identified
38 on a map, or their location otherwise described, and keyed to the appropriate findings.

39 (4) For the expansion of an unincorporated community [~~defined~~] **described** under OAR
40 660-022-0010, [~~or for~~] **including** an urban unincorporated community pursuant to OAR
41 660-022-0040(2), [~~F~~]the **reasons** exception requirements **necessary to address**

1 **standards 2 through 4 of Goal 2, Part II, as described in** of subsections (2)(b), (c) and
2 (d) of this rule, are modified to also include the following:

3 (a) Prioritize land for expansion: First priority goes to exceptions lands in proximity to an
4 unincorporated community boundary. Second priority goes to land designated as
5 marginal land. Third priority goes to land designated in an acknowledged comprehensive
6 plan for agriculture or forestry, or both. Higher priority is given to land of lower
7 capability site class for agricultural land, or lower cubic foot site class for forest land;
8 **and**

9 (b) Land of lower priority described in subsection (a) of this section may be included if
10 land of higher priority is inadequate to accommodate the use for any one of the following
11 reasons:

12 (A) Specific types of identified land needs cannot be reasonably accommodated on higher
13 priority land; [ø€]

14 (B) Public facilities and services cannot reasonably be provided to the higher priority area
15 due to topographic or other physical constraints; or

16 (C) Maximum efficiency of land uses with the unincorporated community requires
17 inclusion of lower priority land in order to provide public facilities and services to higher
18 priority land.

19 Stat. Auth.: ORS 197

20 Stats. Implemented ORS 197.732

21 Hist.: LCDC 5-1982, f. & ef 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 8-1994, f.
22 & cert. ef. 12-5-94; LCDD 3-2004, f. & cert. ef. 5-7-04

23

24 **660-004-0022**

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

26 An exception [U]nder Goal 2, Part II(c) [eæ] **may** be taken for any use not allowed by
27 the applicable goal(s) **or for a use authorized by a statewide planning goal that**
28 **cannot comply with the approval standards for that type of use.**² The types of
29 reasons that may or may not be used to justify certain types of uses not allowed on
30 resource lands are set forth in the following sections of this rule. **Reasons that may**
31 **allow an exception to Goal 11 to provide sewer service to rural lands are described**
32 **in OAR 660-011-0060. Reasons that may allow transportation facilities and**
33 **improvements that do not meet the requirements of OAR 660-012-0065 are**
34 **provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed**
35 **to urban levels of development are provided in OAR 660-014-0030. Reasons that**

² Note, this wording was approved by the commission in 2006 but was inadvertently omitted by a subsequent DLCD error in filing rule amendments with the Secretary of State.

1
2 **are provided in OAR 660-014-0040.**

3 (1) For uses not specifically provided for in ~~[subsequent sections of this rule]~~ **this**
4 **division,** or in **OAR 660-011-0060,** OAR 660-012-0070, ~~[or]~~ **OAR 660-014-0030 or**
5 **OAR 660-014-0040** ~~[chapter 660, division 14],~~ the reasons shall justify why the state
6 policy embodied in the applicable goals should not apply. Such reasons include but are
7 not limited to the following:

8 (a) There is a demonstrated need for the proposed use or activity, based on one or more of
9 the requirements of Goals 3 to 19; and either

10 ~~[(b) **A**]~~ A resource upon which the proposed use or activity is dependent can be
11 reasonably obtained only at the proposed exception site and the use or activity requires a
12 location near the resource. An exception based on this subsection must include an
13 analysis of the market area to be served by the proposed use or activity. That analysis
14 must demonstrate that the proposed exception site is the only one within that market area
15 at which the resource depended upon can reasonably be obtained; or

16 ~~[(e) **B**]~~ The proposed use or activity has special features or qualities that necessitate its
17 location on or near the proposed exception site.

18 (2) Rural Residential Development: For rural residential development the reasons cannot
19 be based on market demand for housing~~[-]~~ except as provided for in this section of this
20 rule, assumed continuation of past urban and rural population distributions, or housing
21 types and cost characteristics. A county must show why, based on the economic analysis
22 in the plan, there are reasons for the type and density of housing planned ~~[which]~~ **that**
23 require this particular location on resource lands. A jurisdiction could justify an exception
24 to allow residential development on resource land outside an urban growth boundary by
25 determining that the rural location of the proposed residential development is necessary
26 to satisfy the market demand for housing generated by existing or planned rural
27 industrial, commercial, or other economic activity in the area.

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

31 (a) The use is significantly dependent upon a unique resource located on agricultural or
32 forest land. Examples of such resources and resource sites include geothermal wells,
33 mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;
34 ~~[or]~~

35 (b) The use cannot be located inside an urban growth boundary due to impacts that are
36 hazardous or incompatible in densely populated areas; or

1 (c) The use would have a significant comparative advantage due to its location (e.g., near
2 existing industrial activity, an energy facility, or products available from other rural
3 activities), which would benefit the county economy and cause only minimal loss of
4 productive resource lands. Reasons for such a decision should include a discussion of the
5 lost resource productivity and values in relation to the county's gain from the industrial
6 use, and the specific transportation and resource advantages [~~which~~] **that** support the
7 decision.

8 (4) Expansion of Unincorporated Communities: For the expansion of an Unincorporated
9 Community defined under OAR 660-022-0010(10)[;], **the requirements of subsections**
10 **(a) through (c) of this section apply:** ~~appropriate reasons and facts include but are not~~
11 ~~limited to the following:~~

12 (a) **appropriate reasons and facts may include findings that there is** [A] a
13 demonstrated need for additional land in the community to accommodate a specific rural
14 use based on Goals 3-19 and a demonstration that either:

15 (A) The use requires a location near a resource located on rural land; or

16 (B) The use has special features necessitating its location in an expanded area of an
17 existing unincorporated community, including:

18 (i) For industrial use, it would have a significant comparative advantage due to its
19 location [(i.e.,) **such as, for example, that it must be** near a rural energy facility, or near
20 products available from other activities only in the surrounding area[;], or **that** it is reliant
21 on an existing work force in an existing unincorporated community[)];

22 (ii) For residential use, the additional land is necessary to satisfy the need for additional
23 housing in the community generated by existing industrial, commercial, or other
24 economic activity in the surrounding area. The plan must include an economic analysis
25 showing why the type and density of planned housing cannot be accommodated in an
26 existing exception area or [UGB] **urban growth boundary**, and is most appropriate at
27 the particular proposed location. The reasons cannot be based on market demand for
28 housing, nor on a projected continuation of past rural population distributions.

29 (b) **The findings of** [N]need must be coordinated and consistent with the comprehensive
30 plan for other exception areas, unincorporated communities, and [UGBs] **urban growth**
31 **boundaries** in the area. **For purposes of this subsection, “[A]area” includes**
32 ~~[encompasses]~~ those communities, exception areas, and [UGBs which] **urban growth**
33 **boundaries that** may be affected by an expansion of a community boundary, taking into
34 account market, economic, and other relevant factors[;].

35 (c) Expansion **of the unincorporated community boundary** requires **a** demonstrated
36 ability to serve both the expanded area and any remaining infill development potential in
37 the community, at **the** time of development, with the level of facilities determined to be
38 appropriate for the existing unincorporated community.

1 (5) Expansion of Urban Unincorporated Communities: **In addition to the requirements**
2 **of section (4) of this rule, the** [E] expansion of an urban unincorporated community
3 defined under OAR 660-022-0010(9) shall comply with 660-022-0040.

4 (6) Willamette Greenway: Within an urban area designated on the approved Willamette
5 Greenway Boundary maps, the siting of uses [which] **that** are neither water-dependent
6 nor water-related within the setback line required by Section C.3.k of [the] [g] **Goal 15**
7 may be approved where reasons demonstrate the following:

8 (a) The use will not have a significant adverse effect on the greenway values of the site
9 under consideration or on adjacent land or water areas;

10 (b) The use will not significantly reduce the sites available for water-dependent or water-
11 related uses within the jurisdiction;

12 (c) The use will provide a significant public benefit; and

13 (d) The use is consistent with the [L] legislative findings and policy in ORS 390.314 and
14 the Willamette Greenway Plan approved by LCDC under ORS 390.322.

15 (7) Goal 16 [X] = Water-Dependent Development: To allow water-dependent industrial,
16 commercial, or recreational uses **that require an exception** in development and
17 conservation estuaries [~~which require an exception~~], an economic analysis must show that
18 there is a reasonable probability that the proposed use will locate in the planning area
19 during the planning period, considering the following:

20 (a) [~~Factors of~~] Goal 9 or, for recreational uses, [~~the factors of~~] **the Goal 8 Recreation**
21 **Planning provisions**;

22 (b) The generally predicted level of market demand for the proposed use;

23 (c) The siting and operational requirements of the proposed use including land needs, and
24 as applicable, moorage, water frontage, draft, or similar requirements; [~~and~~]

25 (d) Whether the site and surrounding area are able to provide for the siting and
26 operational requirements of the proposed use; **and**

27 (e) The economic analysis must be based on **the** Goal 9 element of the County
28 Comprehensive Plan and **must** consider and respond to all economic needs information
29 available or supplied to the jurisdiction. The scope of this analysis will depend on the
30 type of use proposed, the regional extent of the market and the ability of other areas to
31 provide for the proposed use.

32 (8) Goal 16 – Other Alterations or Uses: An exception to the requirement limiting dredge
33 and fill or other reductions or degradations of natural values to water-dependent uses or
34 to the natural and conservation management unit requirements limiting alterations and

1 uses is justified, where consistent with ORS Chapter **196** [541], in any of the [following]
2 circumstances **specified in subsections (a) through (e) of this section:**

3 (a) Dredging to obtain fill for maintenance of an existing functioning dike where an
4 analysis of alternatives demonstrates that other sources of fill material, including adjacent
5 upland soils or stockpiling of material from approved dredging projects, cannot
6 reasonably be utilized for the proposed project or that land access by necessary
7 construction machinery is not feasible;

8 (b) Dredging to maintain adequate depth to permit continuation of **the** present level of
9 navigation in the area to be dredged;

10 (c) Fill or other alteration for a new navigational structure where both the structure and
11 the alteration are shown to be necessary for the continued functioning of an existing
12 federally authorized navigation project such as a jetty or a channel;

13 (d) An exception to allow minor fill, dredging, or other minor alteration of a natural
14 management unit for a boat ramp or to allow piling and shoreline stabilization for a
15 public fishing pier;

16 (e) Dredge or fill or other alteration for expansion of an existing public non-water-
17 dependent use or a nonsubstantial fill for a private non-water-dependent use (as provided
18 for in ORS **196.825** [541.625]) where:

19 (A) A Countywide Economic Analysis based on the factors in Goal 9 demonstrates that
20 additional land is required to accommodate the proposed use; ~~and~~

21 (B) An analysis of the operational characteristics of the existing use and proposed
22 expansion demonstrates that the entire operation or the proposed expansion cannot be
23 reasonably relocated; and

24 (C) ~~That t~~**The** size and design of the proposed use and the extent of the proposed
25 activity are the minimum amount necessary to provide for the use.

26 (f) In each of the situations set forth in subsections (7)(a) to (e) of this rule, the exception
27 must demonstrate that **the** proposed use and alteration (including, where applicable,
28 disposal of dredged materials) will be carried out in a manner [~~which~~] **that** minimizes
29 adverse impacts upon the affected aquatic and shoreland areas and habitats.

30 (9) Goal 17 -- Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to
31 allow certain uses in Coastal Shoreland areas[?] **consistent with subsections (a) through**
32 **(e) of this section, where applicable:**

33 (a) **For purposes of this section,**[These] “Coastal Shoreland Areas” include:

1 (A) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic
2 resources and historic and archaeological sites;

3 (B) Shorelands in urban and urbanizable areas, in rural areas built upon or irrevocably
4 committed to non-resource use and **shorelands** in unincorporated communities pursuant
5 to OAR chapter 660, division 022 (Unincorporated Communities) that are suitable for
6 water-dependent uses;

7 (C) Designated dredged material disposal sites; **and**

8 (D) Designated mitigation sites.

9 (b) To allow a use ~~[which]~~ **that** is incompatible with Goal 17 requirements for coastal
10 shoreland areas listed in subsection (9)(a) of this rule, the exception must demonstrate:

11 (A) A need, based on ~~[the factors in]~~ Goal 9, for additional land to accommodate the
12 proposed use;

13 (B) Why the proposed use or activity needs to be located on the protected site,
14 considering the unique characteristics of the use or the site ~~[which]~~ **that** require use of the
15 protected site; and

16 (C) That the project cannot be reduced in size or redesigned to be consistent with
17 protection of the site and, where applicable, consistent with protection of natural values.

18 (c) Exceptions to convert a dredged material disposal site or mitigation site to another use
19 must also either not reduce the inventory of designated and protected sites in the affected
20 area below the level identified in the estuary plan or be replaced through designation and
21 protection of a site with comparable capacity in the same area[;].

22 (d) Uses ~~[which]~~ **that** would convert a portion of a major marsh, coastal headland,
23 significant wildlife habitat, exceptional aesthetic resource, or historic or archaeological
24 site must use as little of the site as possible[;] **and** be designed and located and, where
25 appropriate, buffered to protect natural values of the remainder of the site.

26 (e) Exceptions to designate and protect, for water-dependent uses, an amount of
27 shorelands less than **that amount** [is] required by Goal 17 Coastal Shoreland Uses
28 Requirement 2 must demonstrate ~~[compliance with the following]~~ **that**:

29 (A) Based on ~~[the factors of]~~ **the Recreation Planning requirements of** Goal[s] 8 and
30 **the requirements of Goal 9**, there is no need during the next 20-year period for the
31 amount of water-dependent shorelands required by Goal 17 Coastal Shoreland Uses
32 Requirement 2 for all cities and the county in the estuary. The Goal 8 and Goal 9 analyses
33 must be conducted for the entire estuary and its shorelands, and must consider the water-
34 dependent use needs of all local government jurisdictions along the estuary, including the

1 port authority, if any, and be consistent with the Goal 8 **Recreation Planning elements**
2 and Goal 9 elements of the comprehensive plans of those jurisdictions[.]; **and**

3 (B) There is a demonstrated need for additional land to accommodate the proposed
4 use(s), based on one or more of the requirements of Goals 3 to 18.

5 (10) Goal 18 -- Foredune Breaching: A foredune may be breached when the exception
6 demonstrates **that** an existing dwelling located on the foredune is experiencing sand
7 inundation and the grading or removal of sand is:

8 (a) Only to the grade of the dwelling;

9 (b) Limited to the immediate area in which the dwelling is located;

10 (c) Sand is retained in the dune system by placement on the beach in front of the
11 dwelling; and

12 (d) The provisions of Goal 18 Implementation Requirement 1 are met.

13 (11) Goal 18 -- Foredune Development: An exception may be taken to the foredune use
14 prohibition in Goal 18 "Beaches and Dunes", implementation requirement (2). Reasons
15 [~~which~~] **that** justify why this state policy embodied in Goal 18 should not apply shall
16 demonstrate [~~compliance with the following~~] **that**:

17 (a) The use will be adequately protected from any geologic hazards, wind erosion,
18 undercutting ocean flooding and storm waves, or **the use** is of minimal value; [~~and~~]

19 (b) The use is designed to minimize adverse environmental effects; **and**

20 (c) The [~~provisions~~] **exceptions requirements** of OAR 660-004-0020 [~~shall also be~~] **are**
21 met.

22 [Publications: Publications referenced are available from the agency.]

23 Stat. Auth.: ORS 197.040

24 Stats. Implemented: ORS 195.012, 197.040, 197.712, 197.717, and 197.732

25 Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f.

26 & ef. 3-21-84; LCDC 4-1985, f. & ef. 8-8-85; LCDC 8-1994, f. & cert. ef. 12-5-94;

27 LCDD 7-1999, f. & cert. ef. 8-20-99; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2006,

28 f. & cert. ef. 2-15-06; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 9-2006, f. &

29 cert. ef. 11-15-06

30 **660-004-0025**

31 **Exception Requirements for Land Physically Developed to Other Uses**

1 (1) A local government may adopt an exception to a goal when the land subject to the
2 exception is physically developed to the extent that it is no longer available for uses
3 allowed by the applicable goal. **Other rules may also apply, as described in OAR 660-**
4 **0040-0000(1).**

5 (2) Whether land has been physically developed with uses not allowed by an applicable
6 Goal[;] will depend on the situation at the site of the exception. The exact nature and
7 extent of the areas found to be physically developed shall be clearly set forth in the
8 justification for the exception. The specific area(s) must be shown on a map or otherwise
9 described and keyed to the appropriate findings of fact. The findings of fact shall identify
10 the extent and location of the existing physical development on the land and can include
11 information on structures, roads, sewer and water facilities, and utility facilities. Uses
12 allowed by the applicable goal(s) to which an exception is being taken shall not be used
13 to justify a physically developed exception.

14 Stat. Auth.: ORS 197

15 Stats. Implemented ORS 197.732

16 Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

17 **660-004-0028**

18 **Exception Requirements for Land Irrevocably Committed to Other Uses**

19 (1) A local government may adopt an exception to a goal when the land subject to the
20 exception is irrevocably committed to uses not allowed by the applicable goal because
21 existing adjacent uses and other relevant factors make uses allowed by the applicable
22 goal impracticable:

23 (a) A "committed exception" is an exception taken in accordance with ORS
24 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule[;], **except where**
25 **other rules apply as described in OAR 660-004-0000(1).**

26 (b) For the purposes of this rule, an "exception area" is that area of land for which a
27 "committed exception" is taken[;].

28 (c) An "applicable goal," as used in this section, is a statewide planning goal or goal
29 requirement that would apply to the exception area if an exception were not taken.

30 (2) Whether land is irrevocably committed depends on the relationship between the
31 exception area and the lands adjacent to it. The findings for a committed exception
32 therefore must address the following:

33 (a) The characteristics of the exception area;

34 (b) The characteristics of the adjacent lands;

35 (c) The relationship between the exception area and the lands adjacent to it; and

1 (d) The other relevant factors set forth in OAR 660-004-0028(6).

2 (3) Whether uses or activities allowed by an applicable goal are impracticable as that
3 term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be
4 determined through consideration of factors set forth in this rule, **except where other**
5 **rules apply as described in OAR 660-004-0000(1)**. Compliance with this rule shall
6 constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this
7 rule to permit irrevocably committed exceptions where justified so as to provide
8 flexibility in the application of broad resource protection goals. It shall not be required
9 that local governments demonstrate that every use allowed by the applicable goal is
10 "impossible." For exceptions to Goals 3 or 4, local governments are required to
11 demonstrate that only the following uses or activities are impracticable:

12 (a) Farm use as defined in ORS 215.203;

13 (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

14 (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

15 (4) A conclusion that an exception area is irrevocably committed shall be supported by
16 findings of fact [~~which~~] **that** address all applicable factors of section (6) of this rule and
17 by a statement of reasons explaining why the facts support the conclusion that uses
18 allowed by the applicable goal are impracticable in the exception area.

19 (5) Findings of fact and a statement of reasons that land subject to an exception is
20 irrevocably committed need not be prepared for each individual parcel in the exception
21 area. Lands [~~which~~] **that** are found to be irrevocably committed under this rule may
22 include physically developed lands.

23 (6) Findings of fact for a committed exception shall address the following factors:

24 (a) Existing adjacent uses;

25 (b) Existing public facilities and services (water and sewer lines, etc.); **and**

26 (c) Parcel size and ownership patterns of the exception area and adjacent lands:

27 (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this
28 rule shall include an analysis of how the existing development pattern came about and
29 whether findings against the Goals were made at the time of partitioning or subdivision.
30 Past land divisions made without application of the Goals do not in themselves
31 demonstrate irrevocable commitment of the exception area. Only if development (e.g.,
32 physical improvements such as roads and underground facilities) on the resulting parcels
33 or other factors **makes** unsuitable their resource use or the resource use of nearby lands
34 can the parcels be considered to be irrevocably committed. Resource and nonresource
35 parcels created **and uses approved** pursuant to the applicable goals shall not be used to

1 justify a committed exception. For example, the presence of several parcels created for
2 nonfarm dwellings or an intensive commercial agricultural operation under the provisions
3 of an exclusive farm use zone cannot be used to justify a committed exception for the
4 subject parcels or land adjoining those parcels[;].

5 (B) Existing parcel sizes and contiguous ownerships shall be considered together in
6 relation to the land's actual use. For example, several contiguous undeveloped parcels
7 (including parcels separated only by a road or highway) under one ownership shall be
8 considered as one farm or forest operation. The mere fact that small parcels exist does not
9 in itself constitute irrevocable commitment. Small parcels in separate ownerships are
10 more likely to be irrevocably committed if the parcels are developed, clustered in a large
11 group or clustered around a road designed to serve these parcels. Small parcels in
12 separate ownerships are not likely to be irrevocably committed if they stand alone amidst
13 larger farm or forest operations, or are buffered from such operations[-];

14 (d) Neighborhood and regional characteristics;

15 (e) Natural or man-made features or other impediments separating the exception area
16 from adjacent resource land. Such features or impediments include but are not limited to
17 roads, watercourses, utility lines, easements, or rights-of-way that effectively impede
18 practicable resource use of all or part of the exception area;

19 (f) Physical development according to OAR 660-004-0025; and

20 (g) Other relevant factors.

21 (7) The evidence submitted to support any committed exception shall, at a minimum,
22 include a current map[;] or aerial photograph [~~which~~] that shows the exception area and
23 adjoining lands, and any other means needed to convey information about the factors set
24 forth in this rule. For example, a local government may use tables, charts, summaries, or
25 narratives to supplement the maps or photos. The applicable factors set forth in section
26 (6) of this rule shall be shown on the map or aerial photograph.

27 ~~[(8) The requirement for a map or aerial photograph in section (7) of this rule only~~
28 ~~applies to the following committed exceptions:~~

29 ~~(a) Those adopted or amended as required by a Continuance Order dated after the~~
30 ~~effective date of section (7) of this rule; and~~

31 ~~(b) Those adopted or amended after the effective date of section (7) of this rule by a~~
32 ~~jurisdiction with an acknowledged comprehensive plan and land use regulations.]~~

33 Stat. Auth.: ORS 183 & ORS 197

34 Stats. Implemented: ORS 197.732 & ORS 197.736

35 Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 5-1985, f.
36 & ef. 11-15-85; LCDC 4-1996, f. & cert. ef. 12-23-96

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660-004-0030
Notice and Adoption of an Exception

(1) Goal 2 requires that each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(2) A planning exception takes effect when the comprehensive plan or plan amendment is adopted by the city or county governing body. Adopted exceptions will be reviewed by the Commission when the comprehensive plan is reviewed for compliance with the goals **through the acknowledgment or periodic review processes under OAR 660, divisions 3 or 25**, and **by LUBA** when a plan amendment is reviewed as a post-acknowledgment plan amendment pursuant to OAR chapter 660, division 18.

Stat. Auth.: ORS 197
Stats. Implemented ORS 197.610 - ORS 197.625, ORS 197.628 - ORS 197.646 & ORS 197.732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

660-004-0035
Appeal of an Exception

(1) Prior to acknowledgment, an exception, or the failure to take a required exception, may be appealed to the [~~Land Use Board of Appeals~~] **LUBA**, pursuant to ORS 197.830, or to the Commission as an objection to the local government's request for acknowledgment, pursuant to ORS 197.251 and OAR 660-003-0000.

(2) After acknowledgment, an exception taken as part of a plan amendment, or the failure to take a required exception when amending a plan, may be appealed to [~~the Board~~] **LUBA**, pursuant to ORS 197.620 and OAR chapter 660, division 18.

(3) After acknowledgment, an exception taken as part of a periodic review work task submitted under OAR 660-025-0130, or failure to take a required exception when amending a plan **under periodic review**, may be appealed to the Commission pursuant to ORS 197.633 and OAR 660-025-0150 and 0160.

Stat. Auth.: ORS 197
Stats. Implemented ORS 197.610 - 197.625, 197.732 & 197.830
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 3-2004, f. & cert. ef. 5-7-04

1 **660-004-0040**

2 **Application of Goal 14 to Rural Residential Areas**

3 (1) The purpose of this rule is to specify how Statewide Planning Goal 14 (*Urbanization*)
4 applies to rural lands in acknowledged exception areas planned for residential uses.

5 (2)(a) This rule applies to lands that are not within an urban growth boundary, that are
6 planned and zoned primarily for residential uses, and for which an exception to Statewide
7 Planning Goal 3 (*Agricultural Lands*), Goal 4 (*Forest Lands*), or both has been taken.
8 Such lands are referred to in this rule as “rural residential areas”.

9 (b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the
10 development or use of one single-family home on such lot or parcel, where the
11 application for partition or subdivision was filed with the local government and deemed
12 to be complete in accordance with ORS 215.427(3) before **October 4, 2000**, the effective
13 date of Sections (1) to (8) of this rule.

14 (c) This rule does not apply to types of land listed in (A) through (H) of this subsection:

15 (A) Land inside an acknowledged urban growth boundary;

16 (B) Land inside an acknowledged unincorporated community boundary established
17 pursuant to OAR chapter 660, division 022;

18 (C) Land in an acknowledged urban reserve area established pursuant to OAR chapter
19 660, divisions ~~[0]21~~ **or 27**;

20 (D) Land in an acknowledged destination resort established pursuant to applicable land
21 use statutes and goals;

22 (E) Resource land, as defined in OAR 660-004-0005(2);

23 (F) Nonresource land, as defined in OAR 660-004-0005(3);

24 (G) Marginal land, as defined in ORS 197.247, 1991 Edition; **or**

25 (H) Land planned and zoned primarily for rural industrial, commercial, or public use.

26 (3)(a) This rule [~~shall take effect on the effective date of an amendment to Goal 14 to~~
27 ~~provide for development of all lawfully created lots and parcels created in rural~~
28 ~~residential areas prior to the effective date of the amendment to Goal 14]~~ **took effect on**
29 **October 4, 2000**.

30 (b) Some rural residential areas have been reviewed for compliance with Goal 14 and
31 acknowledged to comply with that goal by the department or commission in a periodic
32 review, acknowledgment, or post-acknowledgment plan amendment proceeding that

1 occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v.
2 LCDC, 301 Or 447 (Curry County), and before [~~the effective date of this rule,~~] **October**
3 **4, 2000**. Nothing in this rule shall be construed to require a local government to amend its
4 acknowledged comprehensive plan or land use regulations for those rural residential
5 areas already acknowledged to comply with Goal 14 in such a proceeding. However, if
6 such a local government later amends its plan's provisions or land use regulations that
7 apply to any rural residential area, it shall do so in accordance with this rule.

8 (4) The rural residential areas described in Subsection (2)(a) of this rule are "rural lands".
9 Division and development of such lands are subject to Statewide Planning Goal 14
10 (Urbanization), which prohibits urban use of rural lands.

11 (5)(a) A rural residential zone [~~currently~~] in effect **on October 4, 2000** shall be deemed
12 to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at
13 least two acres, **except as required by section (7) of this rule.**

14 (b) A rural residential zone does not comply with Goal 14 if that zone allows the creation
15 of any new lots or parcels smaller than two acres. For such a zone, a local government
16 must either amend the zone's minimum lot and parcel size provisions to require a
17 minimum of at least two acres or take an exception to Goal 14. Until a local government
18 amends its land use regulations to comply with this subsection, any new lot or parcel
19 created in such a zone must have an area of at least two acres.

20 (c) For purposes of this section, "rural residential zone currently in effect" means a zone
21 applied to a rural residential area[;] **that was** in effect on [~~the effective date of this rule,~~]
22 **October 4, 2000**, and acknowledged to comply with the statewide planning goals.

23 (6) After [~~the effective date of this rule~~] **October 4, 2000**, a local government's
24 requirements for minimum lot or parcel sizes in rural residential areas shall not be
25 amended to allow a smaller minimum for any individual lot or parcel without taking an
26 exception to Goal 14 pursuant to OAR 660, division 14, **and applicable requirements of**
27 **this division.**

28 (7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential
29 area shall be considered an urban use. Such a lot or parcel may be created only if an
30 exception to Goal 14 is taken. This subsection shall not be construed to imply that
31 creation of new lots or parcels two acres or larger always complies with Goal 14. The
32 question of whether the creation of such lots or parcels complies with Goal 14 depends
33 upon compliance with all provisions of this rule.

34 (b) Each local government must specify a minimum area for any new lot or parcel that is
35 to be created in a rural residential area. For the purposes of this rule, that minimum area
36 shall be referred to as the minimum lot size.

- 1 (c) If, on [~~the effective date of this rule~~] **October 4, 2000**, a local government's land use
2 regulations specify a minimum lot size of two acres or more, the area of any new lot or
3 parcel shall equal or exceed [~~that~~] **the** minimum lot size [~~which~~] **that** is already in effect.
- 4 (d) If, on [~~the effective date of this rule~~] **October 4, 2000**, a local government's land use
5 regulations specify a minimum lot size smaller than two acres, the area of any new lot or
6 parcel created shall equal or exceed two acres.
- 7 (e) A local government may authorize a planned unit development (PUD), specify the
8 size of lots or parcels by averaging density across a parent parcel, or allow clustering of
9 new dwellings in a rural residential area only if all conditions set forth in paragraphs
10 (7)(e)(A) through (7)(e)(H) are met:
- 11 (A) The number of new dwelling units to be clustered or developed as a PUD does not
12 exceed 10[-];
- 13 (B) The number of new lots or parcels to be created does not exceed 10[-];
- 14 (C) None of the new lots or parcels will be smaller than two acres[-];
- 15 (D) The development is not to be served by a new community sewer system[-];
- 16 (E) The development is not to be served by any new extension of a sewer system from
17 within an urban growth boundary or from within an unincorporated community[-];
- 18 (F) The overall density of the development will not exceed one dwelling for each unit of
19 acreage specified in the local government's land use regulations on the effective date of
20 this rule as the minimum lot size for the area[-];
- 21 (G) Any group or cluster of two or more dwelling units will not force a significant change
22 in accepted farm or forest practices on nearby lands devoted to farm or forest use and will
23 not significantly increase the cost of accepted farm or forest practices there[-]; **and**
- 24 (H) For any open space or common area provided as a part of the cluster or planned unit
25 development under this subsection, the owner shall submit proof of nonrevocable deed
26 restrictions recorded in the deed records. The deed restrictions shall preclude all future
27 rights to construct a dwelling on the lot, parcel, or tract designated as open space or
28 common area for as long as the lot, parcel, or tract remains outside an urban growth
29 boundary.
- 30 (f) Except as provided in subsection (e) of this section, a local government shall not allow
31 more than one permanent single-family dwelling to be placed on a lot or parcel in a rural
32 residential area. Where a medical hardship creates a need for a second household to
33 reside temporarily on a lot or parcel where one dwelling already exists, a local
34 government may authorize the temporary placement of a manufactured dwelling or
35 recreational vehicle.

1 (g) In rural residential areas, the establishment of a new mobile home park or
2 manufactured dwelling park as defined in ORS 446.003(23) and (30) shall be considered
3 an urban use if the density of manufactured dwellings in the park exceeds the density for
4 residential development set by this rule's requirements for minimum lot and parcel sizes.
5 Such a park may be established only if an exception to Goal 14 is taken.

6 (h) A local government may allow the creation of a new parcel or parcels smaller than a
7 minimum lot size required under subsections (a) through (d) of this section without an
8 exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of
9 this subsection exist:

10 (A) The parcel to be divided has two or more permanent habitable dwellings on it;

11 (B) The permanent habitable dwellings on the parcel to be divided were established there
12 before the effective date of this rule;

13 (C) Each new parcel created by the partition would have at least one of those permanent
14 habitable dwellings on it; and

15 (D) The partition would not create any vacant parcels on which a new dwelling could be
16 established.

17 (E) For purposes of this rule, "habitable dwelling" means a dwelling that meets the
18 criteria set forth in ORS 215.283(1)(p)(A)-(D).

19 (i) For rural residential areas designated after the effective date of this rule, the affected
20 county shall either:

21 (A) Require that any new lot or parcel have an area of at least ten acres, or

22 (B) Establish a minimum size of at least two acres for new lots or parcels in accordance
23 with the applicable requirements for an exception to Goal 14 in OAR chapter 660,
24 division 14. The minimum lot size adopted by the county shall be consistent with OAR
25 660-004-0018, "Planning and Zoning for Exception Areas."

26 (8)(a) Notwithstanding the provisions of section (7) of this rule, divisions of rural
27 residential land within one mile of an urban growth boundary for any city or urban area
28 listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions
29 of subsections (8)(b) and (8)(c).

30 (A) Ashland;

31 (B) Central Point;

32 (C) Medford;

1 (D) Newberg;

2 (E) Sandy.

3 (b) **Any division of rural residential land in an urban reserve area shall be done in**
4 **accordance with the acknowledged urban reserve ordinance or acknowledged**
5 **regional growth plan o**[H]f a city or urban area listed in subsection (8)(a) **that**:

6 (A) has an urban reserve area that contains at least a twenty-year reserve of land and that
7 has been acknowledged to comply with OAR chapter 660, division 21; or

8 (B) is part of a regional growth plan that contains at least a twenty-year regional urban
9 reserve of land beyond the land contained within the collective urban growth boundaries
10 of the participating cities, and that has been acknowledged through the process prescribed
11 for Regional Problem Solving in ORS 197.652 through 197.658~~[- then any division of~~
12 ~~rural residential land in that reserve area shall be done in accordance with the~~
13 ~~acknowledged urban reserve ordinances or acknowledged regional growth plan].~~

14 (c) Notwithstanding the provisions of section (7) of this rule, if any part of a lot or parcel
15 to be divided is less than one mile from an urban growth boundary for a city or urban area
16 listed in subsection (8)(a), and if that city or urban area does not have an urban reserve
17 area acknowledged to comply with OAR chapter 660, division 21, or is not part of an
18 acknowledged regional growth plan as described in subsection (b), paragraph (B), of this
19 section, the minimum area of any new lot or parcel there shall be ten acres.

20 (d) Notwithstanding the provisions of section (7), if Metro has an urban reserve area that
21 contains at least a twenty-year reserve of land and that has been acknowledged to comply
22 with OAR chapter 660, division 21 or division 27, any land division of rural residential
23 land in that urban reserve shall be done in accordance with the applicable acknowledged
24 comprehensive plan and zoning provisions adopted to implement the urban reserve.

25 (e) Notwithstanding the provisions of section (7), if any part of a lot or parcel to be
26 divided is less than one mile from the urban growth boundary for the Portland
27 metropolitan area and is in a rural residential area, and if Metro has not designated an
28 urban reserve that contains at least a twenty-year reserve of land acknowledged to
29 comply with either OAR chapter 660, division 21 or division 27, the minimum area of
30 any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies
31 within the area governed by the Columbia River Gorge National Scenic Area Act, the
32 division shall be done in accordance with the provisions of that act.

33 (f) Notwithstanding the provisions of section (7) and subsection (8)(e), a local
34 government may establish minimum area requirements smaller than twenty acres for
35 some of the lands described in subsection (8)(e). The selection of those lands and the
36 minimum established for them shall be based on an analysis of the likelihood that such
37 lands will urbanize, of their current parcel and lot sizes, and of the capacity of local
38 governments to serve such lands efficiently with urban services at densities of at least 10

1 units per net developable acre. In no case shall the minimum parcel area requirement set
2 for such lands be smaller than 10 acres.

3 (g) A local government may allow the creation of a new parcel, or parcels, smaller than a
4 minimum lot size required under subsections (a) through (f) of this section without an
5 exception to Goal 14 only if the conditions described in paragraphs (A) through (G) of
6 this subsection exist:

7 (A) The parcel to be divided has two or more permanent, habitable dwellings on it;

8 (B) The permanent, habitable dwellings on the parcel to be divided were established there
9 before ~~[the effective date of OAR 660-004-0040]~~ **October 4, 2000**;

10 (C) Each new parcel created by the partition would have at least one of those permanent,
11 habitable dwellings on it;

12 (D) The partition would not create any vacant parcels on which new dwellings could be
13 established; and

14 (E) The resulting parcels shall be sized to promote efficient future urban development by
15 ensuring that one of the parcels is the minimum size necessary to accommodate the
16 residential use of the parcel.

17 (F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria
18 set forth in ORS 215.283(1)(~~s~~**p**)(A)-(D); and

19 (G) The parcel is not in an area designated as rural reserve under OAR chapter 660,
20 division 27.

21 (9) The development, placement, or use of one single-family dwelling on a lot or parcel
22 lawfully created in an acknowledged rural residential area is allowed under this rule and
23 Goal 14, subject to all other applicable laws.

24 Stat. Auth.: ORS 197.040, 195.141

25 Stats. Implemented: ORS 197.175 & 197.732, 195.145, 195.141

26 Hist.: LCDD 7-2000, f. 6-30-00, cert. ef. 10-4-00; LCDD 3-2001, f. & cert. ef. 4-3-01;
27 LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2008, f. & cert. ef. 2-13-08

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 6

GOAL 4 FOREST LANDS

1 **660-006-0000**

2 **Purpose**

3 (1) The purpose of [~~the Forest Lands Goal~~]**this division** is to conserve forest lands **as**
4 **defined by Goal 4** and to [~~carry out the legislative policy of~~]**define standards for**
5 **compliance with implementing statutes at ORS 215.700 through 215.799.**

6 (2) To accomplish the purpose of conserving forest lands, the governing body shall:

7 (a) Designate forest lands on the comprehensive plan map as forest lands consistent with
8 Goal 4 and OAR Chapter 660, Division 6;

9 (b) Zone forest lands for uses allowed pursuant to OAR Chapter 660, Division 6 on
10 designated forest lands; and

11 (c) Adopt plan policies consistent with OAR Chapter 660, Division 6.

12 (3) This rule provides for a balance between the application of Goal 3 "Agricultural
13 Lands" and Goal 4 "Forest Lands," because of the extent of lands that may be designated
14 as either agricultural or forest land.

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

16 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS
17 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL
18 Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994,
19 f. & cert. ef. 3-1-94

20 **660-006-0003**

21 **Applicability**

22 (1) OAR Chapter 660, Division 6 applies to all forest lands as defined by Goal 4.

23 (2) Governing bodies shall amend their comprehensive plan and land use regulations to
24 comply with requirements of OAR 660-006-0035(2) and 660-006-0040 by September 6,
25 1994.

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

27 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS
28 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

1 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC
2 1-1994, f. & cert. ef. 3-1-94

3 **660-006-0004**
4 **Notice of Decision in Forest Zones**

5 Governing bodies shall provide the following types of notice:

6 (1) Notice of all applications for dwellings and land divisions in forest and
7 agriculture/forest zones shall be provided to the Department of Land Conservation and
8 Development at the Salem office. Notice shall be in accordance with the governing
9 body's acknowledged comprehensive plan and land use regulations, and shall be mailed
10 at least ten calendar days prior to the hearing or decision being made.

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

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

14 Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245
15 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS
16 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL
17 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

18 **660-006-0005**
19 **Definitions**

20 For the purpose of this division, the following definitions apply:

21 (1) Definitions contained in ORS 197.015 and the Statewide Planning Goals.

22 (2) "Cubic Foot Per Acre" means the average annual increase in cubic foot volume of
23 wood fiber per acre for fully stocked stands at the culmination of mean annual increment
24 as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey.
25 ~~[information, USDA Forest Service plant association guides, Oregon Department of~~
26 ~~Revenue western Oregon site class maps, or other information determined by the State~~
27 ~~Forester to be of comparable quality. Where such data are not available or are shown to~~
28 ~~be inaccurate, an alternative method for determining productivity may be used. An~~
29 ~~alternative method must provide equivalent data as explained in the Oregon Department~~
30 ~~of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated~~
31 ~~April 1998" and be approved by the Oregon Department of Forestry.]~~

32 (3) "Cubic Foot Per Tract Per Year" means the average annual increase in cubic foot
33 volume of wood fiber per tract for fully stocked stands at the culmination of mean annual
34 increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil
35 survey. ~~[information, USDA Forest Service plant association guides, Oregon Department~~

1 of Revenue western Oregon site class maps, or other information determined by the State
2 Forester to be of comparable quality. Where such data are not available or are shown to
3 be inaccurate, an alternative method for determining productivity may be used. An
4 alternative method must provide equivalent data as explained in the Oregon Department
5 of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated
6 April 1998" and be approved by the Oregon Department of Forestry.]

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

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

15 (6) "Forest Operation" means any commercial activity relating to the growing or
16 harvesting or any forest tree species as defined in ORS 527.620(6).

17 (7) "Governing Body" means a city council, county board of commissioners, or county
18 court or its designate, including planning director, hearings officer, planning commission
19 or as provided by Oregon law.

20 (8) "Western Oregon" means that portion of the state lying west of a line beginning at the
21 intersection of the northern boundary of the State of Oregon and the western boundary of
22 Wasco County, then south along the western boundaries of the counties of Wasco,
23 Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

24 (9) "Lot" shall have the meaning set forth in ORS 92.010 and "parcel" shall have the
25 meaning set forth ORS 215.010.

26 Stat. Auth.: ORS 197.040, 197.230 & 197.245

27 Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720,
28 215.740, 215.750, 215.780 & Ch. 792, 1993 OL

29 Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992,
30 f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef.
31 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 3-2008, f. & cert. ef. 4-18-08

32 **660-006-0010**

33 **[Inventory] Identifying Forest Land**

34 (1) Governing bodies shall ~~include an inventory of~~ **identify** "forest lands" as defined by
35 Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands, ~~or~~
36 lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken,
37 **and lands inside urban growth boundaries** are not required to be ~~inventoried under~~

1 ~~this rule. Outside urban growth boundaries, this inventory]~~ **planned and zoned as forest**
2 **lands. Lands suitable for commercial forest uses** shall [~~include~~] **be identified using** a
3 mapping of average annual wood production capability by cubic foot per acre (cf/ac) **as**
4 **reported by the USDA Natural Resources Conservation Service.**

5 (2) [~~If site information is not available then an equivalent method of determining forest~~
6 ~~land suitability must be used. Notwithstanding this rule, governing bodies are not~~
7 ~~required to reinventory forest lands if such an inventory was acknowledged previously by~~
8 ~~the Land Conservation and Development Commission.] **Where NRCS data are not**
9 **available or are shown to be inaccurate, other site productivity data may be used to**
10 **identify forest land, in the following order of priority:**~~

11 **(a) Oregon Department of Revenue western Oregon site class maps;**

12 **(b) USDA Forest Service plant association guides; and**

13 **(c) Other information determined by the State Forester to be of comparable quality.**

14 **(d) Where data of comparable quality are not available or are shown to be**
15 **inaccurate, an alternative method for determining productivity may be used as**
16 **described in the Oregon Department of Forestry's Technical Bulletin entitled "Land**
17 **Use Planning Notes Number 3 dated April 2010."**

18 Stat. Auth.: ORS 197.040

19 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS
20 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL
21 Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDD 3-2008,
22 f. & cert. ef. 4-18-08

23 **660-006-0015**

24 **Plan Designation Outside an Urban Growth Boundary**

25 (1) Lands inventoried as forest lands must be designated in the comprehensive plan and
26 implemented with a zone [~~which~~] **that** conserves forest lands consistent with OAR
27 chapter 660, division 6, unless an exception to Goal 4 is taken pursuant to ORS 197.732,
28 the forest lands are marginal lands pursuant to ORS 197.247 (1991 Edition), the land is
29 zoned with an Exclusive Farm Use Zone pursuant to ORS Chapter 215 provided the zone
30 qualifies for special assessment under ORS 308.370, or is an "abandoned mill site" zoned
31 for industrial use as provided for by Or Laws 2003, Ch 688, Section 3. In areas of
32 intermingled agricultural and forest lands, an agricultural/forest lands designation may
33 also be appropriate if it provides protection for forest lands consistent with the
34 requirements of OAR chapter 660, division 6. The plan shall describe the zoning
35 designation(s) applied to forest lands and its purpose and shall contain criteria [~~which~~]
36 **that** clearly indicate where the zone(s) will be applied.

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

5 Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245
6 Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720,
7 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
8 Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992,
9 f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 3-2004, f. & cert. ef.
10 5-7-04

11 **660-006-0020**
12 **Plan Designation Within an Urban Growth Boundary**

13 Goal 4 does not apply within urban growth boundaries and therefore, the designation of
14 forest lands is not required.

15 Stat. Auth.: ORS 183 & ORS 197
16 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245 & Ch. 792, 1993 OL
17 Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90

18 **660-006-0025**
19 **Uses Authorized in Forest Zones**

20 (1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting
21 and applying comprehensive plan provisions and zoning regulations consistent with the
22 goals and this rule. In addition to forest practices and operations and uses auxiliary to
23 forest practices, as set forth in ORS 527.722, the Commission has determined that five
24 general types of uses, as set forth in the goal, may be allowed in the forest environment,
25 subject to the standards in the goal and in this rule. These general types of uses are:

- 26 (a) Uses related to and in support of forest operations;
- 27 (b) Uses to conserve soil, air and water quality and to provide for fish and wildlife
28 resources, agriculture and recreational opportunities appropriate in a forest environment;
- 29 (c) Locationally dependent uses, such as communication towers, mineral and aggregate
30 resources, etc.;
- 31 (d) Dwellings authorized by ORS [~~215.720~~]**215.705** to [~~215.750~~]**215.755**; and
- 32 (e) Other dwellings under prescribed conditions.

33 (2) The following uses pursuant to the Forest Practices Act (ORS Chapter 527) and Goal
34 4 shall be allowed in forest zones:

- 1 (a) Forest operations or forest practices including, but not limited to, reforestation of
2 forest land, road construction and maintenance, harvesting of a forest tree species,
3 application of chemicals, and disposal of slash;
- 4 (b) Temporary on-site structures [~~which~~] **that** are auxiliary to and used during the term of
5 a particular forest operation;
- 6 (c) Physical alterations to the land auxiliary to forest practices including, but not limited
7 to, those made for purposes of exploration, mining, commercial gravel extraction and
8 processing, landfills, dams, reservoirs, road construction or recreational facilities; and
- 9 (d) For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a
10 structure or land [~~which~~] **that** provides help or is directly associated with the conduct of a
11 particular forest practice. An auxiliary structure is located on site, temporary in nature,
12 and is not designed to remain for the forest's entire growth cycle from planting to
13 harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- 14 (3) The following uses may be allowed outright on forest lands:
- 15 (a) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries
16 resources;
- 17 (b) Farm use as defined in ORS 215.203;
- 18 (c) Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment
19 (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals),
20 or equipment [~~which~~] **that** provides service hookups, including water service hookups;
- 21 (d) Temporary portable facility for the primary processing of forest products;
- 22 (e) Exploration for mineral and aggregate resources as defined in ORS Chapter 517;
- 23 (f) Private hunting and fishing operations without any lodging accommodations;
- 24 (g) Towers and fire stations for forest fire protection;
- 25 (h) Widening of roads within existing rights-of-way in conformance with the
26 transportation element of acknowledged comprehensive plans and public road and
27 highway projects as described in ORS 215.213(1)[~~(m) through (p)~~] and 215.283(1)[~~(k)~~
28 ~~through (n)~~];
- 29 (i) Water intake facilities, canals and distribution lines for farm irrigation and ponds;
- 30 (j) Caretaker residences for public parks and public fish hatcheries;
- 31 (k) Uninhabitable structures accessory to fish and wildlife enhancement;

- 1 (l) Temporary forest labor camps;
- 2 (m) Exploration for and production of geothermal, gas, oil, and other associated
3 hydrocarbons, including the placement and operation of compressors, separators and
4 other customary production equipment for an individual well adjacent to the well head;
- 5 (n) Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.465 and
6 Goal 8;
- 7 (o) Disposal site for solid waste that has been ordered established by the Oregon
8 Environmental Quality Commission under ORS 459.049, together with the equipment,
9 facilities or buildings necessary for its operation; ~~and~~
- 10 (p) Alteration, restoration or replacement of a lawfully established dwelling that:
- 11 (A) Has intact exterior walls and roof structures;
- 12 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities
13 connected to a sanitary waste disposal system;
- 14 (C) Has interior wiring for interior lights;
- 15 (D) Has a heating system; and
- 16 (E) In the case of replacement, is removed, demolished or converted to an allowable
17 nonresidential use within three months of the completion of the replacement dwelling[-];
18 **and**
- 19 (q) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer
20 than 3,000 persons that is not anticipated to continue for more than 120 hours in any
21 three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject
22 to review under this division.
- 23 (4) The following uses may be allowed on forest lands subject to the review standards in
24 section (5) of this rule:
- 25 (a) Permanent facility for the primary processing of forest products;
- 26 (b) Permanent logging equipment repair and storage;
- 27 (c) Log scaling and weigh stations;
- 28 (d) Disposal site for solid waste approved by the governing body of a city or county or
29 both and for which the Oregon Department of Environmental Quality has granted a
30 permit under ORS 459.245, together with equipment, facilities or buildings necessary for
31 its operation;

1 (e)(A) Private parks and campgrounds. Campgrounds in private parks shall only be those
2 allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir,
3 campgrounds shall not be allowed within three miles of an urban growth boundary unless
4 an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 004.
5 A campground is an area devoted to overnight temporary use for vacation, recreational or
6 emergency purposes, but not for residential purposes and is established on a site or is
7 contiguous to lands with a park or other outdoor natural amenity that is accessible for
8 recreational use by the occupants of the campground. A campground shall be designed
9 and integrated into the rural agricultural and forest environment in a manner that protects
10 the natural amenities of the site and provides buffers of existing native trees and
11 vegetation or other natural features between campsites. Campsites may be occupied by a
12 tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-
13 ups shall not be provided to individual camp sites. Campgrounds authorized by this rule
14 shall not include intensively developed recreational uses such as swimming pools, tennis
15 courts, retail stores or gas stations. Overnight temporary use in the same campground by
16 a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6
17 month period.

18 (B) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle.
19 Separate sewer, water or electric service hook-ups shall not be provided to individual
20 camp sites except that electrical service may be provided to yurts allowed for by
21 paragraph (4)(e)(C) of this rule.

22 (C) Subject to the approval of the county governing body or its designee, a private
23 campground may provide yurts for overnight camping. No more than one-third or a
24 maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be
25 located on the ground or on a wood floor with no permanent foundation. Upon request of
26 a county governing body, the Commission may provide by rule for an increase in the
27 number of yurts allowed on all or a portion of the campgrounds in a county if the
28 Commission determines that the increase will comply with the standards described in
29 ORS 215.296(1). As used in this rule, "yurt" means a round, domed shelter of cloth or
30 canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal
31 cooking appliance.

32 (f) Public parks including only those uses specified under OAR 660-034-0035 or 660-
33 034-0040, whichever is applicable[-];

34 (g) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS
35 Chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (e.g.,
36 compressors, separators and storage serving multiple wells), and mining and processing
37 of aggregate and mineral resources as defined in ORS Chapter 517;

38 (h) Television, microwave and radio communication facilities and transmission towers;

39 (i) Fire stations for rural fire protection;

- 1 (j) **Commercial** [U]utility facilities for the purpose of generating power. A power
2 generation facility shall not preclude more than ten acres from use as a commercial forest
3 operation unless an exception is taken pursuant to OAR chapter 660, division 004;
- 4 (k) Aids to navigation and aviation;
- 5 (l) Water intake facilities, related treatment facilities, pumping stations, and distribution
6 lines;
- 7 (m) Reservoirs and water impoundments;
- 8 (n) Firearms training facility;
- 9 (o) Cemeteries;
- 10 (p) Private seasonal accommodations for fee hunting operations may be allowed subject
11 to section (5) of this rule, OAR 660-006-0029, and 660-006-0035 and the following
12 requirements:
- 13 (A) Accommodations are limited to no more than 15 guest rooms as that term is defined
14 in the Oregon Structural Special[ity] Code;
- 15 (B) Only minor incidental and accessory retail sales are permitted;
- 16 (C) Accommodations are occupied temporarily for the purpose of hunting during game
17 bird and big game hunting seasons authorized by the Oregon Fish and Wildlife
18 Commission; and
- 19 (D) A governing body may impose other appropriate conditions.
- 20 (q) New electric transmission lines with right of way widths of up to 100 feet as specified
21 in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic
22 cable) with rights-of-way 50 feet or less in width;
- 23 (r) Temporary asphalt and concrete batch plants as accessory uses to specific highway
24 projects;
- 25 (s) Home occupations as defined in ORS 215.448;
- 26 (t) A manufactured dwelling or recreational vehicle, or the temporary residential use of
27 an existing building, in conjunction with an existing dwelling as a temporary use for the
28 term of a hardship suffered by the existing resident or a relative as defined in ORS
29 215.213 and 215.283. The manufactured dwelling shall use the same subsurface sewage
30 disposal system used by the existing dwelling, if that disposal system is adequate to
31 accommodate the additional dwelling. If the manufactured dwelling will use a public
32 sanitary sewer system, such condition will not be required. Within three months of the

1 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed
2 or demolished or, in the case of an existing building, the building shall be removed,
3 demolished or returned to an allowed nonresidential use. A temporary residence approved
4 under this subsection is not eligible for replacement under subsection (3)(p) of this rule.
5 Governing bodies every two years shall review the permit authorizing such mobile
6 homes. When the hardships end, governing bodies or their designate shall require the
7 removal of such mobile homes. Oregon Department of Environmental Quality review and
8 removal requirements also apply to such mobile homes. As used in this section,
9 "hardship" means a medical hardship or hardship for the care of an aged or infirm person
10 or persons;

11 (u) Expansion of existing airports;

12 (v) Public road and highway projects as described in ORS 215.213(2)(q) through (s) and
13 (10) and 215.283(2)(p) through (r) and (3);

14 (w) Private accommodations for fishing occupied on a temporary basis may be allowed
15 subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035 and the
16 following requirements:

17 (A) Accommodations limited to no more than 15 guest rooms as that term is defined in
18 the Oregon Structural Special[ity] Code;

19 (B) Only minor incidental and accessory retail sales are permitted;

20 (C) Accommodations occupied temporarily for the purpose of fishing during fishing
21 seasons authorized by the Oregon Fish and Wildlife Commission;

22 (D) Accommodations must be located within 1/4 mile of fish bearing Class I waters; and

23 (E) A governing body may impose other appropriate conditions.

24 (x) Forest management research and experimentation facilities as defined by ORS
25 526.215 or where accessory to forest operations[~~:-~~]; **and**

26 (y) An[~~y~~] **outdoor mass** gathering subject to review by a county planning commission
27 under the provisions of ORS 433.763. These gatherings are those of more than 3,000
28 persons [~~which~~] **that** continue or can reasonably be expected to continue for more than
29 120 hours within any three-month period and any part of which is held in open spaces.

30 (5) A use authorized by section (4) of this rule may be allowed provided the following
31 requirements or their equivalent are met. These requirements are designed to make the
32 use compatible with forest operations and agriculture and to conserve values found on
33 forest lands:

- 1 (a) The proposed use will not force a significant change in, or significantly increase the
2 cost of, accepted farming or forest practices on agriculture or forest lands;
- 3 (b) The proposed use will not significantly increase fire hazard or significantly increase
4 fire suppression costs or significantly increase risks to fire suppression personnel; and
- 5 (c) A written statement recorded with the deed or written contract with the county or its
6 equivalent is obtained from the land owner [~~which~~] **that** recognizes the rights of adjacent
7 and nearby land owners to conduct forest operations consistent with the Forest Practices
8 Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.
- 9 (6) Nothing in this rule relieves governing bodies from complying with other requirement
10 contained in the comprehensive plan or implementing ordinances such as the
11 requirements addressing other resource values (e.g., Goal 5) [~~which~~] **that** exist on forest
12 lands.

13 [Publications: Publications referenced are available from the agency.]

14 Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245
15 Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720,
16 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
17 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC
18 1-1994, f. & cert. ef. 3-1-94; LCDC 8-1995, f. & cert. ef. 6-29-95; ; LCDC 3-1996, f. &
19 cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-
20 00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2004, f. & cert. ef. 5-7-04

21 **660-006-0026**
22 **New Land Division Requirements in Forest Zones**

23 (1) Governing bodies shall legislatively amend their land division standards to
24 incorporate one or more of the following parcel sizes. Under these provisions, a
25 governing body may not determine minimum parcel sizes for forest land on a case-by-
26 case basis:

- 27 (a) An 80-acre or larger minimum parcel size; or
- 28 (b) One or more numeric minimum parcel sizes less than 80 acres provided that each
29 parcel size is large enough to ensure:
- 30 (A) The opportunity for economically efficient forest operations typically occurring in
31 the area;
- 32 (B) The opportunity for the continuous growing and harvesting of forest tree species;
- 33 (C) The conservation of other values found on forest lands as described in Goal 4; and

- 1 (D) That parcel meets the requirements of ORS 527.630.
- 2 (2) New land divisions less than the parcel size in section (1) of this rule may be
3 approved for any of the following circumstances:
- 4 (a) For the uses listed in OAR 660-060-0025(3)(m) through (o) and (4)(a) through (o)
5 provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the
6 parcel created from the division is the minimum size necessary for the use[-] **or**
- 7 (b) For the establishment of a parcel for **an existing** dwelling on land zoned for forest
8 use, subject to the following requirements:
- 9 (A) The parcel established shall not be larger than five acres, except as necessary to
10 recognize physical factors such as roads or streams, in which case the parcel shall not be
11 larger than 10 acres;
- 12 (B) The dwelling existed prior to June 1, 1995;
- 13 (C)(i) The remaining parcel, not containing the dwelling, meets the minimum land
14 division standards of the zone; or
- 15 (ii) The remaining parcel, not containing the dwelling, is consolidated with another
16 parcel, and together the parcels meet the minimum land division standards of the zone[-];
17 **and**
- 18 (D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless
19 subsequently authorized by law or goal.
- 20 (c) To allow a division of forest land to facilitate a forest practice as defined in ORS
21 527.620 that results in a parcel that does not meet the minimum area requirements of
22 subsection (1)(a) or (b). Approvals shall be based on findings [~~which~~] **that** demonstrate
23 that there are unique property specific characteristics present in the proposed parcel that
24 require an amount of land smaller than the minimum area requirements of subsections
25 (1)(a) or (b) of this rule in order to conduct the forest practice. Parcels created pursuant to
26 this subsection:
- 27 (A) Shall not be eligible for siting of new dwelling;
- 28 (B) Shall not serve as the justification for the siting of a future dwelling on other lots or
29 parcels;
- 30 (C) **Shall not, as a result of the land division, be used to justify redesignation or**
31 **rezoning of resource lands;**
- 32 (D) Shall not result in a parcel of less than 35 acres, except:

1 (i) Where the purpose of the land division is to facilitate an exchange of lands involving a
2 governmental agency; or

3 (ii) Where the purpose of the land division is to allow transactions in which at least one
4 participant is a person with a cumulative ownership of at least 2,000 acres of forest land;
5 and

6 ~~(D)~~E If associated with the creation of a parcel where a dwelling is involved, shall not
7 result in a parcel less than the minimum lot or parcel size of the zone or the minimum
8 size required for dwellings approved under OAR 660-006-0027(1)(e).

9 (d) ~~[To allow the division of a lot or parcel as provided for by OAR 660-006-0055(2)(d),
10 (3), (4) and (6).]~~ **To allow a division of a lot or parcel zoned for forest use if:**

11 **(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4,
12 1993;**

13 **(B) Each dwelling complies with the criteria for a replacement dwelling under URS
14 215.213(1) or 215.283(1);**

15 **(C) Except for one lot or parcel, each lot or parcel created under this paragraph is
16 between two and five acres in size;**

17 **(D) At least one dwelling is located on each lot or parcel created under this
18 paragraph; and**

19 **(E) The landowner of a lot or parcel created under this paragraph provides
20 evidence that a restriction prohibiting the landowner and the landowner's
21 successors in interest from further dividing the lot or parcel has been recorded with
22 the county clerk of the county in which the lot or parcel is located. A restriction
23 imposed under this paragraph shall be irrevocable unless a statement of release is
24 signed by the county planning director of the county in which the lot or parcel is
25 located indicating that the comprehensive plan or land use regulations applicable to
26 the lot or parcel have been changed so that the lot or parcel is no longer subject to
27 statewide planning goals protecting forestland or unless the land division is
28 subsequently authorized by law or by a change in a statewide planning goal for land
29 zoned for forest use.**

30 (e) To allow a proposed division of land as provided in ORS 215.783.

31 **(3) A county planning director shall maintain a record of lots and parcels that do
32 not qualify for division under the restrictions imposed by OAR 660-006-0026(2)(d)
33 and (4). The record shall be available to the public.**

34 **(4) A lot or parcel may not be divided under OAR 660-006-0026(2)(d) if an existing
35 dwelling on the lot or parcel was approved under:**

1 **(a) A statute, an administrative rule or a land use regulation as defined in ORS**
2 **197.015 that required removal of the dwelling or that prohibited subsequent**
3 **division of the lot or parcel; or**

4 **(b) A farm use zone provision that allowed both farm and forest uses in a mixed**
5 **farm and forest use zone under statewide goal 4 (Forest Lands).**

6 **(5)**(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this
7 section shall provide evidence that a restriction on the remaining parcel, not containing
8 the dwelling, has been recorded with the county clerk of the county where the property is
9 located. The restriction shall allow no dwellings unless authorized by law or goal on land
10 zoned for forest use except as permitted under subsection (2) of this section.

11 (b) A restriction imposed under this subsection shall be irrevocable unless a statement of
12 release is signed by the county planning director of the county where the property is
13 located indicating that the comprehensive plan or land use regulations applicable to the
14 property have been changed in such a manner that the parcel is no longer subject to
15 statewide planning goals pertaining to agricultural land or forest land.

16 (c) The county planning director shall maintain a record of parcels that do not qualify for
17 the siting of a new dwelling under restrictions imposed by this subsection. The record
18 shall be readily available to the public.

19 ~~[(4)]~~ **6** A landowner allowed a land division under section (2) of this rule shall sign a
20 statement that shall be recorded with the county clerk of the county in which the property
21 is located, declaring that the landowner will not in the future complain about accepted
22 farming or forest practices on nearby lands devoted to farm or forest use.

23 Stat. Auth.: ORS 197.040, 197.230 & 197.245

24 Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720,
25 215.740, 215.750, 215.780, 215.783 & Ch. 792, 1993 OL

26 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7 1992, f. & cert. ef. 12-10-92; LCDC
27 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. &
28 cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2008, f. & cert. ef. 4-18-
29 08

30 **660-006-0027**

31 **Dwellings in Forest Zones**

32 ~~[(4)]~~ **The following standards apply to** ~~D~~dwellings ~~[authorized by]~~ **described at** OAR
33 660-006-0025(1)(d) ~~[are]~~:

34 ~~[(a)]~~ **(1) A lot of record** dwelling **authorized under ORS 215.705** may be allowed if:

1 ~~[(A)]~~ **(a)** The lot or parcel on which the dwelling will be sited was lawfully created and
2 was acquired and owned continuously by the present owner as defined in subsection (b)
3 of this section:

4 ~~[(i)]~~ **(A)** Since prior to January 1, 1985; or

5 ~~[(ii)]~~**(B)** By devise or by intestate succession from a person who acquired and had owned
6 continuously the lot or parcel since prior to January 1, 1985.

7 ~~[(B)]~~ **(b)** The tract on which the dwelling will be sited does not include a dwelling;

8 ~~[(C)]~~ **(c)** The lot or parcel on which the dwelling will be sited was part of a tract on
9 November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.

10 ~~[(b)]~~ **(d)** For purposes of subsection (a) of this section, "owner" includes the wife,
11 husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-
12 in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew,
13 stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned
14 by any one or combination of these family members.

15 ~~[(e) For purposes of subsection (a) of this section]~~ **(e)** ~~[(t)]~~**T**he dwelling must be located:

16 (A) On a tract in western Oregon that is composed of soil is not capable of producing
17 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a
18 public road as defined under ORS 368.001 that provides or will provide access to the
19 subject tract. The road shall be maintained and either paved or surfaced with rock and
20 shall not be:

21 (i) A United States Bureau of Land Management road; or

22 (ii) A United States Forest Service road unless the road is paved to a minimum width of
23 18 feet, there is at least one defined lane in each direction and a maintenance agreement
24 exists between the United States Forest Service and landowners adjacent to the road, a
25 local government or a state agency.

26 (B) On a tract in eastern Oregon that is composed of soils not capable of producing 4,000
27 cubic feet per year of commercial tree species and is located within 1,500 feet of a public
28 road as defined under ORS 368.001 that provides or will provide access to the subject
29 tract. The road shall be maintained and either paved or surfaced with rock and shall not
30 be:

31 (i) A United States Bureau of Land Management road; or

32 (ii) A United States Forest Service road unless the road is paved to a minimum width of
33 18 feet, there is at least one defined lane in each direction and a maintenance agreement

1 exists between the United States Forest Service and landowners adjacent to the road, a
2 local government or a state agency.

3 [~~(d)~~ A dwelling authorized under subsection (a) of this section shall comply with the
4 following requirements:]

5 [~~(A)~~] **(f)** When the lot or parcel on which the dwelling will be sited lies within an area
6 designated in an acknowledged comprehensive plan as habitat of big game, the siting of
7 the dwelling shall be consistent with the limitations on density upon which the
8 acknowledged comprehensive plan and land use regulations intended to protect the
9 habitat are based;

10 [~~(B)~~] **(g)** When the lot or parcel on which the dwelling will be sited is part of a tract, the
11 remaining portions of the tract shall be consolidated into a single lot or parcel when the
12 dwelling is allowed.

13 [~~(e)~~] **(2)** If a dwelling is not allowed pursuant to subsection (a) of this section, a **large**
14 **tract forest** dwelling **authorized under ORS 215.740** may be allowed on land zoned for
15 forest use if it complies with other provisions of law and is sited on a tract that does not
16 include a dwelling:

17 [~~(A)~~] **(a)** In eastern Oregon of at least 240 contiguous acres or 320 acres in one ownership
18 that are not contiguous but are in the same county or adjacent counties and zoned for
19 forest use. A deed restriction shall be filed pursuant to section (6) of this rule for all tracts
20 that are used to meet the acreage requirements of this paragraph[;].

21 [~~(B)~~] **(b)** In western Oregon of at least 160 contiguous acres or 200 acres in one
22 ownership that are not contiguous but are in the same county or adjacent counties and
23 zoned for forest use. A deed restriction shall be filed pursuant to section (6) of this rule
24 for all tracts that are used to meet the acreage requirements of this paragraph.

25 [~~(F)~~] **(3)** In western Oregon, a governing body of a county or its designate may allow the
26 establishment of a single family **“template”** dwelling **authorized under ORS 215.750** on
27 a lot or parcel located within a forest zone if the lot or parcel is predominantly composed
28 of soils that are:

29 [~~(A)~~] **(a)** Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

30 [~~(i)~~] **(A)** All or part of at least three other lots or parcels that existed on January 1, 1993,
31 are within a 160 acre square centered on the center of the subject tract; and

32 [~~(ii)~~] **(B)** At least three dwellings existed on January 1, 1993 and continue to exist on the
33 other lots or parcels.

34 [~~(B)~~] **(b)** Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

- 1 [(+) **(A)** All or part of at least seven other lots or parcels that existed on January 1, 1993,
2 are within a 160 acre square centered on the center of the subject tract; and
- 3 [(+) **(B)** At least three dwellings existed on January 1, 1993 and continue to exist on the
4 other lots or parcels.
- 5 [~~(C)~~] **(c)** Capable of producing more than 85 cubic feet per acre per year of wood fiber if:
- 6 [(+) **(A)** All or part of at least 11 other lots or parcels that existed on January 1, 1993, are
7 within a 160 acre square centered on the center of the subject tract; and
- 8 [(+) **(B)** At least three dwellings existed on January 1, 1993 and continue to exist on the
9 other lots or parcels.
- 10 [~~(g)~~] **(4)** In eastern Oregon, a governing body of a county or its designate may allow the
11 establishment of a single family **“template” dwelling authorized under ORS 215.750**
12 on a lot or parcel located within a forest zone if the lot or parcel is predominantly
13 composed of soils that are:
- 14 [~~(A)~~] **(a)** Capable of producing 0 to 20 cubic feet per acre per year of wood fiber if:
- 15 [(+) **(A)** All or part of at least three other lots or parcels that existed on January 1, 1993,
16 are within a 160 acre square centered on the center of the subject tract; and
- 17 [(+) **(B)** At least three dwellings existed on January 1, 1993 and continue to exist on the
18 other lots or parcels.
- 19 [~~(B)~~] **(b)** Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:
- 20 [(+) **(A)** All or part of at least seven other lots or parcels that existed on January 1, 1993,
21 are within a 160 acre square centered on the center of the subject tract; and
- 22 [(+) **(B)** At least three dwellings existed on January 1, 1993 and continue to exist on the
23 other lots or parcels.
- 24 [~~(C)~~] **(c)** Capable of producing more than 50 cubic feet per acre per year of wood fiber if:
- 25 [(+) **(A)** All or part of at least 11 other lots or parcels that existed on January 1, 1993, are
26 within a 160 acre square centered on the center of the subject tract; and
- 27 [(+) **(B)** At least three dwellings existed on January 1, 1993 and continue to exist on the
28 other lots or parcels.
- 29 [~~(h)~~] **(5) The following review standards apply to “template” dwellings approved**
30 **under sections (3) and (4):**

- 1 **(a)** Lots or parcels within urban growth boundaries shall not be used to satisfy the
2 eligibility requirements under ~~[sub]sections (1)(f) (3) and (1)(g) (4) of this section~~.
- 3 ~~(i)~~ **(b)** A proposed dwelling provided for by ~~[sub]sections [(1)(f) (3) and [(1)(g) (4) is~~
4 not allowed if the tract on which the dwelling will be sited includes a dwelling.
- 5 ~~(2)~~ **(c)** Except as provided by subsection ~~[(3) (d) of this section, if the tract under~~
6 ~~[sub]section [(1)(f) (3) or [(g) (4) of this rule abuts a road that existed on January 1,~~
7 1993, the measurement may be made by creating a 160 acre rectangle that is one mile
8 long and 1/4 mile wide centered on the center of the subject tract and that is to the
9 maximum extent possible, aligned with the road.
- 10 ~~(3)(a)~~ **(d)(A)** If a tract 60 acres or larger described under ~~[sub]section [(1)(f) (3) or~~
11 ~~[(g) (4) of this rule abuts a road or perennial stream, the measurement shall be made in~~
12 accordance with ~~subsection [(2) (c) of this rule section~~. However, one of the three
13 required dwellings shall be on the same side of the road or stream as the tract, and:
- 14 ~~(A)~~ **(i)** Be located within a 160-acre rectangle that is one mile long and 1/4 mile wide
15 centered on the center of the subject tract and that is, to the maximum extent possible
16 aligned with the road or stream; or
- 17 ~~(B)~~ **(ii)** Be within 1/4 mile from the edge of the subject tract but not outside the length
18 of the 160 acre rectangle, and on the same side of the road or stream as the tract.
- 19 ~~(b)~~ **(B)** If a road crosses the tract on which the dwelling will be located, at least one of
20 the three required dwellings shall be on the same side of the road as the proposed
21 dwelling.
- 22 ~~(4)~~ **(6)** A proposed dwelling under this rule is not allowed:
- 23 (a) If it is prohibited by or will not comply with the requirements of an acknowledged
24 comprehensive plan and acknowledged land use regulations or other provisions of law;
- 25 (b) Unless it complies with the requirements of OAR 660-006-0029 and 660-006-0035;
- 26 (c) Unless no dwellings are allowed on other lots or parcels that make up the tract and
27 deed restrictions established under section ~~[(6) (8) of this rule for the other lots or~~
28 parcels that make up the tract are met.
- 29 ~~(5)~~ **(7)** The following definitions shall apply to this rule:
- 30 (a) "Tract" means one or more contiguous lots or parcels in the same ownership. A tract
31 shall not be considered to consist of less than the required acreage because it is crossed
32 by a public road or waterway;

1 (b) "Commercial Tree Species" means trees recognized under rules adopted under ORS
2 527.715 for commercial production.

3 ~~[(6)]~~ **(8)**(a) The applicant for a dwelling authorized by paragraph ~~[(1)(e)(A)]~~ **(2)(a)** or
4 ~~[(B)]~~ **(b)** of this rule that requires one or more lot or parcel to meet minimum acreage
5 requirements shall provide evidence that the covenants, conditions and restrictions form
6 adopted as "Exhibit A" has been recorded with the county clerk of the county or counties
7 where the property subject to the covenants, conditions and restrictions is located[;].

8 (b) The covenants, conditions and restrictions are irrevocable, unless a statement of
9 release is signed by an authorized representative of the county or counties where the
10 property subject to the covenants, conditions and restrictions is located[;].

11 (c) Enforcement of the covenants, conditions and restrictions may be undertaken by the
12 Department of Land Conservation and Development or by the county or counties where
13 the property subject to the covenants, conditions and restrictions is located[;].

14 (d) The failure to follow the requirements of this section shall not affect the validity of
15 the transfer of property or the legal remedies available to the buyers of property ~~[which]~~
16 **that** is subject to the covenants, conditions and restrictions required by this section[;].

17 (e) The county planning director shall maintain a copy of the covenants, conditions and
18 restrictions filed in the county deed records pursuant to this section and a map or other
19 record depicting tracts ~~[that]~~ do not qualify for the siting of a dwelling under the
20 covenants, conditions and restrictions filed in the county deed records pursuant to this
21 section. The map or other record required by this subsection shall be readily available to
22 the public in the county planning office.

23 ~~[(7)]~~ **(9)** Notwithstanding subsection ~~[(4)]~~ **(9)**(a) of this rule, if the acknowledged
24 comprehensive plan and land use regulations of a county require that a dwelling be
25 located in a 160-acre square or rectangle described in subsections ~~[(1)(f)]~~ **(3)** or ~~[(g)]~~ **(4)**
26 or **sub**sections ~~[(2)]~~ **(5)(c)** or ~~[(3)]~~ **(d)** of this rule, a dwelling is in the 160-acre square or
27 rectangle if any part of the dwelling is in the 160-acre square or rectangle.

28 [ED. NOTE: Exhibits referenced are available from the agency.]

29 Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245
30 Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720,
31 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
32 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 2-1990, f. & cert. ef. 3-9-90; LCDC 7-
33 1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. &
34 cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 6-2000, f. & cert. ef. 6-14-
35 00; LCDD 2-2006, f. & cert. ef. 2-15-06

36 **660-006-0029**
37 **Siting Standards for Dwellings and Structures in Forest Zones**

1 The following siting criteria or their equivalent shall apply to all new dwellings and
2 structures in forest and agriculture/forest zones. These criteria are designed to make such
3 uses compatible with forest operations and agriculture, to minimize wildfire hazards and
4 risks and to conserve values found on forest lands. A governing body shall consider the
5 criteria in this rule together with the requirements OAR 660-0060-0035 to identify the
6 building site:

7 (1) Dwellings and structures shall be sited on the parcel so that:

8 (a) They have the least impact on nearby or adjoining forest or agricultural lands;

9 (b) The siting ensures that adverse impacts on forest operations and accepted farming
10 practices on the tract will be minimized;

11 (c) The amount of forest lands used to site access roads, service corridors, the dwelling
12 and structures is minimized; and

13 (d) The risks associated with wildfire are minimized.

14 (2) Siting criteria satisfying section (1) of this rule may include setbacks from adjoining
15 properties, clustering near or among existing structures, siting close to existing roads and
16 siting on that portion of the parcel least suited for growing trees.

17 (3) The applicant shall provide evidence to the governing body that the domestic water
18 supply is from a source authorized in accordance with the Water Resources Department's
19 administrative rules for the appropriation of ground water or surface water and not from a
20 Class II stream as defined in the Forest Practices rules (OAR Chapter 629). For purposes
21 of this section, evidence of a domestic water supply means:

22 (a) Verification from a water purveyor that the use described in the application will be
23 served by the purveyor under the purveyor's rights to appropriate water; [Ø]

24 (b) A water use permit issued by the Water Resources Department for the use described
25 in the application; or

26 (c) Verification from the Water Resources Department that a water use permit is not
27 required for the use described in the application. If the proposed water supply is from a
28 well and is exempt from permitting requirements under ORS 537.545, the applicant shall
29 submit the well constructor's report to the county upon completion of the well.

30 (4) As a condition of approval, if road access to the dwelling is by a road owned and
31 maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau
32 of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of
33 a long-term road access use permit or agreement. The road use permit may require the
34 applicant to agree to accept responsibility for road maintenance.

1 (5) Approval of a dwelling shall be subject to the following requirements:

2 (a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of
3 trees on the tract to demonstrate that the tract is reasonably expected to meet Department
4 of Forestry stocking requirements at the time specified in department of Forestry
5 administrative rules;

6 (b) The planning department shall notify the county assessor of the above condition at the
7 time the dwelling is approved;

8 (c) If the lot or parcel is more than 10 acres in western Oregon, as defined in ORS
9 321.257, or more than 30 acres in eastern Oregon, as defined in ORS 321.405, the
10 property owner shall submit a stocking survey report to the county assessor and the
11 assessor will verify that the minimum stocking requirements have been met by the time
12 required by Department of Forestry rules[-];

13 (d) Upon notification by the assessor the Department of Forestry will determine whether
14 the tract meets minimum stocking requirements of the Forest Practices Act. If the
15 department determines that the tract does not meet those requirements, the department
16 will notify the owner and the assessor that the land is not being managed as forest land.
17 The assessor will then remove the forest land designation pursuant to ORS 321.359 and
18 impose the additional tax pursuant to ORS 321.372[-]; **and**

19 (e) The County governing body or its designate shall require as a condition of approval of
20 a single-family dwelling under ORS 215.213, 215.383 or 215.284 or otherwise in a farm
21 or forest zone, that the landowner for the dwelling sign and record in the deed records for
22 the county a document binding the landowner, and the landowner's successors in interest,
23 prohibiting them from pursuing a claim for relief or cause of action alleging injury from
24 farming or forest practices for which no action or claim is allowed under ORS 30.936 or
25 30.937.

26 Stat. Auth.: ORS 197.040, ORS 197.245 & ORS 215.730
27 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS
28 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL
29 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 7-
30 1994, f. & cert. ef. 9-21-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. &
31 cert. ef. 6-1-98

32 **660-006-0031**
33 **Youth Camps**

34 (1) A youth camp may be established in compliance with the provisions of this rule. The
35 purpose of this rule is to provide for the establishment of a youth camp that is generally
36 self-contained and located on a parcel suitable to limit potential impacts on nearby and
37 adjacent land and to be compatible with the forest environment.

1 (2) [~~The provisions of this rule shall not apply to~~] **Changes to or expansions of** youth
2 camps established prior to the effective date of this rule **shall be subject to the**
3 **provisions of ORS 215.130.**

4 (3) A "youth camp" is a facility either owned or leased, and operated by a state or local
5 government, or a nonprofit corporation as defined under ORS 65.001, to provide an
6 outdoor recreational and educational experience primarily for the benefit of persons
7 twenty-one (21) years of age and younger. Youth camps do not include any manner of
8 juvenile detention center or juvenile detention facility.

9 (4) An application for a proposed youth camp shall comply with the following:

10 (a) The number of overnight camp participants that may be accommodated shall be
11 determined by the governing body, or its designate, based on the size, topography,
12 geographic features and any other characteristics of the proposed site for the youth camp.
13 Except as provided by subsection (4)(b) of this rule a youth camp shall not provide
14 overnight accommodations for more than 350 youth camp participants, including staff.

15 (b) The governing body, or its designated may allow up to eight (8) nights during the
16 calendar year when the number of overnight participants may exceed the total number of
17 overnight participants allowed under subsection (4)(a) of this rule.

18 (c) Overnight stays for adult programs primarily for individuals over twenty-one years of
19 age, not including staff, shall not exceed 10% of the total camper nights offered by the
20 youth camp.

21 (d) The provisions of OAR 660-006-0025(5)(a).

22 (e) A campground as described in ORS 215.283(2)(c), 215.213(2)(c) and OAR 660-006-
23 0025(4)(e) shall not be established in conjunction with a youth camp.

24 (f) A youth camp shall not be allowed in conjunction with an existing golf course.

25 (g) A youth camp shall not interfere with the exercise of legally established water rights
26 on adjacent properties.

27 (5) The youth camp shall be located on a lawful parcel that is:

28 (a) Suitable to provide a forested setting needed to ensure a primarily outdoor experience
29 without depending upon the use or natural characteristics of adjacent and nearby public
30 and private land. This determination shall be based on the size, topography, geographic
31 features and any other characteristics of the proposed site for the youth camp, as well as,
32 the number of overnight participants and type and number of proposed facilities. A youth
33 camp shall be located on a parcel of at least:

34 (A) 80-acres if located in eastern Oregon.

1 (B) 40-acres if located in western Oregon.

2 (b) Suitable to provide a protective buffer to separate the visual and audible aspects of
3 youth camp activities from other nearby and adjacent lands. The buffers shall consist of
4 forest vegetation, topographic or other natural features as well as structural setbacks from
5 adjacent public and private lands, roads, and riparian areas. The structural setback from
6 roads and adjacent public and private property shall be 250 feet unless the governing
7 body, or its designate sets a different setback based upon the following criteria that may
8 be applied on a case-by-case basis:

9 (A) The proposed setback will prevent conflicts with commercial resource management
10 practices;

11 (B) The proposed setback will prevent a significant increase in safety hazards associated
12 with vehicular traffic; and

13 (C) The proposed setback will provide an appropriate buffer from visual and audible
14 aspects of youth camp activities from other nearby and adjacent resource lands.

15 (c) Suitable to provide for the establishment of sewage disposal facilities without
16 requiring a sewer system as defined in OAR 660-011-0060(1)(f). Prior to granting final
17 approval, the governing body or its designate shall verify that a proposed youth camp will
18 not result in the need for a sewer system.

19 (d) Predominantly forestland if within a mixed agricultural/forest zone as provided for
20 under 660-006-0050.

21 (6) A youth camp may provide for the following facilities:

22 (a) Recreational facilities limited to passive improvements, such as open areas suitable
23 for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and
24 biking trails, horse back riding or swimming that can be provided in conjunction with the
25 site's natural environment. Intensively developed facilities such as tennis courts,
26 gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed
27 if no lake or other water feature suitable for aquatic recreation is located on the subject
28 property or immediately available for youth camp use.

29 (b) Primary cooking and eating facilities shall be included in a single building. Except in
30 sleeping quarters, the governing body, or its designate, may allow secondary cooking and
31 eating facilities in one or more buildings designed to accommodate other youth camp
32 activities. Food services shall be limited to the operation of the youth camp and shall be
33 provided only for youth camp participants. The sale of individual meals may be offered
34 only to family members or guardians of youth camp participants.

35 (c) Bathing and laundry facilities except that they shall not be provided in the same
36 building as sleeping quarters.

- 1 (d) Up to three camp activity buildings, not including primary cooking and eating
2 facilities.
- 3 (e) Sleeping quarters including cabins, tents or other structures. Sleeping quarters may
4 include toilets, but, except for the caretaker's dwelling, shall not include kitchen facilities.
5 Sleeping quarters shall be provided only for youth camp participants and shall not be
6 offered as overnight accommodations for persons not participating in youth camp
7 activities or as individual rentals.
- 8 (f) Covered areas that are not fully enclosed.
- 9 (g) Administrative, maintenance and storage buildings; permanent structure for
10 administrative services, first aid, equipment and supply storage, and for use as an
11 infirmary if necessary or requested by the applicant.
- 12 (h) An infirmary may provide sleeping quarters for the medical care provider (e.g.
13 Doctor, Registered Nurse, Emergency Medical Technician, etc.).
- 14 (i) A caretaker's residence may be established in conjunction with a youth camp prior to
15 or after the effective date of this rule, if no other dwelling exists on the subject property.
- 16 (7) A proposed youth camp shall comply with the following fire safety requirements:
- 17 (a) The fire siting standards in OAR 660-006-0035[;].
- 18 (b) A fire safety protection plan shall be developed for each youth camp that includes the
19 following[;]:
- 20 (A) Fire prevention measures;
- 21 (B) On site pre-suppression and suppression measures; and
- 22 (C) The establishment and maintenance of fire safe area(s) in which camp participants
23 can gather in the event of a fire.
- 24 (c) Except as determined under subsection (7)(d) of this rule, a youth camp's on-site fire
25 suppression capability shall at least include:
- 26 (A) A 1000 gallon mobile water supply that can access all areas of the camp; [~~and~~]
- 27 (B) A 30 gallon-per-minute water pump and an adequate amount of hose and nozzles;
28 [~~and~~]
- 29 (C) A sufficient number of fire fighting hand tools; and

1 (D) Trained personnel capable of operating all fire suppression equipment at the camp
2 during designated periods of fire danger.

3 (d) An equivalent level of fire suppression facilities may be determined by the governing
4 body, or its designate. The equivalent capability shall be based on the Oregon
5 Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time
6 of the effective wildfire suppression agencies, and consultation with ODF personnel if the
7 camp is within an area protected by the Oregon Department of Forestry and not served by
8 a local structural fire protection provider.

9 (e) The provisions of OAR 660-006-0031(7)(d) may be waived by the governing body, or
10 its designate, if the youth camp is located in an area served by a structural fire protection
11 provider and that provider informs the governing body in writing that on-site fire
12 suppression at the camp is not needed.

13 (8) The governing body, or its designate, shall require as a condition of approval of a
14 youth camp, that the land owner of the youth camp sign and record in the deed records
15 for the county a document binding the land owner, or operator of the youth camp if
16 different from the owner, and the land owner's or operator's successors in interest,
17 prohibiting them from pursuing a claim for relief or cause of action alleging injury from
18 farming or forest practices for which no action or claim is allowed under ORS 30.936 or
19 30.937.

20 (9) Nothing in this rule relieves governing bodies from complying with other
21 requirements contained in the comprehensive plan or implementing land use regulations
22 such as the requirements addressing other resource values (e.g. Goal 5) [~~which~~ **that** exist
23 on forest lands.

24 (10) The provisions of this rule shall apply directly to any land use decision pursuant to
25 ORS 197.646 and 215.427(3) commencing 120 days following the effective date of this
26 rule. A county may adopt provisions in its comprehensive plan or land use regulations
27 that establish standards and criteria in addition to those set forth in this rule, or to ensure
28 compliance with any standards or criteria.

29 Stat. Auth.: ORS 183, 197 & 215
30 Stats. Implemented: ORS 184.618, 195.025, 197.040 - 197.717 & 215.750 - 215.755
31 Hist.: LCDD 6-2000, f. & cert. ef. 6-14-00; LCDD 2-2006, f. & cert. ef. 2-15-06

32 **660-006-0035**

33 **Fire-Siting Standards for Dwellings and Structures**

34 The following fire-siting standards or their equivalent shall apply to **all** new dwelling or
35 structures in a forest or agriculture/forest zone:

1 (1) The dwelling shall be located upon a parcel within a fire protection district or shall be
2 provided with residential fire protection by contract. If the dwelling is not within a fire
3 protection district, the applicant shall provide evidence that the applicant has asked to be
4 included within the nearest such district. If the governing body determines that inclusion
5 within a fire protection district or contracting for residential fire protection is
6 impracticable, the governing body may provide an alternative means for protecting the
7 dwelling from fire hazards. The means selected may include a fire sprinkling system,
8 onsite equipment and water storage or other methods that are reasonable, given the site
9 conditions. If a water supply is required for fire protection, it shall be a swimming pool,
10 pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a
11 stream that has a continuous year round flow of at least one cubic foot per second. The
12 applicant shall provide verification from the Water Resources Department that any
13 permits or registrations required for water diversion or storage have been obtained or that
14 permits or registrations are not required for the use. Road access shall be provided to
15 within 15 feet of the water's edge for firefighting pumping units. The road access shall
16 accommodate the turnaround of firefighting equipment during the fires season.
17 Permanent signs shall be posted along the access route to indicate the location of the
18 emergency water source.

19 (2) Road access to the dwelling shall meet road design standards described in OAR 660-
20 006-0040.

21 (3) The owners of the dwellings and structures shall maintain a primary fuel-free break
22 area surrounding all structures and clear and maintain a secondary fuel-free break area on
23 land surrounding the dwelling that is owned or controlled by the owner in accordance
24 with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures
25 and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the
26 Oregon Department of Forestry.

27 (4) The dwelling shall have a fire retardant roof.

28 (5) The dwelling shall not be sited on a slope of greater than 40 percent.

29 (6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

30 [Publications: The publication(s) referred to or incorporated by reference in this rule are
31 available from the agency.]

32 Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245
33 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS
34 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL
35 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-
36 1998, f. & cert. ef. 6-1-98

37 **660-006-0040**
38 **Fire Safety Design Standards for Roads**

1 The governing body shall establish road design standards, except for private roads and
2 bridges accessing only commercial forest uses, which ensure that public roads, bridges,
3 private roads and driveways are constructed so as to provide adequate access for fire
4 fighting equipment. Such standards shall address maximum grade, road width, turning
5 radius, road surface, bridge design, culverts, and road access taking into consideration
6 seasonal weather conditions. The governing body shall consult with the appropriate Rural
7 Fire Protection District and Forest Protection District in establishing these standards.

8 Stat. Auth.: ORS 183 & ORS 197

9 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS
10 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL

11 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90

12 **660-006-0050**

13 **Uses Authorized in Agriculture/Forest Zones**

14 (1) Governing bodies may establish agriculture/forest zones in accordance with both
15 Goals 3 and 4, and OAR Chapter 660, Divisions 6 and 33.

16 (2) Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-
17 006-0025 and 660-006-0027, subject to the requirements of the applicable section, may
18 be allowed in any agricultural/forest zone. The county shall apply either OAR Chapter
19 660, Division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based
20 on the predominant use of the tract on January 1, 1993.

21 (3) Dwellings and related structures authorized under section (2), where the predominant
22 use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-
23 0035.

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

25 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.213, ORS
26 215.283, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS
27 215.780 & Ch. 792, 1993 OL

28 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

29 **660-006-0055**

30 **New Land Division Requirements in Agriculture/Forest Zones**

31 (1) A governing body shall apply the standards of OAR 660-006-0026 and 660-033-0100
32 to determine the proper minimum lot or parcel size for a mixed agriculture/forest zone.
33 These standards are designed: To make new land divisions compatible with forest
34 operations; to maintain the opportunity for economically efficient forest and agriculture
35 practices; and to conserve values found on forest lands.

36 (2) New land divisions less than the parcel size established according to the requirements
37 in section (1) of this rule may be approved for any of the following circumstances:

- 1 (a) For the uses listed in OAR 660-006-0025(3)(m) through (o) and (4)(a) through (n)
2 provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the
3 land division created is the minimum size necessary for the use.
- 4 (b) For the establishment of a parcel for an existing dwelling on land zoned for mixed
5 farm and forest use, subject to the following requirements:
- 6 (A) The parcel established shall not be larger than five acres, except as necessary to
7 recognize physical factors such as roads or streams, in which case the parcel shall not be
8 larger than 10 acres;
- 9 (B) The dwelling existed prior to June 1, 1995;
- 10 (C)(i) The remaining parcel, not containing the dwelling, meets the minimum land
11 division standards of the zone; or
- 12 (ii) The remaining parcel, not containing the dwelling, is consolidated with another
13 parcel, and together the parcels meet the minimum land division standards of the zone;
- 14 (D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless
15 subsequently authorized by law or goal[-];
- 16 (E) The minimum tract eligible under subsection (b) of this section is 40 acres[-];
- 17 (F) The tract shall be predominantly in forest use and that portion in forest use qualified
18 for special assessment under a program under ORS chapter 321[-]; **and**
- 19 (G) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213
20 and 215.283 that are not allowed on forestland.
- 21 (c) To allow a division of forestland to facilitate a forest practice as defined in ORS
22 527.620 that results in a parcel that does not meet the minimum area requirements of
23 section (1). Parcels created pursuant to this subsection:
- 24 (A) Shall not be eligible for siting of new dwelling;
- 25 (B) Shall not serve as the justification for the siting of a future dwelling on other lots or
26 parcels;
- 27 (C) **Shall not, as a result of the land division, be used to justify redesignation or**
28 **rezoning of resource land;**
- 29 **(D)** Shall not result in a parcel of less than 35 acres, except:
- 30 (i) Where the purpose of the land division is to facilitate an exchange of lands involving a
31 governmental agency; or

- 1 (ii) Where the purpose of the land division is to allow transactions in which at least one
2 participant is a person with a cumulative ownership of at least 2,000 acres of forestland;
3 and
- 4 (~~D~~)E If associated with the creation of a parcel where a dwelling is involved, shall not
5 result in a parcel less than the minimum lot or parcel size of the zone.
- 6 (d) **To allow** [~~A~~]a division of a lot or parcel zoned for mixed farm **and** forest **use** [~~may~~
7 ~~be allowed~~] if:
- 8 (A) At least two dwellings lawfully existed on the lot or parcel prior to November 4,
9 1993;
- 10 (B) Each dwelling complies with the criteria for a replacement dwelling under ORS
11 215.213(1)[~~(+)~~] or 215.283(1)[~~(+)~~];
- 12 (C) Except for one lot or parcel, each lot or parcel created under this section is between
13 two and five acres in size;
- 14 (D) At least one dwelling is located on each lot or parcel created under this section; and
- 15 (E) The landowner of a lot or parcel created under this section provides evidence that a
16 restriction prohibiting the landowner and the land owner's successors in interest from
17 further dividing the lot or parcel has been recorded with the county clerk of the county in
18 which the lot or parcel is located. A restriction imposed under this section shall be
19 irrevocable unless a statement of release is signed by the county planning director of the
20 county in which the lot or parcel is located indicating that the comprehensive plan or land
21 use regulations applicable to the lot or parcel have been changed so that the lot or parcel
22 is no longer subject to statewide goal 4 (Forest Lands) or unless the land division is
23 subsequently authorized by law or by a change in statewide goal 4 (Forest Land);
- 24 (e) To allow a proposed division of land as provided in ORS 215.783[~~;~~].
- 25 (3) A county planning director shall maintain a record of lots and parcels that do not
26 qualify for division under the restrictions imposed by OAR 660-006-0055(2)(d) and (4).
27 The record shall be readily available to the public.
- 28 (4) A lot or parcel may not be divided under OAR 660-006-0055(2)(d) if an existing
29 dwelling on the lot or parcel was approved under:
- 30 (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015
31 that required removal of the dwelling or that prohibited subsequent division of the lot or
32 parcel; or
- 33 (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and
34 forest use zone under statewide goal 4 (Forest Lands).

1 (5)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this rule
2 shall provide evidence that a restriction on the remaining parcel, not containing the
3 dwelling, has been recorded with the county clerk of the county where the property is
4 located. The restriction shall allow no dwellings unless authorized by law or goal on land
5 zoned for forest use except as permitted under section (2) of this rule.

6 (b) A restriction imposed under this section shall be irrevocable unless a statement of
7 release is signed by the county planning director of the county where the property is
8 located indicating that the comprehensive plan or land use regulations applicable to the
9 property have been changed in such a manner that the parcel is no longer subject to
10 statewide planning goals pertaining to agricultural land or forestland.

11 (c) The county planning director shall maintain a record of parcels that do not qualify for
12 the siting of a new dwelling under restrictions imposed by this section. The record shall
13 be readily available to the public.

14 (6) A landowner allowed a land division under section (2) of this rule shall sign a
15 statement that shall be recorded with the county clerk of the county in which the property
16 is located, declaring that the landowner and the landowner's successors in interest will
17 not in the future complain about accepted farming or forest practices on nearby lands
18 devoted to farm or forest use.

19 Stat. Auth.: ORS 197.040, 197.230 & 197.245
20 Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.213, 215.283, 215.700,
21 215.705, 215.720, 215.740, 215.750, 215.780, 215.783 & Ch. 792, 1993 OL
22 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC
23 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 1-2002, f. &
24 cert. ef. 5-22-02; LCDD 3-2008, f. & cert. ef. 4-18-08

25 **660-006-0057**
26 **Rezoning Land to an Agriculture/Forest Zone**

27 Any rezoning or plan map amendment of lands from an acknowledged zone or plan
28 designation to an agriculture/forest zone requires a demonstration that each area being
29 rezoned or replanned contains such a mixture of agriculture and forest uses that neither
30 Goal 3 nor 4 can be applied alone.

31 Stat. Auth.: ORS 183, ORS 197.040, ORS 197.230 & ORS 197.245
32 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.213, ORS
33 215.283, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS
34 215.780 & Ch. 792, 1993 OL
35 Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC
36 1-1994, f. & cert. ef. 3-1-94

37 **660-006-0060**
38 **Regulation of Forest Operations**

1 The Forest Practices Act (ORS 527.620 to 527.990) as implemented through Oregon
2 Board of Forestry rules (OAR 629-024-0101 to 629-024-0648) regulates forest operations
3 on forest lands. The relationship between the Forest Practices Act and land use planning
4 is described in 527.722 to 527.726. OAR 660-006-0025 does not authorize county
5 governing bodies to regular forest operations or other uses allowed by ORS 527.620 to
6 527.990 and OAR 629-024-0101 to 629-024-0648.

7 Stat. Auth.: ORS 183, ORS 197 & ORS 215
8 Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS
9 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL
10 Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; Renumbered
11 from 660-006-0030; LCDC 7-1992, f. & cert. ef. 12-10-92

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 18

POST-ACKNOWLEDGEMENT AMENDMENTS

1 **660-018-0005**

2 **Purpose**

3 This division is intended to implement provisions of ORS 197.610 through 197.625. The
4 overall purpose is to carry out the state policies outlined in ORS 197.010[~~and Or Laws~~
5 ~~2003, Chapter 800, Section 17(2))~~].

6 Stat. Auth.: ORS 197.040

7 Stats. Implemented: ORS 197.610 - 197.625

8 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-

9 2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08

10 **660-018-0010**

11 **Definitions**

12 For the purpose of this division, the definitions contained in ORS 197.015 apply. In
13 addition, the following definitions apply:

14 (1) "Computation of Time" means unless otherwise provided in this rule, the time within
15 which an act is to be done is computed by excluding the first day and including the last
16 unless the last day falls upon any legal holiday, Saturday, or Sunday in which case the
17 last day is also excluded.

18 (2) "Electronic copy" means a computer file or files, which can be submitted as digital
19 media such as disc, electronic mail, or other method of file transfer.

20 (3) "Final Decision" means the written, signed approval, or approval as modified, by the
21 local government, of a proposed amendment to, or adoption of, a comprehensive plan or
22 land use regulation. A denial of a proposed amendment by the local government shall not
23 be considered a "Final Decision" and therefore is not subject to review under this
24 administrative rule. The date of the "Final Decision" as described in OAR 660-018-0040
25 shall be the date on which the local government takes final action on the amendment to,
26 or adoption of, a comprehensive plan or land use regulation. In order to be deemed final,
27 the local government action must include the adoption of all supplementary findings and
28 data. In addition, the date of final action shall be the day following exhaustion of all
29 appeal rights before local government.

30 (4) "Final Hearing on Adoption" as described in OAR 660-018-0020 and 660-018-0030
31 means the last hearing where all interested persons are allowed to present evidence and
32 rebut testimony on the proposal to adopt or amend a comprehensive plan or land use

1 regulation. “Final Hearing on Adoption” shall not include a hearing held solely on the
2 record of a previous hearing held by the governing body or its designated hearing body.

3 (5) “First Evidentiary Hearing” means the first hearing conducted by the local
4 government where interested persons are allowed to present and rebut evidence and
5 testimony on a proposal to adopt or amend a comprehensive plan or land use regulation.
6 “First evidentiary hearing” does not include a work session or briefing where testimony is
7 not allowed.

8 (6) “Map Change” as used in OAR 660-018-0020 means a change in the designation of
9 an area as shown on the comprehensive plan map, zoning map or both.

10 (7) “Substantially Amended” as used in OAR 660-018-0045 shall mean any change in
11 text that differs from the proposal submitted under OAR 660-018-0020 to such a degree
12 that the notice under OAR 660-018-0020 did not reasonably describe the nature of the
13 local government final action.

14 Stat. Auth.: ORS 197.040

15 Stats. Implemented: ORS 197.610 - 197.625

16 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-
17 1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert.
18 ef. 4-18-08

19 **660-018-0020**

20 **Filing of a Proposed Amendment to or Adoption of a Comprehensive Plan or Land**
21 **Use Regulation with the Director**

22 (1) A proposal to amend a local government acknowledged comprehensive plan or land
23 use regulation or to adopt a new land use regulation must:

24 (a) Be submitted to the director at least 45 days before the first evidentiary hearing on
25 adoption. The submittal must be received by the department at its Salem office;

26 (b) Be accompanied by appropriate forms provided by the department;

27 (c) Contain two copies of the text and any supplemental information the local
28 government believes is necessary to inform the director as to the effect of the proposal.
29 One of the required copies may be an electronic copy;

30 (d) Indicate the date of the final hearing on adoption. If a final hearing on adoption is
31 continued or delayed, following proper procedures, the local government is not required
32 to submit a new notice under OAR 660-018-0020.

33 (e) In the case of a map change, include a map showing the area to be changed as well as
34 the existing and proposed designations. Wherever possible, this map should be on 8-1/2
35 by 11-inch paper;

1 (f) Where a goal exception is being proposed, include the proposed language of the
2 exception. The [C]commission urges the local government to submit information that
3 explains the relationship of the proposal to the acknowledged plan and the goals, where
4 applicable.

5 (2) The text submitted to comply with subsection (1)(c) of this rule must include the
6 specific language being proposed as an addition to or deletion from the acknowledged
7 plan or land use regulations. A general description of the proposal or its purpose is not
8 sufficient. In the case of map changes, the text must include a graphic depiction of the
9 change, and not just a legal description, tax account number, address or other similar
10 general description.

11 Stat. Auth.: ORS 197.040

12 Stats. Implemented: ORS 197.610 - 197.625

13 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-
14 1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert.
15 ef. 4-18-08

16 **660-018-0021**

17 **Submittal of Joint Amendments**

18 Where two or more local governments are required [~~by plan provisions or statewide~~
19 ~~goals~~] to jointly consider or agree on a comprehensive plan or land use regulation
20 amendment, the local governments shall jointly submit the proposed amendment and
21 adopted action. Notice of jointly proposed amendments must be provided 45 days prior to
22 the first evidentiary hearing. For purposes of notice and appeal, the date of the final
23 decision is the date of the last local government's adoption.

24 Stat. Auth.: ORS 197.040

25 Stats. Implemented: ORS 197.610 - 197.625

26 Hist.: LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-
27 2008, f. & cert. ef. 4-18-08

28 **660-018-0022**

29 **Exemptions to Filing Requirements Under OAR 660-018-0020**

30 [~~Exemptions to the requirements of OAR 660-018-0020 are governed by ORS~~
31 ~~197.610(2).~~] **When a local government determines that no goals, commission rules, or**
32 **land use statutes apply to a particular proposed amendment or new regulation,**
33 **filing under OAR 660-018-0020 is not required. In addition, a local government may**
34 **submit an amendment or new regulation with less than 45 days' notice if the local**
35 **government determines that there are emergency circumstances requiring expedited**
36 **review. In both cases:**

37 **(a) The amendment or new regulation shall be submitted after adoption as**
38 **provided in ORS 197.615 (1) and (2); and**

39 **(b) Notwithstanding the requirements of ORS 197.830 (2) to have appeared**
40 **before the local government in the proceedings concerning the proposal, the director**

1 **or any other person may appeal the decision to the board under ORS 197.830 to**
2 **197.845.**

3

4 Stat. Auth.: ORS 197.040
5 Stats. Implemented: ORS 197.610(2)
6 Hist.: LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-
7 2008, f. & cert. ef. 4-18-08

8 **660-018-0025**
9 **Notice of Proposed Amendment to or Adoption of a Comprehensive Plan or Land**
10 **Use Regulation Sent to Those Requesting**

11 Persons requesting written notice of proposed amendments to acknowledged
12 comprehensive plans or land use regulations or proposed adoptions of new land use
13 regulations who have paid the fee established under the provisions of OAR 660-018-0140
14 shall be mailed a notice by the department of the proposed action within 15 days of the
15 receipt of notice from local government required by OAR 660-018-0020. The department
16 may provide such notice by electronic mail, in which case no fee is required. The
17 department may provide the notice via the World Wide Web.

18 Stat. Auth.: ORS 197.040
19 Stats. Implemented: ORS 197.610 - 197.625
20 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-
21 2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08

22 **660-018-0030**
23 **Report to Commission**

24 **When the department participates in a local government proceeding on a proposed**
25 **amendment to an acknowledged comprehensive plan or land use regulation, t[~~F~~]**
26 **he** director must report the department position on proposed comprehensive plan or land use
27 regulation adoption or amendments to the Commission[~~-at least 20 days prior to the final~~
28 ~~hearing on adoption~~]. This report shall indicate whether the [department will participate
29 ~~in local government proceedings and whether the~~] director believes the proposal violates
30 the goals.

31 Stat. Auth.: ORS 197.040
32 Stats. Implemented: ORS 197.610 - 197.625
33 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-
34 2008, f. & cert. ef. 4-18-08

35 **660-018-0035**
36 **Department Participation**

1 If the department [~~chooses to~~] participates in a local government proceeding for which
2 notice was received under OAR 660-018-0020, the department shall [~~notify the local~~
3 ~~government. The department notification shall occur~~] **do so** at least 15 days prior to the
4 first evidentiary hearing [~~on adoption~~] as specified in **the** notice received under OAR
5 660-018-0020, provided the director received the proposal at least 45 days prior to the
6 first evidentiary hearing[;]. [~~and shall indicate any concerns with the proposal and~~
7 ~~recommendations considered necessary to address the concerns including, but not limited~~
8 ~~to, suggested corrections to achieve compliance with the goals.~~]

9 Stat. Auth.: ORS 197.040

10 Stats. Implemented: ORS 197.610 - 197.625

11 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-
12 2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08

13 **660-018-0040**

14 **Submittal of Adopted Material**

15 (1) Amendments to acknowledged comprehensive plans or land use regulations, new land
16 use regulations adopted by local government, and findings to support the adoption shall
17 be mailed or otherwise submitted to the director within five working days after the final
18 decision by the governing body and shall be accompanied by appropriate forms provided
19 by the department. If the text and findings are mailed, they shall include a signed
20 statement by the person mailing them indicating the date of deposit in the mail.

21 (2) Local government must notify the department of withdrawals or denials of proposals
22 previously sent to the department under requirements of OAR 660-018-0020.

23 (3) The local government must clearly indicate in its transmittal which provisions of ORS
24 196.610(2) are applicable where the adopted amendment was not submitted for review 45
25 days prior to the first evidentiary hearing on adoption.

26 **NOTE:** (ORS 197.610 clearly requires all adopted plan and land use regulation
27 amendments and new land use regulations to be submitted to the director even [~~though~~] **if**
28 they were not required to be submitted for review prior to adoption.)

29 (4) Where amendments **or new land use regulations**, including supplementary materials,
30 exceed 100 pages, a summary of the amendment briefly describing its purpose and
31 requirements shall be **included with the** submittal[ed] to the director. Such amendments
32 **or new land use regulations may** [~~should~~] be submitted [~~as an~~] **by** electronic [~~copy~~]
33 mail **notwithstanding the requirement of OAR 660-018-0020 for at least one paper**
34 **copy.**

35 Stat. Auth.: ORS 197.040

36 Stats. Implemented: ORS 197.610 - 197.625

37 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-

1 1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert.
2 ef. 4-18-08

3 **660-018-0045**
4 **Changes in Proposals**

5 If **a proposed amendment to a** comprehensive plan or land use regulation [~~amendments~~]
6 or new land use regulations **is substantially amended after notice has been provided**
7 **under OAR 660-018-0020 but before the amendment or new regulation is** [~~that are~~]
8 adopted [~~by a local government have been substantially amended~~], the local government
9 must specify the changes that have been made in the notice **of adoption** [~~to the director~~]
10 provided in OAR 660-018-0040.

11 Stat. Auth.: ORS 197.040
12 Stats. Implemented: ORS 197.610 - 197.625
13 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-
14 2008, f. & cert. ef. 4-18-08

15 **660-018-0050**
16 **Notice to Other Parties**

17 Notice of adopted plan amendments to parties other than director is governed by ORS
18 197.615(2).

19 Stat. Auth.: ORS 197.040
20 Stats. Implemented: ORS 197.615(2)
21 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-
22 1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert.
23 ef. 4-18-08

24 **660-018-0055**
25 **Notice of Local Government Action by the Director**

26 Within five working days of the receipt of notice under OAR 660-018-0040, the director
27 shall provide notice by mail or other submission to those who have requested notice
28 under OAR 660-018-0055 and have paid the fee established under the provisions of OAR
29 660-018-0140. Such notice may, with the requestor's consent, be provided by electronic
30 mail or the World Wide Web, in which case no fee is required. This notice shall explain
31 the requirements for appealing the local government action to the Land Use Board of
32 Appeals and indicate the locations where the adopted documents may be reviewed.

33 Stat. Auth.: ORS 197.040
34 Stats. Implemented: ORS 197.610 - 197.625
35 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-
36 1987, f. & ef. 11-12-87; LCDD 3-2008, f. & cert. ef. 4-18-08

1 **660-018-0060**
2 **Who May Appeal**

3 Eligibility for appeal of a local government decision to adopt or amend a comprehensive
4 plan or land use regulation is governed by ORS 197.620.

5 Stat. Auth.: ORS 197.040
6 Stats. Implemented: ORS 197.610 - 197.845
7 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-
8 1987, f. & ef. 11-12-87; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2000, f. & cert. ef.
9 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08

10 **660-018-0085**
11 **Action Where No Appeal or Objection is Timely Filed**

12 Pursuant to ORS 197.625, if the Land Use Board of Appeals or the appellate courts
13 affirm a local government action, or no appeal is timely filed, a local action under this
14 division is considered acknowledged.

15 Stat. Auth.: ORS 197.040
16 Stats. Implemented: ORS 197.610 - 197.625
17 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-
18 1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert.
19 ef. 4-18-08

20 **660-018-0140**
21 **Fee for Notice**

22 (1) An annual fee of \$300 to defray the costs of mailed notice provided under OAR 660-
23 018-0025 is established. The fee shall be assessed for each fiscal year, or fraction thereof,
24 commencing July 1, 2008. The fee is payable in advance of any notice being provided
25 under OAR 660-018-0025. For each subsequent fiscal year, the department shall bill
26 persons requesting such notice the annual fee each July. Persons failing to remit the fee
27 within 30 days of the date of the invoice shall be deemed as having terminated the request
28 for notice provided under OAR 660-018-0025.

29 (2) An annual fee of \$500 to defray the costs of mailed notice provided under OAR 660-
30 018-0055 is established. The fee shall be assessed for each fiscal year, or fraction thereof,
31 commencing July 1, 2008. The fee is payable in advance of any notice being provided
32 under OAR 660-018-0055. For each subsequent fiscal year, the department shall bill
33 persons requesting such notice the annual fee each July. Persons failing to remit the fee
34 within 30 days of the date of the invoice shall be deemed as having terminated the request
35 for notice provided under OAR 660-018-0055.

36 Stat. Auth.: ORS 197.040
37 Stats. Implemented: ORS 197.610 - 197.625

1 Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-
2 2008, f. & cert. ef. 4-18-08

3 **660-018-0150**

4 **Time Limits Regarding Certified Industrial Sites**

5 (1) Upon application for a comprehensive plan or land use regulation amendment or a
6 new land use regulation necessary to expedite and facilitate industrial or traded sector
7 development on any of the certified industrial sites identified and prioritized under Or
8 Laws 2003, Chapter 800, Section 12, a local government shall take final action
9 approving, approving with modifications, or denying the application no later than 180
10 days after the date the application is deemed complete by the local government.

11 (2) For purposes of this rule, “certified industrial sites” are those sites so designated by
12 the Economic Revitalization Team Regulatory Efficiency Group established by Or Laws
13 2003, Chapter 800, Section (2) in accordance with the requirements of Or Laws 2003,
14 Chapter 800, Section 12.

15 (3) Persons, including the director, who participated in the local government proceedings
16 leading to the adoption of a comprehensive plan or land use regulation amendment or
17 new land use regulation described in section (1) of this rule may appeal the final decision
18 by the local government in accordance with requirements and time limits specified in
19 ORS 197.610 through 197.625, except as provided in section (4) of this rule.

20 (4) For a final action to expand an urban growth boundary or designate an urban reserve
21 necessary to expedite and facilitate industrial or traded sector development on any of the
22 certified industrial sites identified and prioritized under Or Laws 2003, Chapter 800,
23 Section 12, and provided the decision is subject to ORS 197.626, the Commission shall
24 review the action following the timelines and procedures specified in OAR 660-025-040,
25 660-025-140 through 660-025-160, and 660-025-175.

26 Stat. Auth.: ORS 197.040

27 Stats. Implemented: ORS 197.610 - 197.625

28 Hist.: LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 21

URBAN RESERVES

1 **660-021-0000**

2 **Purpose**

3 This division **interprets and implements ORS 195.137 through 195.145 and**
4 **Statewide Planning Goals pertaining to Urbanization. Rules in this division**
5 authorize[s] planning for areas outside urban growth boundaries to be reserved for
6 eventual inclusion in an urban growth boundary and to be protected from patterns of
7 development that would impede urbanization.

8 Stat. Auth.: ORS 197.040

9 Stats. Implemented: ORS 195.145

10 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

11 **660-021-0010**

12 **Definitions**

13 For purposes of this division, the definitions contained in ORS 197.015 and the Statewide
14 Planning Goals (OAR chapter 660, division 015) apply. In addition, the following
15 definitions apply:

16 (1) "Urban Reserve": Lands outside of an urban growth boundary that will provide for:

17 (a) Future expansion over a long-term period; and

18 (b) The cost-effective provision of public facilities and services within the area when the
19 lands are included within the urban growth boundary.

20 (2) "Resource Land": Land subject to the Statewide Planning Goals listed in OAR 660-
21 004-0010(1)(a) through ([f]g), except subsections (c) **and (d)**.

22 (3) "Nonresource Land": Land not subject to **one or more of** the Statewide Planning
23 Goals listed in OAR 660-004-0010(1)(a) through ([f]g) except subsections (c) **and (d)**.
24 Nothing in this definition is meant to imply that other goals do not apply to nonresource
25 land.

26 (4) "Exception Areas": Rural lands for which an exception to Statewide Planning Goals 3
27 [and] **or 4, or both**, as defined in **ORS 197.732 and** OAR 660-004-0005(1), **has** [have]
28 been acknowledged.

1 (5) "Developable Land": Land that is not severely constrained by natural hazards ~~and~~ or
2 designated or zoned to protect natural resources~~and~~ and that is either entirely vacant or has
3 a portion of its area unoccupied by structures or roads.

4 (6) "Adjacent Land": Abutting land.

5 (7) "Nearby Land": Land that lies wholly or partially within a quarter mile of an urban
6 growth boundary.

7 Stat. Auth.: ORS 197.040

8 Stats. Implemented: ORS 195.145

9 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD
10 1-2008, f. & cert. ef. 2-13-08

11 **660-021-0020**

12 **Authority to Establish Urban Reserve**

13 (1) Cities and counties cooperatively, and the Metropolitan Service District for the
14 Portland Metropolitan area urban growth boundary, may designate urban reserves under
15 the requirements of this division, in coordination with special districts listed in OAR 660-
16 021-0050(2) and other affected local governments, including neighboring cities within
17 two miles of the urban growth boundary. Where urban reserves are adopted or amended,
18 they shall be shown on all applicable comprehensive plan and zoning maps, and plan
19 policies and land use regulations shall be adopted to guide the management of these
20 reserves in accordance with the requirements of this division.

21 (2) As an alternative to designation of urban reserves under the requirements of this
22 division, Metro may designate urban reserves for the Portland Metropolitan area urban
23 growth boundary under OAR 660, division 027.

24 Stat. Auth.: ORS 197.040

25 Stats. Implemented: ORS 195.145

26 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD
27 1-2008, f. & cert. ef. 2-13-08

28 **660-021-0030**

29 **Determination of Urban Reserve**

30 (1) Urban reserves shall include an amount of land estimated to be at least a 10-year
31 supply and no more than a 30-year supply of developable land beyond the 20-year time
32 frame used to establish the urban growth boundary. Local governments designating urban
33 reserves shall adopt findings specifying the particular number of years over which
34 designated urban reserves are intended to provide a supply of land.

35 (2) Inclusion of land within an urban reserve shall be based upon the locational factors of
36 Goal 14 and a demonstration that there are no reasonable alternatives that will require

1 less, or have less effect upon, resource land. Cities and counties cooperatively, and the
2 Metropolitan Service District for the Portland Metropolitan Area Urban Growth
3 Boundary, shall first study lands adjacent to, or nearby, the urban growth boundary for
4 suitability for inclusion within urban reserves, as measured by the factors and criteria set
5 forth in this section. Local governments shall then designate, for inclusion within urban
6 reserves, that suitable land which satisfies the priorities in section (3) of this rule.

7 (3) Land found suitable for an urban reserve may be included within an urban reserve
8 only according to the following priorities:

9 (a) First priority goes to land adjacent to, or nearby, an urban growth boundary and
10 identified in an acknowledged comprehensive plan as an exception area or nonresource
11 land. First priority may include resource land that is completely surrounded by exception
12 areas unless these are high value crop areas as defined in Goal 8 or prime or unique
13 agricultural lands as defined by the United States Department of Agriculture;

14 (b) If land of higher priority is inadequate to accommodate the amount of land estimated
15 in section (1) of this rule, second priority goes to land designated as marginal land
16 pursuant to former ORS 197.247 (1991 edition);

17 (c) If land of higher priority is inadequate to accommodate the amount of land estimated
18 in section (1) of this rule, third priority goes to land designated in an acknowledged
19 comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to
20 land of lower capability as measured by the capability classification system or by cubic
21 foot site class, whichever is appropriate for the current use.

22 (4) Land of lower priority under section (3) of this rule may be included if land of higher
23 priority is found to be inadequate to accommodate the amount of land estimated in
24 section (1) of this rule for one or more of the following reasons:

25 (a) Future urban services could not reasonably be provided to the higher priority area due
26 to topographical or other physical constraints; or

27 (b) Maximum efficiency of land uses within a proposed urban reserve requires inclusion
28 of lower priority lands in order to include or to provide services to higher priority lands.

29 (5) Findings and conclusions concerning the results of the above consideration shall be
30 adopted by the affected] jurisdictions.

31 Stat. Auth.: ORS 197.040

32 Stats. Implemented: ORS 195.145

33 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 7-1996, f. & cert. ef. 12-31-96; LCDD
34 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

1 **660-021-0040**
2 **Urban Reserve Area Planning and Zoning**

3 (1) Until included in the urban growth boundary, lands in urban reserves shall continue to
4 be planned and zoned for rural uses in accordance with the requirements of this
5 ~~[section]~~ **rule and the applicable statutes and goals**, but in a manner that ensures a
6 range of opportunities for the orderly, economic and efficient provision of urban services
7 when these lands are included in the urban growth boundary.

8 (2) Urban reserve land use regulations shall ensure that development and land divisions
9 in exception areas and nonresource lands will not hinder the efficient transition to urban
10 land uses and the orderly and efficient provision of urban services. These measures shall
11 be adopted by the time the urban reserves are designated, or in the case of those local
12 governments with planning and zoning responsibility for lands in the vicinity of the
13 Portland Metropolitan Area Urban Growth Boundary, by the time such local governments
14 amend their comprehensive plan and zoning maps to implement urban reserve
15 designations made by the Portland Metropolitan Service District. The measures may
16 include:

17 (a) Prohibition on the creation of new parcels less than ten acres;

18 (b) Requirements for clustering as a condition of approval of new parcels;

19 (c) Requirements for preplatting of future lots or parcels;

20 (d) Requirements for written waivers of remonstrance against annexation to a provider of
21 sewer, water or streets;

22 (e) Regulation of the siting of new development on existing lots for the purpose of
23 ensuring the potential for future urban development and public facilities.

24 (3) For exception areas and nonresource land in urban reserves, land use regulations shall
25 prohibit zone amendments allowing more intensive uses, including higher residential
26 density, than permitted by acknowledged zoning in effect as of the date of establishment
27 of the urban reserves. Such regulations shall remain in effect until such time as the land is
28 included in the urban growth boundary.

29 (4) Resource land that is included in urban reserves shall continue to be planned and
30 zoned under the requirements of applicable Statewide Planning Goals.

31 (5) Urban reserve agreements consistent with applicable comprehensive plans and
32 meeting the requirements of OAR 660-021-0050 shall be adopted for urban reserves.

33 (6) Cities and counties are authorized to plan for the eventual provision of urban public
34 facilities and services to urban reserves. However, this division is not intended to
35 authorize urban levels of development or services in urban reserves prior to their

1 inclusion in the urban growth boundary. This division is not intended to prevent any
2 planning for, installation of, or connection to public facilities or services in urban
3 reserves consistent with the statewide planning goals and with acknowledged
4 comprehensive plans and land use regulations in effect on the applicable date of this
5 division.

6 (7) A local government shall not prohibit the siting of a single family dwelling on a legal
7 parcel pursuant to urban reserve planning requirements if the single family dwelling
8 would otherwise have been allowed under law existing prior to the designation of the
9 parcel as part of an urban reserve.

10 Stat. Auth.: ORS 197.040

11 Stats. Implemented: ORS 195.145

12 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD
13 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000,
14 f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

15 **660-021-0050**

16 **Urban Reserve Agreements**

17 Urban reserve planning shall include the adoption and maintenance of urban reserve
18 agreements among cities, counties and special districts serving or projected to serve the
19 designated urban reserves. These agreements shall be adopted by each applicable
20 jurisdiction **at or prior to the time of reserve designation** and shall contain:

21 (1) Designation of the local government responsible for building code administration and
22 land use regulation in the urban reserves, both at the time of reserve designation and upon
23 inclusion of these reserves within the urban growth boundary.

24 (2) Designation of the local government or special district responsible for the following
25 services: sewer, water, fire protection, parks, transportation and storm water. The
26 agreement shall include maps indicating areas and levels of current rural service
27 responsibility and areas projected for future urban service responsibility when included in
28 the urban growth boundary.

29 (3) Terms and conditions under which service responsibility will be transferred or
30 expanded for areas where the provider of the service is expected to change over time.

31 (4) Procedures for notification and review of land use actions to ensure involvement by
32 all affected local governments and special districts.

33 Stat. Auth.: ORS 197.040

34 Stats. Implemented: ORS 195.145

35 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD
36 1-2008, f. & cert. ef. 2-13-08

1 **660-021-0060**
2 **Urban Growth Boundary Expansion**

3 All lands within urban reserves established pursuant to this division shall be included
4 within an urban growth boundary before inclusion of other lands, except where an
5 identified need for a particular type of land cannot be met by lands within an established
6 urban reserve.

7 Stat. Auth.: ORS 197.040
8 Stats. Implemented: ORS 195.145
9 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD
10 1-2008, f. & cert. ef. 2-13-08

11 **660-021-0070**
12 **Adoption and Review of Urban Reserve**

13 (1) Designation and amendment of urban reserves shall follow the **applicable** procedures
14 ~~in~~ **of** ORS 197.610 through 197.650.

15 (2) Disputes between jurisdictions regarding urban reserve boundaries, planning and
16 regulation, or urban reserve agreements may be mediated by the Department or
17 Commission upon request by an affected local government or special district.

18 Stat. Auth.: ORS 197.040
19 Stats. Implemented: ORS 195.145
20 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97;
21 LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008,
22 f. & cert. ef. 2-13-08

23 **660-021-0080**
24 **Applicability**

25 The provisions of this ~~rule~~ **division, and amendments to rules in this division,** are
26 effective upon filing with the Secretary of State.

27 Stat. Auth.: ORS 183, 197.040
28 Stats. Implemented: ORS 195.145
29 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD
30 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-1997,
31 f. & cert. ef. 12-23-97; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef.
32 2-13-08

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 25

PERIODIC REVIEW

1 **660-025-0010**

2 **Purpose**

3 The purpose of this division is to carry out the state policy outlined in ORS 197.010 and
4 197.628. This division is intended to implement provisions of ORS 197.626 through
5 197.[646]**651**. The purpose for periodic review is to ensure that comprehensive plans and
6 land use regulations remain in compliance with the statewide planning goals adopted
7 pursuant to ORS 197.230, **the commission's rules and applicable land use statutes.**
8 **Periodic review also is intended to assure that local governments plan for**~~[, and that]~~
9 adequate provision for needed housing, economic development, transportation, public
10 facilities and services, and urbanization, **and that local plans** are coordinated as
11 described in ORS 197.015(5). Periodic Review is a cooperative process between the
12 state, local governments, and other interested persons.

13 Stat. Auth.: ORS 183 & 197

14 Stats. Implemented: ORS 197.628 - 197.646

15 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD

16 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06

17 **660-025-0020**

18 **Definitions**

19 For the purposes of this division, the definitions contained in ORS 197.015, 197.303,
20 shall apply unless the context requires otherwise. In addition, the following definitions
21 apply:

22 (1) "Economic Revitalization Team" means the team established under ORS 284.555.

23 (2) "Filed" or "Submitted" means that the required documents have been received by the
24 Department of Land Conservation and Development at its Salem, Oregon, office.

25 (3) "Final Decision" means the completion by the local government of a work task on an
26 approved work program, including the adoption of supporting findings and any
27 amendments to the comprehensive plan or land use regulations. A decision is final when
28 the local government's decision is transmitted to the department for review.

29 (4) "Metropolitan planning organization" means an organization located wholly within
30 the State of Oregon and designated by the Governor to coordinate transportation planning
31 in an urbanized area of the state pursuant to 49 USC 5303(c).

1 (5) "Objection" means a written complaint concerning the adequacy of an evaluation,
2 proposed work program, or completed work task.

3 (6) "Participated at the local level" means to have provided substantive comment,
4 evidence, documents, correspondence, or testimony to the local government during the
5 local proceedings regarding a decision on an evaluation, work program or work task.

6 (7) "Work Program" means a detailed listing of tasks necessary to revise or amend the
7 local comprehensive plan or land use regulations to ensure the plan and regulations
8 achieve the statewide planning goals. A work program must indicate the date that each
9 work task must be submitted to the department for review.

10 (8) "Work Task" or "task" means an activity, that is included on an approved work
11 program and that generally results in an adopted amendment to a comprehensive plan or
12 land use regulation.

13 Stat. Auth.: ORS 183 & 197

14 Stats. Implemented: ORS 197.015 & 197.628 - 197.646

15 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD

16 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06

17 **660-025-0030**

18 **Periodic Review Schedule**

19 (1) The commission must approve, and update as necessary, a schedule for periodic
20 review. The schedule must include the date when each local government must be sent a
21 letter by the department requesting the local government to commence the periodic
22 review process.

23 (2) The schedule developed by the commission must reflect the following:

24 (a) A city with a population of more than 2,500 within a metropolitan planning
25 organization or a metropolitan service district shall conduct periodic review every seven
26 years after completion of the previous periodic review.

27 (b) A city with a population of 10,000 or more inside its urban growth boundary that is
28 not within a metropolitan planning organization shall conduct periodic review every 10
29 years after completion of the previous periodic review.

30 (c) A county with a portion of its population within the urban growth boundary of a city
31 subject to periodic review under this section shall conduct periodic review for that
32 portion of the county according to the schedule and work program set for the city.

33 (d) Notwithstanding subsection (c) of this section, if the schedule set for the county is
34 specific as to that portion of the county within the urban growth boundary of a city

1 subject to periodic review under this section, the county shall conduct periodic review for
2 that portion of the county according to the schedule and work program set for the county.

3 (3) The commission may establish a schedule that varies from the standards in section (2)
4 of this rule if necessary to coordinate approved periodic review work programs or to
5 account for special circumstances. The commission may schedule a local government's
6 periodic review earlier than provided in section (2) of this rule if necessary to ensure that
7 all local governments in a region whose land use decisions would significantly affect
8 other local governments in the region are conducting periodic review concurrently, but
9 not sooner than five years after completion of the previous periodic review.

10 (4) The director must maintain and implement the schedule. Copies of the schedule must
11 be provided upon request.

12 Stat. Auth.: ORS 197.040 & 197.633

13 Stats. Implemented: ORS 197.628 - 197.646

14 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
15 4-2006, f. & cert. ef. 5-15-06

16 **660-025-0035**

17 **Initiating Periodic Review Outside the Schedule**

18 (1) A local government may request, and the commission may approve, initiation of
19 periodic review not otherwise provided for in the schedule established under OAR 660-
20 025-0030. The request must be submitted to the commission along with justification for
21 the requested action. The justification must include a statement of local circumstances
22 that warrant periodic review and identification of the statewide planning goals to be
23 addressed.

24 (2) In consideration of the request filed pursuant to section (1), the commission must
25 consider the needs of the jurisdiction to address the issue(s) identified in periodic review,
26 the interrelationships of the statewide planning goals to be addressed in the periodic
27 review project, and other factors the commission finds relevant. If the commission
28 approves the request, the provisions of this division apply, except as provided in section
29 (3) of this rule.

30 (3) The Economic Revitalization Team may work with a city to create a voluntary
31 comprehensive plan review that focuses on the unique vision of the city, instead of
32 conducting a standard periodic review, if the team identifies a city that the team
33 determines can benefit from a customized voluntary comprehensive plan review. In order
34 for a voluntary comprehensive plan review to be initiated by the commission, the city
35 must request initiation of such a modified periodic review. The provisions of this division
36 apply except as follows:

- 1 (a) If the city is subject to the periodic review schedule in OAR 660-025-0030, the
2 periodic review under this section will not replace or delay the next scheduled periodic
3 review;
- 4 (b) If the city misses a deadline related to an evaluation, work program or work task,
5 including any extension, the commission must terminate the evaluation, work program, or
6 work task or impose sanctions pursuant to OAR 660-025-0170(3).
- 7 (4) If the commission pays the costs of a local government that is not subject to OAR
8 660-025-0030 to perform new work programs and work tasks, the commission may
9 require the local government to complete periodic review when the local government has
10 not completed periodic review within the previous five years if:
- 11 (a) A city has been growing faster than the annual population growth rate of the state for
12 five consecutive years;
- 13 (b) A major transportation project on the Statewide Transportation Improvement Program
14 that is approved for funding by the Oregon Transportation commission is likely to:
- 15 (A) Have a significant impact on a city or an urban unincorporated community; or
- 16 (B) Be significantly affected by growth and development in a city or an urban
17 unincorporated community;
- 18 (c) A major facility, including a prison, is sited or funded by a state agency; or
- 19 (d) Approval by the city or county of a facility for a major employer will increase
20 employment opportunities and significantly affect the capacity of housing and public
21 facilities in the city or urban unincorporated community.
- 22 (5) As used in section (4) of this rule, "the costs of a local government" means: normal
23 and customary expenses for supplies, personnel and services directly related to preparing
24 a work program, and completing studies and inventories, drafting of ordinances,
25 preparing and sending notices of hearings and meetings, conducting meetings and
26 workshops, and conducting hearings on possible adoption of amendments to plans or
27 codes, to complete a work task.

28 Stat. Auth.: ORS 197.040 & 197.633
29 Stats. Implemented: ORS 197.628 - ORS 197.646
30 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06

31 **660-025-0040**
32 **Exclusive Jurisdiction of LCDC**

33 (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction to review
34 the evaluation, work program, and all work tasks for compliance with the statewide

1 planning goals and applicable statutes and administrative rules. Pursuant to ORS 197.626,
2 the commission has exclusive jurisdiction to review the following land use decisions for
3 compliance with the statewide planning goals:

4 (a) If made by a city with a population of 2,500 or more inside its urban growth
5 boundary, amendments to an urban growth boundary to include more than 50 acres;

6 (b) If made by a metropolitan service district, amendments to an urban growth boundary
7 to include more than 100 acres;

8 (c) P[~~p~~]lan and land use regulations that designate urban reserve areas.

9 (2) The director may transfer one or more matters arising from review of a work task,
10 urban growth boundary amendment or designation or amendment of an urban reserve
11 area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-
12 025-0250.

13 Stat. Auth.: ORS 197.040

14 Stats. Implemented: ORS 195.145, 197.628 - 197.646, 197.825

15 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
16 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
17 cert. ef. 5-15-06

18 **660-025-0050**

19 **Commencing Periodic Review**

20 (1) The department must commence the periodic review process by sending a letter to the
21 affected local government pursuant to OAR 660-025-0030 or 660-025-0035. The
22 department may provide advance notice to a local government of the upcoming review
23 and must encourage local governments to review their citizen involvement provisions
24 prior to beginning periodic review.

25 (2) The periodic review commencement letter must include the following information:

26 (a) A description of the requirements for citizen involvement, evaluation of the plan and
27 preparation of a work program;

28 (b) The date the evaluation and work program or evaluation and decision that no work
29 program is required must be submitted;

30 (c) Applicable evaluation forms; and

31 (d) Other information the department considers relevant.

32 (3) The director must provide copies of the materials sent to the local government to
33 interested persons upon written request.

1 Stat. Auth.: ORS 197.040 & 197.633
2 Stats. Implemented: ORS 197.628 - 197.646
3 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

4 **660-025-0060**
5 **Periodic Review Assistance Team(s)**

6 (1) The director may create one or more Periodic Review Assistance Team(s) to
7 coordinate state, regional or local public agency comment, assistance, and information
8 into the evaluation and work program development process. The director must seek input
9 from agencies, regional governments and local governments on the membership of
10 Periodic Review Assistance Team(s).

11 (2) Members of the Periodic Review Assistance Team will provide, as appropriate:

12 (a) Information relevant to the periodic review process;

13 (b) New and updated information;

14 (c) Technical and professional land use planning assistance; or

15 (d) Coordinated evaluation and comment from state agencies.

16 (3) Membership. The Periodic Review Assistance Team may include representatives of
17 state agencies with programs affecting land use and representatives of regional or local
18 governments who may have an interest in the review.

19 (4) Meetings. The Periodic Review Assistance Team shall meet as necessary to provide
20 information and advice to a local government in periodic review.

21 (5) Authority. The Periodic Review Assistance Team shall be an advisory body. The
22 team may make recommendations concerning an evaluation, a work program or work
23 task undertaken pursuant to an approved work program. The team may also make
24 recommendations to cities, counties, state agencies and the commission regarding any
25 other issues related to periodic review.

26 (6) In addition to the Periodic Review Assistance Team(s), the department may utilize the
27 Economic Revitalization Team or institute an alternative process for coordinating agency
28 participation in the periodic review of comprehensive plans.

29 (7) Consideration by the commission. The commission must consider the
30 recommendations, if any, of the Periodic Review Assistance Team(s).

31 Stat. Auth.: ORS 197.040 & 197.633
32 Stats. Implemented: ORS 197.628 - 197.646
33 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

1 **660-025-0070**

2 **Need for Periodic Review**

3 (1) The following conditions indicate the need for, and establish the scope of, review for
4 periodic review of comprehensive plans and land use regulations when required under
5 OAR 660-025-0030:

6 (a) There has been a substantial change in circumstances including but not limited to the
7 conditions, findings, or assumptions upon which the comprehensive plan or land use
8 regulations were based, so that the comprehensive plan or land use regulations do not
9 comply with the statewide planning goals relating to economic development, needed
10 housing, transportation, public facilities and services and urbanization;

11 (b) Decisions based on acknowledged comprehensive plan and land use regulations are
12 inconsistent with the goals relating to economic development, needed housing,
13 transportation, public facilities and services and urbanization;

14 (c) There are issues of regional or statewide significance, intergovernmental coordination,
15 or state agency plans or programs affecting land use which must be addressed in order to
16 bring comprehensive plans and land use regulations into compliance with the goals
17 relating to economic development, needed housing, transportation, public facilities and
18 services and urbanization; or

19 (d) The existing comprehensive plan and land use regulations are not achieving the
20 statewide planning goals relating to economic development, needed housing,
21 transportation, public facilities and services and urbanization.

22 (2) When a local government requests initiation of periodic review under OAR 660-025-
23 0035(2), the need for periodic review may be based on factors not contained in section
24 (1) of this rule and the scope of such a periodic review may be more limited than would
25 be the case for scheduled periodic review under section (1) of this rule.

26 Stat. Auth.: ORS 197.040

27 Stats. Implemented: ORS 197.628 - 197.646

28 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
29 4-2006, f. & cert. ef. 5-15-06

30 **660-025-0080**

31 **Citizen Involvement**

32 (1) The local government must use its acknowledged or otherwise approved citizen
33 involvement program to provide adequate participation opportunities for citizens and
34 other interested persons in all phases of the local periodic review. Each local government
35 must publish a notice in a newspaper of general circulation within the community
36 informing citizens about the initiation of the local periodic review. The local government

1 must also provide written notice of the initiation of the local periodic review to other
2 persons who, in writing, request such notice.

3 (2) Each local government must review its citizen involvement program and assure that
4 there is an adequate process for citizen involvement in all phases of the periodic review
5 process. Citizen involvement opportunities must, at a minimum, include:

6 (a) Interested persons must have the opportunity to comment in writing in advance of or
7 at one or more hearings on the periodic review evaluation. Citizens and other interested
8 persons must have the opportunity to present comments orally at one or more hearings on
9 the periodic review evaluation. Citizens and other interested persons must have the
10 opportunity to propose periodic review work tasks prior to or at one or more hearings.
11 The local government must provide a response to comments at or following the hearing
12 on the evaluation.

13 (b) Interested persons must have the opportunity to comment in writing in advance of or
14 at one or more hearings on a periodic review work task. Citizens and other interested
15 persons must have the opportunity to present comments orally at one or more hearings on
16 a periodic review work task. The local government must respond to comments at or
17 following the hearing on a work task.

18 Stat. Auth.: ORS 197.040 & 197.633

19 Stats. Implemented: ORS 197.628 - 197.646

20 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06

21 **660-025-0085**

22 **Commission Hearings Notice and Procedures**

23 (1) Hearings before the commission on a referral of a local government submittal of an
24 evaluation, work program, determination that a work program is not necessary, or
25 hearings on referral or appeal of a work task must be noticed and conducted in
26 accordance with this rule.

27 (2) The commission shall take final action on an appeal or referral within 90 days of the
28 date the appeal was filed or the director issued notice of the referral unless:

29 (a) At the request of a local government and a person who files a valid objection or
30 appeals the director's decision, the department may provide mediation services to resolve
31 disputes related to the appeal. Where mediation is underway, the commission shall delay
32 its hearing until the mediation process is concluded or the director, after consultation with
33 the mediator, determines that mediation is of no further use in resolution of the work
34 program or work task disagreements;

35 (b) If the appeal or referral raises new or complex issues of fact or law that make it
36 unreasonable for the commission to give adequate consideration to the issues within the
37 90-day limit the commission is not required to take final action within that time limit; or

1 (c) If the parties to the appeal and the commission agree to an extension, the hearing may
2 be continued for a period not to exceed an additional 90 days.

3 (3) The director must provide written notice of the hearing to the local government, the
4 appellant, objectors, and individuals requesting notice in writing. The notice must contain
5 the date and location of the hearing.

6 (4) The director may prepare a written report to the commission on an appeal or referral.
7 If a report is prepared, the director must mail a copy to the local government, objectors,
8 the appellant, and individuals requesting the report in writing.

9 (5) Commission hearings will be conducted using the following procedures:

10 (a) The chair will open the hearing and explain the proceedings;

11 (b) The director or designee will present an oral report regarding the nature of the matter
12 before the commission, an explanation of the director's decision, if any, and other
13 information to assist the commission in reaching a decision. If another state agency
14 participated in the periodic review under ORS 197.637 or 197.638, the agency may
15 participate in the director's oral report.

16 (c) **Participation in the hearing is limited to** [~~Oral argument will be allowed. F~~]:

17 **(A)** The local government or governments whose decision is under review;

18 **(B)** [~~and parties~~] **Persons** who filed **a valid** objection[s] **to the local decision in the case**
19 **of commission hearing on a referral;**

20 **(C)** **Persons who filed a valid appeal of the director's decision in the case of a**
21 **commission hearing on** [~~or~~] an appeal; **and**

22 **(D)** **Other affected local governments.**

23 **(d) Standing to file an appeal of a work task is governed by OAR 660-025-0150.**

24 **(e) Persons or their authorized representative** may present oral argument. [~~Oral~~
25 ~~argument will not be an opportunity to present new evidence regarding the matter before~~
26 ~~the commission.~~]

27 **(f)** The local government that submitted the task may provide general information **from**
28 **the record** on the task submittal and address those issues raised in the department
29 review, objections, **or** [~~and~~] the appeal. [~~Persons~~] **A person** who submitted objections or
30 an appeal may address only those issues raised in **the** objections or the appeal **submitted**
31 **by that person.** Other affected local governments may address only those issues raised in
32 objections or [~~the~~] **an** appeal.

1 ~~(g)(d)~~ **The commission will not consider new evidence unless it requests it.** [The
2 commission may request new evidence or information] at its discretion. **If the**
3 **commission considers new evidence, it** [and] will allow the parties an opportunity to
4 review and respond to the new evidence [~~or information~~], subject to the time limits in
5 section (2) of this rule.

6 ~~(h)(e)~~ The director or commission may take official notice of law defined as:

7 (A) The decisional, constitutional and public statutory law of Oregon, the United States
8 and any state, territory or other jurisdiction of the United States.

9 (B) Public and private official acts of the legislative, executive and judicial departments
10 of this state, the United States, and any other state, territory or other jurisdiction of the
11 United States.

12 (C) Regulations, ordinances and similar legislative enactments issued by or under the
13 authority of the United States or any state, territory or possession of the United States.

14 (D) Rules of court of any court of this state or any court of record of the United States or
15 of any state, territory or other jurisdiction of the United States.

16 (E) The law of an organization of nations and of foreign nations and public entities in
17 foreign nations.

18 (F) An ordinance, comprehensive plan or enactment of any local government in this state,
19 or a right derived therefrom.

20 [~~(f) The commission must make a decision on the appeal or referral as provided in this~~
21 ~~division.~~]

22 Stat. Auth.: ORS 197.040 & 197.633

23 Stats. Implemented: ORS 197.628 - 197.646

24 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06

25 **660-025-0090**

26 **Evaluation, Work Program or Decision that No Work Is Necessary**

27 (1) The local government must conduct an evaluation of its plan and land use regulations
28 based on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The
29 local evaluation process must comply with the following requirements:

30 (a) The local government must follow its citizen involvement program and the
31 requirements of OAR 660-025-0080 for conducting the evaluation and determining the
32 scope of a work program.

1 (b) The local government must provide opportunities for participation by the department
2 and Periodic Review Assistance Team. Issues related to coordination between local
3 government comprehensive plan provisions and certified state agency coordination
4 programs that are raised by the affected agency, or Periodic Review Assistance Team
5 must be considered by the local government.

6 (c) The local government may provide opportunities for participation by the Economic
7 Revitalization Team.

8 (d) At least 21 days before submitting the evaluation and work program, or decision that
9 no work program is required, the local government must provide copies of the evaluation
10 to members of the Periodic Review Assistance Team, if formed, and others who have, in
11 writing, requested copies.

12 (e) After review of comments from interested persons, the local government must adopt
13 an evaluation and work program or decision that no work program is required.

14 (2) The local government must submit the evaluation and work program, or decision that
15 no work program is required, to the department according to the following requirements:

16 (a) The evaluation must include completed evaluation forms that are appropriate to the
17 jurisdiction as determined by the director. Evaluation forms will be based on the
18 jurisdiction's size, growth rate, geographic location, and other factors that relate to the
19 planning situation at the time of periodic review. Issues related to coordination between
20 local government comprehensive plan provisions and certified agency coordination
21 programs may be included in evaluation forms.

22 (b) The local government must also submit to the department a list of persons who
23 requested notice of the evaluation and work program or decision that no work program is
24 required.

25 (c) The evaluation and work program, or decision that no work program is necessary,
26 must be submitted within six months of the date the department sent the letter initiating
27 the periodic review process, including any extension granted under section (3) of this
28 rule.

29 (3) A local government may request an extension of time for submitting its evaluation
30 and work program, or decision that no work program is required. The director may grant
31 the request if the local government shows good cause for the extension. A local
32 government may be permitted only one extension, which shall be for no more than 90
33 days.

34 (4) A decision by the director to deny a request for an extension may be appealed to the
35 commission according to the procedures in OAR 660-025-0110(5), or the director may
36 refer a request for extension under section (3) of this rule to the commission pursuant to
37 OAR 660-025-0085.

1 (5) If a local government fails to submit its evaluation and work program, or decision that
2 no work program is necessary, by the deadline set by the director or the commission,
3 including any extension, the director shall schedule a hearing before the commission
4 according to OAR 660-025-0170(3).

5 Stat. Auth.: ORS 197.040 & 197.633

6 Stats. Implemented: ORS 197.628 - 197.646

7 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD

8 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06

9 **660-025-0100**

10 **Notice and Filing of Objections (Work Program Phase)**

11 (1) After the local government approves the evaluation and work program, or the
12 evaluation and decision that no work program is necessary, the local government must
13 notify the department and persons who participated at the local level orally or in writing
14 during the local process. The local government notice must contain the following
15 information:

16 (a) Where a person can review a copy of the local government's evaluation and work
17 program or the evaluation and decision that no work program is necessary, and how a
18 person may obtain a copy of the decision;

19 (b) The requirements listed in section (2) of this rule for filing a valid objection to the
20 evaluation, work program or decision that no work program is necessary; and

21 (c) That objectors must give a copy of the objection to the local government.

22 (2) Persons who participated at the local level orally or in writing during the local process
23 leading to the evaluation and work program or decision that no work program is
24 necessary may object to the local government's decision. To be valid, an objection must:

25 (a) Be in writing and filed with the department no later than 21 days from the date the
26 notice was mailed by the local government;

27 (b) Clearly identify an alleged deficiency in the evaluation, work program or decision that
28 no work program is necessary;

29 (c) Suggest a specific work task that would resolve the deficiency;

30 (d) Demonstrate that the objecting party participated at the local level orally or in writing
31 during the local process.

32 (3) Objections that do not meet the requirements of section (2) of this rule must not be
33 considered by the director or commission.

1 (4) If no valid objections are received within the 21-day objection period, the director
2 may approve the evaluation and work program or decision that no work program is
3 required. Regardless of whether valid objections are received, the department may make
4 its own determination of the sufficiency of the evaluation and work program or
5 determination that no work program is necessary.

6 (5) If valid objections are received~~[or the department conducts its own review]~~, the
7 department must issue a report. The report must ~~[focus on]~~ **address** the issues raised in
8 valid objections~~[and concerns of the department]~~. The report must identify specific work
9 tasks to resolve valid objections or department concerns. A valid objection must either be
10 sustained or rejected by the department or commission based on the statewide planning
11 goals and related statutes and administrative rules.

12 Stat. Auth.: ORS 197.040 & 197.633

13 Stats. Implemented: ORS 197.628 - 197.646

14 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
15 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06

16 **660-025-0110**

17 **Director and Commission Action (Work Program Phase)**

18 (1) The director may:

19 (a) Issue an order approving the evaluation and work program or ~~[evaluation and]~~
20 determination that no work program is necessary;

21 (b) Issue an order rejecting the evaluation and work program or ~~[evaluation and]~~
22 determination that no work program is necessary and suggest modifications to the local
23 government including a date for resubmittal; or

24 (c) Refer the evaluation and work program or ~~[evaluation and]~~ determination that no
25 work program is necessary to the commission for review and action.

26 (2) The director may postpone action, pursuant to subsections (1)(a)-(c) of this rule to
27 allow the department, the jurisdiction, objectors or other persons who participated orally
28 or in writing at the local level to reach agreement on specific issues relating to the
29 evaluation and work program or ~~[evaluation and]~~ determination that no work program is
30 necessary.

31 (3) The director must provide written notice of the decision to the local government
32 persons who filed objections, and persons who requested notice of the local government
33 decision.

34 (4) The director's decision to approve an evaluation and work program or ~~[evaluation~~
35 ~~and]~~ determination that no work program is necessary is final and may not be appealed.

1 (5) The director's decision to deny an evaluation and work program or [~~evaluation and~~
2 determination that no work program is necessary may be appealed to the commission by
3 the local government, or a person who filed an objection, or other person who
4 participated orally or in writing at the local level.

5 (a) Appeal of the director's decision must be filed with the department within 21 days of
6 the date notice of the director's action was mailed;

7 (b) A person appealing the director's decision must show that the person participated in
8 the local government decision. The person appealing the director's decision must show a
9 deficiency in the director's decision to deny the evaluation, work program or decision that
10 no work program is necessary. The person appealing the director's decision also must
11 suggest a specific modification to the evaluation, work program or decision that no work
12 program is necessary to resolve the alleged deficiency.

13 (6) If no such appeal is filed, the director's decision shall be final.

14 (7) In response to an appeal, the director may prepare and submit a report to the
15 commission. The provisions in OAR 660-025-0160(3) and (4) apply.

16 (8) The commission shall hear referrals and appeals of evaluations and work programs
17 according to the procedures in OAR 660-025-0085.

18 (9) Following its hearing, the commission must issue an order that either:

19 (a) Establishes a work program; or

20 (b) Determines that no work program is necessary.

21 Stat. Auth.: ORS 197.040 & 197.633

22 Stats. Implemented: ORS 197.628 - 197.646

23 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
24 4-2006, f. & cert. ef. 5-15-06

25 **660-025-0130**

26 **Submission of Completed Work Task**

27 1) A local government must submit completed work tasks as provided in the approved
28 work program to the department along with **the notice required in OAR 660-025-0140**
29 **and** any form required by the department. A local government must submit to the
30 department a list of persons who participated orally or in writing in the local **proceedings**
31 **leading to the adoption of the work task** [~~decision process~~] or who requested notice of
32 the local government's final decision on a work task.

33 (2) After receipt of a work task, the department must determine whether the submittal is
34 complete.

1 (3) To be complete a submittal must be a final decision containing all required elements
2 identified for that task in the work program. A portion of a task or subtask may be
3 accepted as a complete submittal if the work program identified that portion of the task or
4 subtask as a separate item for adoption by the local government. Task submittals are
5 subject to the following requirements:

6 (a) If the local record does not exceed 2,000 pages, a submittal must include the entire
7 local record, including but not limited to adopted ordinances and orders, studies,
8 inventories, findings, staff reports, correspondence, hearings minutes, written testimony
9 and evidence, and any other items specifically listed in the work program;

10 (b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances
11 and orders, findings, hearings minutes, written testimony and evidence, and a detailed
12 index listing items not included in the submittal. Items in the local record not included in
13 the submittal must be made available for public review during the period for submitting
14 objections under OAR 660-025-0140. The director or Commission may require
15 submission of any materials not included in the initial submittal;

16 (c) A task submittal of over 500 pages must include an index of all submitted materials.

17 (4) A submittal includes only the materials provided to the department pursuant to section
18 (3) of this rule. Following submission of objections pursuant to OAR 660-025-0140, the
19 local government may provide written correspondence that is not part of the local record
20 which identifies material in the record relevant to filed objections. The correspondence
21 may not include or refer to materials not in the record submitted or listed pursuant to
22 section (3) of this rule. The local government must provide the correspondence to each
23 objector at the same time it is sent to the department.

24 (5) If the department determines that a submittal is incomplete, it must notify the local
25 government. If the department determines that the submittal should be reviewed despite
26 missing information, the department may commence a formal review of the submittal.
27 Missing material may be identified as a deficiency in the review process and be a basis to
28 require further work by the local government.

29 (6) A local government may request an extension of time for submitting a work task. The
30 director may grant the request if the local government shows good cause for the
31 extension. A local government may be permitted only one extension, which shall be for
32 no more than one year.

33 (7) If a local government fails to submit a complete work task by the deadline set by the
34 director, or the commission, including any extension, the director must schedule a
35 hearing before the commission. The hearing must be conducted according to the
36 procedures in OAR 660-025-0090(5).

37 Stat. Auth.: ORS 197.040 & 197.633

38 Stats. Implemented: ORS 197.628 - 197.646

1 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
2 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
3 cert. ef. 5-15-06

4 **660-025-0140**
5 **Notice and Filing of Objections (Work Task Phase)**

6 (1) After the local government makes a final decision on a work task, the local
7 government must notify the department and persons who participated at the local level
8 orally or in writing during the local process or who requested notice in writing. The local
9 government notice must contain the following information:

10 (a) Where a person can review a copy of the local government's final decision, and how a
11 person may obtain a copy of the final decision;

12 (b) The requirements listed in section (2) of this rule for filing a valid objection to the
13 work task; and

14 (c) That objectors must give a copy of the objection to the local government.

15 (2) Persons who participated [~~at the local level~~] orally or in writing [~~during~~] **in** the local
16 process leading to the final decision may object to the local government's work task
17 submittal. To be valid, objections must:

18 (a) Be in writing and filed with the department's Salem office no later than 21 days from
19 the date the notice was mailed by the local government;

20 (b) Clearly identify an alleged deficiency in the work task sufficiently to identify the
21 relevant section of the final decision and the statute, goal, or administrative rule the task
22 submittal is alleged to have violated;

23 (c) Suggest specific revisions that would resolve the objection; and

24 (d) Demonstrate that the objecting party participated **in the local process leading to the**
25 **final decision** [~~at the local level~~] orally or in writing [~~during the local process~~].

26 (3) Objections that do not meet the requirements of section (2) of this rule will not be
27 considered by the director or commission.

28 (4) If no valid objections are received within the 21-day objection period, the director
29 may approve the work task. Regardless of whether valid objections are received, the
30 director may make a determination of whether the work task final decision complies with
31 the statewide planning goals and applicable statutes and administrative rules.

32 (5) When a subsequent work task conflicts with a work task that has been deemed
33 acknowledged, or violates a statewide planning goal, **applicable statute or**

1 **administrative rule** related to a previous work task, the director or commission shall not
2 approve the submittal until all conflicts and ~~[goal]~~ compliance issues are resolved. In
3 such case, the director or commission may enter an order deferring acknowledgment of
4 all, or part, of the work task until completion of additional tasks.

5 (6) If valid objections are received or the department conducts its own review, the
6 department must issue a report. The report shall **address** ~~[focus on]~~ the issues raised in
7 valid objections~~[and issues of compliance identified by the department]~~. The report shall
8 identify specific work tasks to resolve valid objections or department concerns. A valid
9 objection shall either be sustained or rejected by the department or commission based on
10 the statewide planning goals, **or** ~~[and]~~ applicable statutes ~~[and]~~ **or** administrative rules.

11 Stat. Auth.: ORS 197.040 & 197.633

12 Stats. Implemented: ORS 197.628 - 197.646

13 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
14 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
15 cert. ef. 5-15-06

16 **660-025-0150**

17 **Director Action and Appeal of Director Action (Work Task Phase)**

18 (1) The director may:

19 (a) Issue an order approving the completed work task;

20 (b) Issue an order remanding the work task to the local government including a date for
21 resubmittal;

22 (c) Refer the work task ~~[and recommendation]~~ to the commission for review and action;
23 or

24 (d) The director may issue an order approving portions of the completed work task
25 provided these portions are not affected by an order remanding or referring the completed
26 work task.

27 (2) The director must send the order to the local government, persons who filed
28 objections, and persons who, in writing, requested a copy of the action.

29 (3) The **order or referral** ~~[director's action in section (1) of this rule]~~ must be sent
30 ~~[pursuant to section (2) of this rule]~~ within 120 days of the date the department received
31 the task submittal from the local government, unless the local government waives the
32 120-day deadline or the commission grants the director an extension. The local
33 government may withdraw the submittal, in which case the 120-day deadline does not
34 apply, provided the withdrawal will not result in the local government passing the
35 deadline for work task submittal in the work program and any extension allowed in OAR
36 660-025-0130(7).

1 **(4) If the director does not issue an order or refer the work task within the time limits**
2 **set by subsection (3) of this rule, and the department did not receive any valid**
3 **objections to the work task, [take action as prescribed in this section:**

4 (a) ~~[If the department does not receive valid objections to the work task pursuant to OAR~~
5 ~~660-025-0140(2),]~~ the work task shall be deemed approved. **In such cases, [and] the**
6 **department must provide a letter to the local government certifying that the work task is**
7 **approved[;].**

8 ~~(5)[(b)]~~ If the department received one or more valid objections to the work task
9 ~~[pursuant to OAR 660-025-0140(2)],~~ the director must **either issue an order or** refer the
10 work task to the commission for review~~[-and action].~~

11 ~~(6)[(4)]~~ Appeals of **a director's** decision[s] are subject to the **following** requirements ~~of~~
12 ~~this section:~~

13 (a) **A director's decision approving or partially approving a work task may be**
14 **appealed to the commission only by [A] a person who filed a valid objection[-may**
15 **appeal a director's approval or partial approval of a work task to the commission].**

16 (b) **A director's decision remanding, or partially remanding a work task may be**
17 **appealed to the commission only by [T] the local government, a person who filed a**
18 **valid objection, or by another person who participated orally or in writing in the local**
19 **proceedings leading to adoption of the local decision under review[at the local level**
20 **during the local process on the work task may appeal a director's remand or partial**
21 **remand of a work task to the commission].**

22 (c) Appeals of ~~[the]~~ **a** director's decision must be filed with the department's Salem office
23 within 21 days of the date the director's action was mailed;

24 (d) A person, **other than the local government that submitted the work task and an**
25 **affected local government,** appealing the director's decision must:

26 (A) Show that the person participated ~~[at]~~ **in the local proceedings leading to adoption**
27 **of the work task [level] orally or in writing[-during the local process];**

28 (B) Clearly identify a deficiency in the work task sufficiently to identify the relevant
29 section of the submitted task and the statute, goal, or administrative rule the local
30 government is alleged to have violated; and

31 (C) Suggest a specific modification to the work task necessary to resolve the alleged
32 deficiency.

33 (5) If no appeal to the commission is filed within the time provided by section ~~[(4)]~~ **(6)** of
34 this rule, the ~~[work tasks approved by the]~~ director's **order is deemed affirmed by the**
35 **commission. If the order approved a work task, the work task is deemed[-are**

1 ~~considered~~] acknowledged. [~~If the director's decision is to remand a work task and no~~
2 ~~appeal to the commission is filed within the time provided in section (4) of this rule, the~~
3 ~~decision is final~~].

4 Stat. Auth.: ORS 197.040 & 197.633

5 Stats. Implemented: ORS 197.628 - 197.646

6 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
7 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
8 cert. ef. 5-15-06

9 **660-025-0160**

10 **Commission Review of Referrals and Appeals (Work Task Phase)**

11 (1) The commission shall hear appeals and referrals of work tasks according to the
12 **applicable** procedures in OAR 660-025-0085 **and 0150**.

13 (2) In response to a referral or appeal, the director may prepare and submit a report to the
14 commission.

15 (3) The department must mail a copy of the report to the local government, all persons
16 who submitted objections, and other persons who appealed the director's decision. The
17 department must mail the report at least 21 days before the commission meeting to
18 consider the referral or appeal.

19 (4) **The p[P]ersons specified in OAR 660-0085(5)(c)** [~~who filed valid objections or an~~
20 ~~appeal, and the submitting local government,~~] may file written exceptions to the director's
21 report within ten (10) days of the date the report is mailed. The director may issue a
22 response to exceptions and may make revisions to the director's report in response to
23 exceptions. A response or revised report may be provided to the commission at or prior to
24 its hearing on the referral or appeal. A revised director's report does not require mailing
25 21 days prior to the commission hearing.

26 (5) The commission shall hear appeals based on the record **except as provided in OAR**
27 **660-0085(5)(g)** [~~unless the commission requests new evidence or information at its~~
28 ~~discretion and allows the parties an opportunity to review and respond to the new~~
29 ~~evidence or information~~]. The written record shall consist of the submittal, timely
30 objections, the director's report, timely exceptions to the director's report, the director's
31 response to exceptions and revised report if any, and the appeal if one was filed.

32 (6) Following its hearing, the commission must issue an order that does one or more of
33 the following:

34 (a) Approves the work task or a portion of the task;

35 (b) Remands the work task or a portion of the task to the local government, including a
36 date for resubmittal;

1 (c) Requires specific plan or land use regulation revisions to be completed by a specific
2 date. Where specific revisions are required, the order shall specify that no further review
3 is necessary. These changes are final when adopted by the local government. The failure
4 to adopt the required revisions by the date established in the order shall constitute failure
5 to complete a work task by the specified deadline requiring the director to initiate a
6 hearing before the commission according to the procedures in OAR 660-025-0170(3);

7 (d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b);
8 or

9 (e) Modifies the schedule for the approved work program in order to accommodate
10 additional work on a remanded work task.

11 (7) If the commission approves the work task **or portion of a work task** under
12 subsection (6)(a) of this section and no appeal to the Court of Appeals is filed within the
13 time provided in ORS 183.482, the work task **or portion of a work task** shall be deemed
14 acknowledged. If the commission decision on a work task is under subsection (6)(b)
15 through (e) of this section and no appeal to the Court of Appeals is filed within the time
16 provided in ORS 183.482, the decision is final.

17 Stat. Auth.: ORS 197.040 & 197.633

18 Stats. Implemented: ORS 197.628 - 197.646

19 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
20 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &
21 cert. ef. 5-15-06

22 **660-025-0170**

23 **Modification of an Approved Work Program, Extensions, and Sanctions for Failure** 24 **to Meet Deadlines**

25 (1) The commission may direct, or, upon request of the local government, the director
26 **may** authorize, a local government to modify an approved work program when:

27 (a) Issues of regional or statewide significance arising out of another local government's
28 periodic review requires an enhanced level of coordination;

29 (b) Issues of goal compliance are raised as a result of completion of a work task resulting
30 in a need to undertake further review or revisions;

31 (c) Issues relating to the organization of the work program, coordination with affected
32 agencies or persons, or orderly implementation of work tasks result in a need for further
33 review or revision; or

34 (d) Issues relating to needed housing, economic development, transportation, public
35 facilities and services, or urbanization were omitted from the work program but must be
36 addressed in order to ensure compliance with the statewide planning goals.

1 (2) Failure to complete a modified work task shall constitute failure to complete a work
2 task by the specified deadline, requiring the director to initiate a hearing before the
3 commission according to the procedures in section (3).

4 (3) If a local government fails to submit its evaluation and work program, a decision that
5 no work program is necessary, or a work task by the deadline set by the director or the
6 commission, including any extension, the director shall schedule a hearing before the
7 commission. The notice must state the date and location at which the commission will
8 conduct the hearing. The hearing will be conducted pursuant to OAR 660-025-0085 and
9 as follows:

10 (a) The director shall notify the local government in writing that its submittal is past due
11 and that the commission will conduct a hearing and consider imposing sanctions against
12 the local government as required by ORS 197.636(2);

13 (b) The director and the local government may prepare written statements to the
14 commission addressing the circumstances causing the local government to miss the
15 deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The
16 written statements must be filed in a manner and according to a schedule established by
17 the director;

18 (c) The commission shall issue an order imposing one or more of the sanctions listed in
19 ORS 197.636(2) until the local government submits its evaluation and work program or
20 its decision that no work program is required, or its work task required under OAR 660-
21 025-0130, as follows:

22 (A) Require the local government to apply those portions of the goals and rules to land
23 use decisions as specified in an order issued by the commission,

24 (B) Forfeiture of all or a portion of the grant money received to conduct the review,
25 develop the work program or complete the work task,

26 (C) Completion of the work program or work task by the department. The commission
27 may require the local government to pay the cost for completion of work performed by
28 the department, following the withholding process set forth in ORS 197.335(4),

29 (D) Application of such interim measures as the commission deems necessary to ensure
30 compliance with the statewide planning goals.

31 Stat. Auth.: ORS 197.040 & 197.633

32 Stats. Implemented: ORS 197.628 - 197.646

33 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
34 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. &
35 cert. ef. 5-15-06

1 **660-025-0175**

2 **Review of UGB Amendments and Urban Reserve Area Designations**

3 (1) Land use decisions establishing or amending an urban growth boundary or urban
4 reserve area must be submitted to the department for review **for compliance** with the
5 **applicable** statewide planning goals, ~~[and related]~~ statutes and rules when ~~[not on a work~~
6 ~~program and]~~:

7 (a) A metropolitan service district amends its urban growth boundary to include more
8 than 100 acres;

9 (b) A city with a population of 2,500 or more within its urban growth boundary amends
10 the urban growth boundary to include more than 50 acres; or

11 (c) A city or metropolitan service district designates or amends urban reserve areas under
12 ORS 195.145.

13 (2) The standards and procedures in this rule govern the local government process and
14 submittal, and department and commission review.

15 (3) The local government must provide notice of the proposed amendment according to
16 the procedures and requirements for post-acknowledgement plan amendments in ORS
17 197.610 and OAR 660-018-0020.

18 (4) The local government must submit its final decision amending its urban growth
19 boundary, or designating urban reserve areas, to the department according to all the
20 requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

21 (5) Department and commission review and decision on the submittal from the local
22 government must follow the procedures and requirements for review and decision of a
23 work task submittal in OAR **660-025-0085, and** 660-025-0140 to 660-025-0160.

24 Stat. Auth.: ORS 197.040

25 Stats. Implemented: ORS 195.145, 197.626 - 197.646

26 Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD
27 4-2006, f. & cert. ef. 5-15-06

28 **660-025-0180**

29 **Stay Provisions**

30 (1) When a local government makes a final decision on a work task or portion of a work
31 task that is required by, or carries out, an approved work program, or if the local
32 government is a city with a population of 2,500 or more and either adopts a decision
33 adding more than 50 acres to its urban growth boundary or designates or amends urban
34 reserve areas, or a metropolitan service district that adopts a decision adding more than
35 100 acres to its urban growth boundary or designates or amends urban reserve areas,

1 interested persons may request a stay of the local government's final decision by filing a
2 request for a stay with the commission. In taking an action on a request to stay a local
3 government's final decision on a work task, the commission must use the standards and
4 procedures contained in OAR chapter 660, division 1.

5 (2) The director may grant a temporary stay of a final decision on a local government
6 decision described in section (1) of this rule. A temporary stay must meet applicable stay
7 requirements of the Administrative Procedures Act. A temporary stay issued by the
8 director shall only be effective until the commission has acted on a stay request pursuant
9 to section (1) of this rule.

10 Stat. Auth.: ORS 197.040

11 Stats. Implemented: ORS 197.628 - 197.646

12 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD
13 4-2006, f. & cert. ef. 5-15-06

14 **660-025-0210**

15 **Updated Planning Documents**

16 (1) Pursuant to ORS 195.025 and 195.040 and the legislative policy described in ORS
17 197.010, each local government must file two complete and accurate copies of its
18 comprehensive plan and land use regulations bearing the date of adoption (including plan
19 and zone maps bearing the date of adoption) with the department following completion of
20 periodic review. These materials may be either a new printing or an up-to-date
21 compilation of the required materials or upon approval of the department, an up-to-date
22 copy on computer disk(s) or other electronic format.

23 (2) Materials described in section (1) of this rule must be submitted to the department
24 within six months of completion of the last work task.

25 (3) The updated plan must be accompanied by a statement signed by a city or county
26 official certifying that the materials are an accurate copy of current planning documents
27 and that they reflect changes made as part of periodic review.

28 (4) Jurisdictions that do not file an updated plan on time shall not be eligible for grants
29 from the department until such time as the required materials are provided to the
30 department.

31 Stat. Auth.: ORS 183 & 197

32 Stats. Implemented: ORS 197.190, 197.270 & 197.628 - 197.646

33 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
34 4-2006, f. & cert. ef. 5-15-06

35 **660-025-0220**

36 **Computation of Time**

1 (1) For the purposes of OAR chapter 660, division 25, periodic review rule, unless
2 otherwise provided by rule, the time to complete required tasks, notices, objections, and
3 appeals shall be computed as follows. The first day of the designated period to complete
4 the task, notice, objection or appeal shall not be counted. The last day of the period shall
5 be counted unless it is a Saturday, Sunday or legal holiday recognized by the State of
6 Oregon. In that event the period shall run until the end of the next day that is not a
7 Saturday, Sunday or state legal holiday.

8 (2) When the period of time to complete the task is less than seven (7) days, intervening
9 Saturdays, Sundays or state legal holidays shall not be counted.

10 Stat. Auth.: ORS 197.040

11 Stats. Implemented: ORS 187.010, 187.020, 197.628 - 197.650

12 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD
13 4-2006, f. & cert. ef. 5-15-06

14 **660-025-0230**

15 **Applicability**

16 (1) Amendments to this division apply as follows:

17 (a) Local governments in periodic review that have not submitted an evaluation and work
18 program, or decision that no work program is required, **must apply the amendments**
19 ~~[when rule amendments become effective shall apply the new requirements]~~ to the
20 evaluation and work program or decision than no work program is required;

21 (b) Local governments in periodic review must apply amendments to work tasks not
22 completed or submitted to the department on the effective date of the amendments;

23 (c) The commission may modify approved work programs to carry out the priorities and
24 standards reflected in amendments;

25 (d) The procedures and standards in amendments for department and commission review
26 and action on periodic review submittals, requests for extensions, and late submittals
27 apply to all such submittals and requests filed after the effective date of the amendments,
28 as well as any such submittals and requests awaiting initial department action on the
29 effective date of the amendments.

30 ~~[(2) Amendments to OAR 660-025-0030 and 660-025-0035(3) and (4) become effective~~
31 ~~July 1, 2007.]~~

32 Stat. Auth.: ORS 197.040-197.245

33 Stats. Implemented: ORS 197.628 - 197.646

34 Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06

35 **660-025-0250**

1 **Transfer of Matters to the Land Use Board of Appeals**

2 (1) When the department receives an appeal of a director's decision pursuant to OAR
3 660-025-0150(4), the director may elect to transfer a matter raised in the appeal to the
4 Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A).

5 (2) Matters raised in an appeal may be transferred by the director to the board when:

6 (a) The matter is an urban growth boundary expansion approved by the local government
7 based on a quasi-judicial land use application and does not require an interpretation of
8 first impression of statewide planning Goal 14, ORS 197.296 or 197.298; or

9 (b)(A) The matter alleges the work task submittal violates a provision of law not directly
10 related to compliance with a statewide planning goal;

11 (B) The appeal clearly identifies the provision of the task submittal that is alleged to
12 violate a provision of law and clearly identifies the provision of law that is alleged to
13 have been violated; and

14 (C) The matter is sufficiently well-defined that it can be separated from other allegations
15 in the appeal.

16 (3) When the director elects to transfer a matter to the board, notice of the decision must
17 be sent to the local jurisdiction, the appellant, objectors, and the board within 60 days of
18 the date the appeal was filed with the department. The notice shall include identification
19 of the matter to be transferred and explanation of the procedures and deadline for appeal
20 of the matter to the board.

21 (4) The director's decision under this rule is final and may not be appealed.

22 Stat. Auth.: ORS 197.040

23 Stats. Implemented: ORS 197.825

24 Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 33

AGRICULTURAL LAND

1 **660-033-0010**

2 **Purpose**

3 The purpose of this division is to [~~implement the requirements for~~] **preserve and**
4 **maintain** agricultural lands as defined by Goal 3 **for farm use, and to implement ORS**
5 **215.203 through 215.327 and ORS 215.438 through 215.459 and ORS 215.700**
6 **through 215.799.**

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

8 Stats. Implemented: ORS 197.015, ORS 197.040, ORS 197.230, ORS 197.245, ORS
9 215.203, ORS 215.243 & ORS 215.700

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

11 **660-033-0020**

12 **Definitions**

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

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

17 (A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as
18 predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

19 (B) Land in other soil classes that is suitable for farm use as defined in ORS
20 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic
21 conditions; existing and future availability of water for farm irrigation purposes; existing
22 land use patterns; technological and energy inputs required; and accepted farming
23 practices; and

24 (C) Land that is necessary to permit farm practices to be undertaken on adjacent or
25 nearby agricultural lands.

26 (b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with
27 lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as
28 agricultural lands even though this land may not be cropped or grazed;

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

- 1 (2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:
- 2 (A) Contribute in a substantial way to the area's existing agricultural economy; and
- 3 (B) Help maintain agricultural processors and established farm markets.
- 4 (b) When determining whether a farm is part of the commercial agricultural enterprise,
5 not only what is produced, but how much and how it is marketed shall be considered.
6 These are important factors because of the intent of Goal 3 to maintain the agricultural
7 economy of the state.
- 8 (3) "Contiguous" means connected in such a manner as to form a single block of land.
- 9 (4) "Date of Creation and Existence". When a lot, parcel or tract is reconfigured pursuant
10 to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or
11 tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or
12 existence. Reconfigured means any change in the boundary of the lot, parcel or tract.
- 13 (5) "Eastern Oregon" means that portion of the state lying east of a line beginning at the
14 intersection of the northern boundary of the State of Oregon and the western boundary of
15 Wasco County, then south along the western boundaries of the Counties of Wasco,
16 Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.
- 17 (6) "Exception Area" means an area no longer subject to the requirements of Goal 3 or 4
18 because the area is the subject of a site specific exception acknowledged pursuant to ORS
19 197.732 and OAR chapter 660, division 4.
- 20 (7)(a) "Farm Use" as that term is used in ORS chapter 215 and this division means "farm
21 use" as defined in ORS 215.203.
- 22 (b) As used in the definition of "farm use" in ORS 215.203 and in this division:
- 23 (A) "Preparation" of products or by-products includes but is not limited to the cleaning,
24 treatment, sorting, or packaging of the products or by-products; and
- 25 (B) "Products or by-products raised on such land" means that those products or by-
26 products are raised on the farm operation where the preparation occurs or on other farm
27 land provided the preparation is occurring only on land being used for the primary
28 purpose of obtaining a profit in money from the farm use of the land.
- 29 (8)(a) "High-Value Farmland" means land in a tract composed predominantly of soils that
30 are:
- 31 (A) Irrigated and classified prime, unique, Class I or II; or
- 32 (B) Not irrigated and classified prime, unique, Class I or II.

1 (b) In addition to that land described in subsection (a) of this section, high-value
2 farmland, if outside the Willamette Valley, includes tracts growing specified perennials
3 as demonstrated by the most recent aerial photography of the Agricultural Stabilization
4 and Conservation Service of the U.S. Department of Agriculture taken prior to November
5 4, 1993. "Specified perennials" means perennials grown for market or research purposes
6 including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or
7 vineyards, but not including seed crops, hay, pasture or alfalfa;

8 (c) In addition to that land described in subsection (a) of this section, high-value
9 farmland, if in the Willamette Valley, includes tracts composed predominantly of the
10 following soils in Class III or IV or composed predominantly of a combination of the
11 soils described in subsection (a) of this section and the following soils:

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

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

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

22 (D) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy,
23 Noti and Whiteson.

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

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

31 (B) Subclassification IIIw, specifically, [~~Brennar~~] **Brenner** and Chitwood;

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

34 (D) Subclassification IVw, specifically, Coquille.

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

5 (A) Subclassification IIIw, specifically, Ettersburg Silt Loam and [~~Croftland~~] **Croftland**
6 Silty Clay Loam;

7 (B) Subclassification IIIe, specifically, [~~Klooqueth~~] **Klooqueth** Silty Clay Loam and
8 Winchuck Silt Loam; and

9 (C) Subclassification IVw, specifically, Huffling Silty Clay Loam.

10 ~~[(f) For the purposes of approving a land use application under ORS 215.705, the soil~~
11 ~~class, soil rating or other soil designation of a specific lot or parcel may be changed if:~~

12 ~~(A) The property owner submits a statement of agreement from the Natural Resources~~
13 ~~Conservation Service (NRCS) that the soil class, soil rating or other soil designation~~
14 ~~should be adjusted based on new information; or~~

15 ~~(B) Submits a report from a soils scientist whose credentials are acceptable to the State~~
16 ~~Department of Agriculture that the soil class, soil rating or other soil designation should~~
17 ~~be changed; and~~

18 ~~(C) Submits a statement from the State Department of Agriculture that the Director of~~
19 ~~Agriculture or the director's designee has reviewed the report described in paragraph~~
20 ~~(8)(f)(B) of this rule and finds the analysis in the report to be soundly and scientifically~~
21 ~~based.~~

22 ~~(g) For the purposes of approving a land use application under ORS 215.705, soil classes,~~
23 ~~soil ratings or other soil designations used in or made pursuant to this definition are those~~
24 ~~of the NRCS in its most recent publication for that class, rating or designation before~~
25 ~~November 4, 1993 except for changes made pursuant to subsection (f) of this rule. Within~~
26 ~~six months of the effective date of this rule, the department shall provide to all counties~~
27 ~~and other interested persons a list of soils that qualify land as high-value farmland under~~
28 ~~this subsection.~~

29 ~~(h) For the purposes of approving a land use application under OAR 660-033-0090, 660-~~
30 ~~033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other soil~~
31 ~~designations used in or made pursuant to this definition are those of the NRCS in its most~~
32 ~~recent publication for that class, rating or designation.]~~

33 ~~[(i)]~~ **(f)** Lands designated as "marginal lands" according to the marginal lands provisions
34 adopted before January 1, 1993, and according to the criteria in ORS 215.247 (1991), are
35 excepted from this definition of "high-value farmlands";

1 ~~[(j) Any county that adopted marginal lands provisions before January 1, 1993, may~~
2 ~~continue to designate lands as "marginal lands" according to those provisions and criteria~~
3 ~~in ORS 215.247 (1991), as long as the county has not applied the provisions of ORS~~
4 ~~215.705 to 215.750 to lands zoned for exclusive farm use.]~~

5 (9) "Irrigated" means watered by an artificial or controlled means, such as sprinklers,
6 furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered,
7 or has established rights to use water for irrigation, including such tracts that receive
8 water for irrigation from a water or irrigation district or other provider. For the purposes
9 of this division, an area or tract within a water or irrigation district that was once irrigated
10 shall continue to be considered "irrigated" even if the irrigation water was removed or
11 transferred to another tract.

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

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

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

21 (13) "Lot" shall have the meaning set forth in ORS 92.010 and "parcel" shall have the
22 meaning set forth in ORS 215.010.

23 (14) "Manufactured dwelling" and "manufactured home" shall have the meaning set forth
24 in ORS 446.003(26).

25 [Publications: Publications referenced are available from the agency.]

26 Stat. Auth.: ORS 197.040

27 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243,
28 215.283 & 215.700 - 215.710

29 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94;
30 LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-
31 1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. &
32 cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 3-2008, f. & cert. ef. 4-
33 18-08

34 **660-033-0030**

35 **Identifying Agricultural Land**

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

3 (2) When a jurisdiction determines the predominant soil capability classification of a lot
4 or parcel it need only look to the land within the lot or parcel being inventoried.
5 However, whether land is "suitable for farm use" requires an inquiry into factors beyond
6 the mere identification of scientific soil classifications. The factors are listed in the
7 definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry
8 requires the consideration of conditions existing outside the lot or parcel being
9 inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for
10 farm use, Goal 3 nonetheless defines as agricultural "lands in other classes [~~which~~] **that**
11 are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A
12 determination that a lot or parcel is not agricultural land requires findings supported by
13 substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1).

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

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

23 (5) More detailed data on soil capability than is contained in the U.S. Natural Resources
24 Conservation Service (NRCS) soil maps and soil surveys may be used to define
25 agricultural land. However, the more detailed soils data shall be related to the U.S.
26 Natural Resources Conservation Service (NRCS) land capability classification system.

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

31 **(7) For the purposes of approving a land use application under ORS 215.705, the**
32 **soil class, soil rating or other soil designation of a specific lot or parcel may be**
33 **changed if:**

34 **(a) The property owner submits a statement of agreement from the Natural**
35 **Resources Conservation Service (NRCS) that the soil class, soil rating or other soil**
36 **designation should be adjusted based on new information; or**

1 **(b) Submits a report from a soils scientist whose credentials are acceptable to the**
2 **State Department of Agriculture that the soil class, soil rating or other soil**
3 **designation should be changed; and**

4 **(c) Submits a statement from the State Department of Agriculture that the Director**
5 **of Agriculture or the director's designee has reviewed the report described in**
6 **paragraph (7)(b) of this rule and finds the analysis in the report to be soundly and**
7 **scientifically based.**

8 **(8) For the purposes of approving a land use application under ORS 215.705, soil**
9 **classes, soil ratings or other soil designations used in or made pursuant to this**
10 **definition are those of the NRCS in its most recent publication for that class, rating**
11 **or designation before November 4, 1993, except for changes made pursuant to**
12 **subsection (f) of this rule. Within six months of the effective date of this rule, the**
13 **department shall provide to all counties and other interested persons a list of soils**
14 **that qualify land as high-value farmland under this subsection.**

15 **(9) For the purposes of approving a land use application under OAR 660-033-0090,**
16 **660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other soil**
17 **designations used in or made pursuant to this definition are those of the NRCS in its**
18 **most recent publication for that class, rating or designation.**

19 Stat. Auth.: ORS 197.040

20 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 &
21 215.700 - 215.710

22 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 5-2000, f. & cert. ef. 4-24-
23 00; LCDD 3-2008, f. & cert. ef. 4-18-08

24 **660-033-0080**

25 **Designation of High-Value Farmland**

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

29 (2) Counties shall submit maps of high-value farmland described in OAR 660-033-
30 0020(8) and such amendments of their plans and land use regulations as are necessary to
31 implement the requirements of this division to the Commission for review. Counties shall
32 submit high-value farmland maps no later than the time of the first periodic review after
33 December 31, 1994. The submittal shall include the notice required by OAR chapter 660,
34 division 18 or 25, whichever applies.

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

36 Stats. Implemented: ORS 197.015, ORS 197.040, ORS 197.230, ORS 197.245, ORS
37 215.203, ORS 215.243 & ORS 215.700 - ORS 215.710

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

1 **660-033-0090**
2 **Uses on High-Value and Non High-Value Farmland**

3 (1) Uses on land identified as high-value farmland and uses on land not identified as
4 high-value farmland shall be limited to those specified in OAR 660-033-0120. Except as
5 provided for in section (2) of this rule, counties shall apply zones that qualify as exclusive
6 farm use zones under ORS chapter 215 to "agricultural land" as identified under OAR
7 660-033-0030, which includes land identified as high-value farmland and land not
8 identified as high-value farmland.

9 (2) "Abandoned mill sites" may be zoned for industrial use as provided for by ORS
10 197.719.

11 Stat. Auth.: ORS 197 & 215
12 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243,
13 215.283 & 215.700 - 215.710
14 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2004, f. & cert. ef. 4-30-
15 04

16 **660-033-0100**
17 **Minimum Parcel Size Requirements**

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

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

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

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

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

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

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

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

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

22 (6) To determine the minimum parcel size, a county shall evaluate available data and
23 choose a size that maintains the existing commercial agricultural enterprise within the
24 county or within each area of the county. In areas where the size of commercial farms
25 and ranches is mixed, and the size of parcels needed to maintain those commercial farms
26 and ranches varies, the county shall not choose a minimum parcel size that allows larger
27 farms, lots or parcels to be divided to the size of the smallest farms, lots or parcels in the
28 area. The activities of the larger as well as smaller holdings must be maintained.

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

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

37 (9) A county may choose to establish a different minimum parcel size for distinct
38 commercial agricultural areas of the county. The appropriate minimum lot or parcel size

1 for each area shall reflect the type of commercial agriculture in the area, consistent with
2 sections (3)-(6) of this rule.

3 (10) Counties may allow the creation of new parcels for nonfarm uses only as authorized
4 by ORS 215.263. Such new parcels shall be the minimum size needed to accommodate
5 the use in a manner consistent with other provisions of law except as required for the
6 nonfarm dwellings authorized by section (11) of this rule.

7 (11)(a) Counties may allow the creation of new lots or parcels for dwellings not in
8 conjunction with farm use pursuant to ORS 215.263(4) or (5), whichever is applicable.

9 (b) In the Willamette Valley, a new lot or parcel may be allowed if the originating lot or
10 parcel is equal to or larger than the applicable minimum lot or parcel size, and:

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

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

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

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

16 (c) No new lot or parcel may be created for this purpose until the county finds that the
17 dwelling to be sited on the new lot or parcel has been approved under the requirements
18 for dwellings not in conjunction with farm use in ORS 215.284(3) or (4), 215.236 and
19 OAR 660-033-0130(4).

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

21 Stats. Implemented: ORS 197.015, ORS 197.040, ORS 197.230, ORS 197.245, ORS
22 215.203, ORS 215.243, ORS 215.283, ORS 215.700 - ORS 215.710 & ORS 215.780

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

24 LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-

25 2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02

26 **660-033-0120**

27 **Uses Authorized on Agricultural Lands**

28 The specific development and uses listed in the following table are [~~permitted~~] **allowed**
29 **or may be allowed** in the areas that qualify for the designation pursuant to this division.
30 All uses are subject to the general provisions, special conditions, additional restrictions
31 and exceptions set forth in this division. The abbreviations used within the schedule shall
32 have the following meanings:

33 (1) A -- Use **is** [~~may be~~] allowed. Authorization of some uses may require notice and the
34 opportunity for a hearing because the authorization qualifies as a land use decision

1 pursuant to ORS chapter 197. Minimum standards for uses in the table that include a
2 numerical reference are specified in OAR 660-033-0130. Counties may prescribe
3 additional limitations and requirements to meet local concerns [~~as~~] **only to the extent**
4 authorized by law.

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

9 (3) * -- Use not [~~permitted~~] **allowed**.

10 (4) # -- Numerical references for specific uses shown on the chart refer to the
11 corresponding section of OAR 660-033-0130. Where no numerical reference is noted for
12 a use on the chart, this rule does not establish criteria for the use.

13 [ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy of](#)
14 [table\(s\)](#).]

15 Stat. Auth.: ORS 197.040 & 197.245
16 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243,
17 215.283, 215.700 - 215.710 & 215.780
18 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94;
19 LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95;
20 LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-
21 1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. &
22 cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-
23 18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-
24 09; LCDD 6-2010, f. & cert. ef. 6-17-10

25 **660-033-0130**
26 **Minimum Standards Applicable to the Schedule of [~~Permitted~~] Allowed and**
27 **Conditional Uses**

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

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

35 (2)(a) No enclosed structure with a design capacity greater than 100 people, or group of
36 structures with a total design capacity of greater than 100 people, shall be approved in
37 connection with the use within three miles of an urban growth boundary, unless an

1 exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or
2 unless the structure is described in a master plan adopted under the provisions of OAR
3 chapter 660, division 34.

4 (b) Any enclosed structures or group of enclosed structures described in subsection (a)
5 within a tract must be separated by at least one-half mile. For purposes of this section,
6 “tract” means a tract as defined by ORS 215.010(2) that is in existence as of the effective
7 date of this section.

8 (c) Existing facilities wholly within a farm use zone may be maintained, enhanced or
9 expanded on the same tract, subject to other requirements of law, but enclosed existing
10 structures within a farm use zone within three miles of an urban growth boundary may
11 not be expanded beyond the requirements of this rule.

12 (3)(a) A dwelling may be approved **on a pre-existing lot or parcel** if:

13 (A) The lot or parcel on which the dwelling will be sited was lawfully created and was
14 acquired and owned continuously by the present owner as defined in subsection (3)(g) of
15 this rule:

16 (i) Since prior to January 1, 1985; or

17 (ii) By devise or by intestate succession from a person who acquired and had owned
18 continuously the lot or parcel since prior to January 1, 1985.

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

20 (C) The lot or parcel on which the dwelling will be sited was part of a tract on November
21 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

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

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

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

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

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

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

4 (B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-
5 0020(8)(a); ~~and~~

6 (C) A hearings officer of a county determines that:

7 (i) The lot or parcel cannot practicably be managed for farm use, by itself or in
8 conjunction with other land, due to extraordinary circumstances inherent in the land or its
9 physical setting that do not apply generally to other land in the vicinity. For the purposes
10 of this section, this criterion asks whether the subject lot or parcel can be physically put
11 to farm use without undue hardship or difficulty because of extraordinary circumstances
12 inherent in the land or its physical setting. Neither size alone nor a parcel's limited
13 economic potential demonstrate that a lot of parcel cannot be practicably managed for
14 farm use. Examples of "extraordinary circumstances inherent in the land or its physical
15 setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility
16 lines or other similar natural or physical barriers that by themselves or in combination
17 separate the subject lot or parcel from adjacent agricultural land and prevent it from being
18 practicably managed for farm use by itself or together with adjacent or nearby farms. A
19 lot or parcel that has been put to farm use despite the proximity of a natural barrier or
20 since the placement of a physical barrier shall be presumed manageable for farm use.

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

22 (iii) The dwelling will not materially alter the stability of the overall land use pattern in
23 the area by applying the standards set forth in paragraph (4)(a)(D) of this rule[-]; **and**

24 (D) A local government shall provide notice of all applications for dwellings allowed
25 under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall
26 be provided in accordance with the governing body's land use regulations but shall be
27 mailed at least 20 calendar days prior to the public hearing before the hearings officer
28 under paragraph (3)(c)(C) of this rule.

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

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

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

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

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

1 (iii) Twenty-one acres or less in size; and

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

4 ~~(H)~~ **(D)** The tract is not a flaglot and is bordered on at least 25 percent of its perimeter
5 by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1,
6 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings
7 may lie within an urban growth boundary, but only if the subject tract abuts an urban
8 growth boundary; or

9 ~~(H)~~ **(E)** The tract is a flaglot and is bordered on at least 25 percent of its perimeter by
10 tracts that are smaller than 21 acres, and at least four dwellings existed on January 1,
11 1993, within 1/4 mile of the center of the subject tract and on the same side of the public
12 road that provides access to the subject tract. The governing body of a county must
13 interpret the center of the subject tract as the geographic center of the flaglot if the
14 applicant makes a written request for that interpretation and that interpretation does not
15 cause the center to be located outside the flaglot. Up to two of the four dwellings may lie
16 within an urban growth boundary, but only if the subject tract abuts an urban growth
17 boundary:

18 (i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access
19 from the public road to the rest of the tract.

20 (ii) "Geographic center of the flaglot" means the point of intersection of two
21 perpendicular lines of which the first line crosses the midpoint of the longest side of a
22 flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the
23 longest adjacent side of the flaglot.

24 (e) If land is in a zone that allows both farm and forest uses is acknowledged to be in
25 compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under
26 ORS chapter 215, a county may apply the standards for siting a dwelling under either
27 section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of
28 the tract on January 1, 1993;

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

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

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

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

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

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

8 (i) When a local government approves an application for a single-family dwelling under
9 section (3) of this rule, the application may be transferred by a person who has qualified
10 under section (3) of this rule to any other person after the effective date of the land use
11 decision.

12 (4) **A single-family residential dwelling not provided in conjunction with farm use**
13 **[R]** requires approval of the governing body or its designate in any farmland area zoned
14 for exclusive farm use:

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

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

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

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

23 (D) The dwelling will not materially alter the stability of the overall land use pattern of
24 the area. In determining whether a proposed nonfarm dwelling will alter the stability of
25 the land use pattern in the area, a county shall consider the cumulative impact of possible
26 new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated.
27 To address this standard, the county shall:

28 (i) Identify a study area for the cumulative impacts analysis. The study area shall include
29 at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a
30 distinct agricultural area based on topography, soil types, land use pattern, or the type of
31 farm or ranch operations or practices that distinguish it from other, adjacent agricultural
32 areas. Findings shall describe the study area, its boundaries, the location of the subject
33 parcel within this area, why the selected area is representative of the land use pattern
34 surrounding the subject parcel and is adequate to conduct the analysis required by this
35 standard. Lands zoned for rural residential or other urban or nonresource uses shall not be
36 included in the study area;

1 (ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated
2 crops, pasture or grazing lands), the number, location and type of existing dwellings
3 (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993.
4 Determine the potential number of nonfarm/lot-of-record dwellings that could be
5 approved under subsections (3)(a)[~~(3)(d)~~] and section (4) of this rule, including
6 identification of predominant soil classifications, the parcels created prior to January 1,
7 1993 and the parcels larger than the minimum lot size that may be divided to create new
8 parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the
9 existing land use pattern of the study area including the distribution and arrangement of
10 existing uses and the land use pattern that could result from approval of the possible
11 nonfarm dwellings under this subparagraph;

12 (iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings
13 together with existing nonfarm dwellings will materially alter the stability of the land use
14 pattern in the area. The stability of the land use pattern will be materially altered if the
15 cumulative effect of existing and potential nonfarm dwellings will make it more difficult
16 for the existing types of farms in the area to continue operation due to diminished
17 opportunities to expand, purchase or lease farmland, acquire water rights or diminish the
18 number of tracts or acreage in farm use in a manner that will destabilize the overall
19 character of the study area; **and**

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

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

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

27 (B) The dwelling will not materially alter the stability of the overall land use pattern of
28 the area. In determining whether a proposed nonfarm dwelling will alter the stability of
29 the land use pattern in the area, a county shall consider the cumulative impact of nonfarm
30 dwellings on other lots or parcels in the area similarly situated and whether creation of
31 the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in
32 the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

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

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

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

1 (B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is
2 generally unsuitable land for the production of farm crops and livestock or merchantable
3 tree species, considering the terrain, adverse soil or land conditions, drainage and
4 flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or
5 parcel shall not be considered unsuitable solely because of size or location if it can
6 reasonably be put to farm or forest use in conjunction with other land; and

7 (ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply
8 because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a
9 lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial
10 farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally
11 unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in
12 Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon,
13 it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of
14 a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another
15 farm use; or

16 (iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally
17 unsuitable land for the production of merchantable tree species recognized by the Forest
18 Practices Rules, considering the terrain, adverse soil or land conditions, drainage and
19 flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest
20 assessment, the area is not "generally unsuitable" simply because it is too small to be
21 managed for forest production profitably by itself. If a lot or parcel under forest
22 assessment can be sold, leased, rented or otherwise managed as a part of a forestry
23 operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it
24 is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable
25 of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is
26 composed predominantly of soils capable of producing 20 cubic feet of wood fiber per
27 acre per year. If a lot or parcel is under forest assessment, to be found compatible and not
28 seriously interfere with forest uses on surrounding land it must not force a significant
29 change in forest practices or significantly increase the cost of those practices on the
30 surrounding land;

31 (C) The dwelling will not materially alter the stability of the overall land use pattern of
32 the area. In determining whether a proposed nonfarm dwelling will alter the stability of
33 the land use pattern in the area, a county shall consider the cumulative impact of nonfarm
34 dwellings on other lots or parcels in the area similarly situated by applying the standards
35 set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a
36 new parcel for the nonfarm dwelling, a county shall consider whether creation of the
37 parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the
38 area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

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

- 1 (d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of
2 this rule or OAR 660-006-0027, no additional dwelling may later be sited under the
3 provisions of section (4) of this rule;
- 4 (e) Counties that have adopted marginal lands provisions before January 1, 1993, shall
5 apply the standards in ORS 215.213(3) **through 215.213(8)** for nonfarm dwellings on
6 lands zoned exclusive farm use that are not designated marginal or high-value farmland.
- 7 (5) Approval requires review by the governing body or its designate under ORS 215.296.
8 Uses may be approved only where such uses:
- 9 (a) Will not force a significant change in accepted farm or forest practices on surrounding
10 lands devoted to farm or forest use; and
- 11 (b) Will not significantly increase the cost of accepted farm or forest practices on lands
12 devoted to farm or forest use.
- 13 (6) [~~Such~~] **A facility for the primary processing of forest products** shall not seriously
14 interfere with accepted farming practices and shall be compatible with farm uses
15 described in ORS 215.203(2). Such facility may be approved for a one-year period
16 [~~which~~] **that** is renewable and is intended to be only portable or temporary in nature. The
17 primary processing of a forest product, as used in this section, means the use of a portable
18 chipper or stud mill or other similar methods of initial treatment of a forest product in
19 order to enable its shipment to market. Forest products as used in this section means
20 timber grown upon a tract where the primary processing facility is located.
- 21 (7) A personal use airport as used in this section means an airstrip restricted, except for
22 aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by
23 invited guests, and by commercial aviation activities in connection with agricultural
24 operations. No aircraft may be based on a personal use airport other than those owned or
25 controlled by the owner of the airstrip. Exceptions to the activities permitted under this
26 definition may be granted through waiver action by the Oregon Department of Aviation
27 in specific instances. A personal use airport lawfully existing as of September 13, 1975,
28 shall continue to be permitted subject to any applicable rules of the Oregon Department
29 of Aviation.
- 30 (8)(a) A lawfully established dwelling is a single family dwelling which:
- 31 (A) Has intact exterior walls and roof structure;
- 32 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities
33 connected to a sanitary waste disposal system;
- 34 (C) Has interior wiring for interior lights; and
- 35 (D) Has a heating system.

1 (b) In the case of replacement, the dwelling to be replaced shall be:

2 (i) Removed, demolished, or converted to an allowable use within three months of the
3 completion of the replacement dwelling. A replacement dwelling may be sited on any
4 part of the same lot or parcel. A dwelling established under this section shall comply with
5 all applicable siting standards. However, the standards shall not be applied in a manner
6 that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a
7 portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition
8 of approval, shall execute and record in the deed records for the county where the
9 property is located a deed restriction prohibiting the siting of a dwelling on that portion of
10 the lot or parcel. The restriction imposed shall be irrevocable unless a statement of
11 release is placed in the deed records for the county. The release shall be signed by the
12 county or its designee and state that the provisions of this section regarding replacement
13 dwellings have changed to allow the siting of another dwelling. The county planning
14 director or the director's designee shall maintain a record of the lots and parcels that do
15 not qualify for the siting of a new dwelling under the provisions of this section, including
16 a copy of the deed restrictions and release statements filed under this section; and

17 (ii) For which the applicant has requested a deferred replacement permit, is removed or
18 demolished within three months after the deferred replacement permit is issued. A
19 deferred replacement permit allows construction of the replacement dwelling at any time.
20 If, however, the established dwelling is not removed or demolished within three months
21 after the deferred replacement permit is issued, the permit becomes void. The
22 replacement dwelling must comply with applicable building codes, plumbing codes,
23 sanitation codes and other requirements relating to health and safety or to siting at the
24 time of construction. A deferred replacement permit may not be transferred, by sale or
25 otherwise, except by the applicant to the spouse or a child of the applicant.

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

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

34 (b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements
35 under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9)
36 obtains construction financing or other financing secured by the dwelling and the secured
37 party forecloses on the dwelling, the secured party may also foreclose on the homesite, as
38 defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite
39 to create a new parcel. Prior conditions of approval for the subject land and dwelling
40 remain in effect.

1 (c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those
2 foreclosures that are exempt from partition under ORS 92.010(7)(a).

3 (10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of
4 an existing building allowed under this provision is a temporary use for the term of the
5 hardship suffered by the existing resident or relative as defined in ORS chapter 215. The
6 manufactured dwelling shall use the same subsurface sewage disposal system used by the
7 existing dwelling, if that disposal system is adequate to accommodate the additional
8 dwelling. If the manufactured home will use a public sanitary sewer system, such
9 condition will not be required. Governing bodies shall review the permit authorizing such
10 manufactured homes every two years. Within three months of the end of the hardship, the
11 manufactured dwelling or recreational vehicle shall be removed or demolished or, in the
12 case of an existing building, the building shall be removed, demolished or returned to an
13 allowed nonresidential use. A temporary residence approved under this section is not
14 eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p). Oregon Department
15 of Environmental Quality review and removal requirements also apply. As used in this
16 section "hardship" means a medical hardship or hardship for the care of an aged or infirm
17 person or persons.

18 (11) Subject to the issuance of a license, permit or other approval by the Department of
19 Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055,
20 or in compliance with rules adopted under ORS 468B.095, and with the requirements of
21 ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water,
22 agricultural process or industrial process water or biosolids for agricultural, horticultural
23 or silvicultural production, or for irrigation in connection with a use allowed in an
24 exclusive farm use zones under this division **is allowed**.

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

27 (13) [~~Such uses~~] **Roads, highways and other transportation facilities, and**
28 **improvements not otherwise allowed under this rule** may be established, subject to the
29 adoption of the governing body or its designate of an exception to Goal 3, Agricultural
30 Lands, and to any other applicable goal with which the facility or improvement does not
31 comply. In addition, transportation uses and improvements may be authorized under
32 conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

33 (14) Home occupations and the parking of vehicles may be authorized. Home
34 occupations shall be operated substantially in the dwelling or other buildings normally
35 associated with uses permitted in the zone in which the property is located. A home
36 occupation shall be operated by a resident or employee of a resident of the property on
37 which the business is located, and shall employ on the site no more than five full-time or
38 part-time persons.

39 (15) New uses that batch and blend mineral and aggregate into asphalt cement may not be
40 authorized within two miles of a planted vineyard. Planted vineyard means one or more

1 vineyards totaling 40 acres or more that are planted as of the date the application for
2 batching and blending is filed.

3 (16)(a) A utility facility is necessary for public service if the facility must be sited in an
4 exclusive farm use zone in order to provide the service. To demonstrate that a utility
5 facility is necessary, an applicant must show that reasonable alternatives have been
6 considered and that the facility must be sited in an exclusive farm use zone due to one or
7 more of the following factors:

8 (A) Technical and engineering feasibility;

9 (B) The proposed facility is locationally dependent. A utility facility is locationally
10 dependent if it must cross land in one or more areas zoned for exclusive farm use in order
11 to achieve a reasonably direct route or to meet unique geographical needs that cannot be
12 satisfied on other lands;

13 (C) Lack of available urban and nonresource lands;

14 (D) Availability of existing rights of way;

15 (E) Public health and safety; and

16 (F) Other requirements of state and federal agencies.

17 (b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be
18 considered, but cost alone may not be the only consideration in determining that a utility
19 facility is necessary for public service. Land costs shall not be included when considering
20 alternative locations for substantially similar utility facilities and the siting of utility
21 facilities that are not substantially similar.

22 (c) The owner of a utility facility approved under this section shall be responsible for
23 restoring, as nearly as possible, to its former condition any agricultural land and
24 associated improvements that are damaged or otherwise disturbed by the siting,
25 maintenance, repair or reconstruction of the facility. Nothing in this subsection shall
26 prevent the owner of the utility facility from requiring a bond or other security from a
27 contractor or otherwise imposing on a contractor the responsibility for restoration.

28 (d) The governing body of the county or its designee shall impose clear and objective
29 conditions on an application for utility facility siting to mitigate and minimize the
30 impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order
31 to prevent a significant change in accepted farm practices or a significant increase in the
32 cost of farm practices on surrounding farmlands.

33 (e) Utility facilities necessary for public service may include on-site and off-site facilities
34 for temporary workforce housing for workers constructing a utility facility. Such facilities
35 must be removed or converted to an allowed use under OAR 660-033-0130(19) or other

1 statute or rule when project construction is complete. Off-site facilities allowed under
2 this paragraph are subject to OAR 660-033-0130(5). Temporary workforce housing
3 facilities not included in the initial approval may be considered through a minor
4 amendment request. A minor amendment request shall have no effect on the original
5 approval.

6 (f) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment
7 or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive
8 farm use zone shall be subject to the provisions of OAR 660-011-0060.

9 (g) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural
10 gas pipelines and associated facilities authorized by and subject to regulation by the
11 Federal Energy Regulatory Commission.

12 (17) A power generation facility may include on-site and off-site facilities for temporary
13 workforce housing for workers constructing a power generation facility. Such facilities
14 must be removed or converted to an allowed use under OAR 660-033-0130(19) or other
15 statute or rule when project construction is complete. Temporary workforce housing
16 facilities not included in the initial approval may be considered through a minor
17 amendment request. A minor amendment request shall be subject to OAR 660-033-
18 0130(5) and shall have no effect on the original approval. Permanent features of a power
19 generation facility shall not preclude more than 12 acres from use as a commercial
20 agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR
21 chapter 660, division 4.

22 (18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or
23 expanded on the same tract, subject to other requirements of law. An existing golf course
24 may be expanded consistent with the requirements of sections (5) and (20) of this rule,
25 but shall not be expanded to contain more than 36 total holes.

26 (b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter,
27 restore or replace a use that has been disallowed by the enactment or amendment of a
28 zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a)
29 or 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850,
30 section 14, may be expanded subject to:

31 (A) The requirements of subsection (c) of this section; and

32 (B) Conditional approval of the county in the manner provided in ORS 215.296.

33 (c) A nonconforming use described in subsection (b) of this section may be expanded
34 under this section if:

35 (A) The use was established on or before January 1, 2009; and

36 (B) The expansion occurs on:

1 (i) The tax lot on which the use was established on or before January 1, 2009; or

2 (ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this
3 paragraph and that was owned by the applicant on January 1, 2009.

4 (19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds
5 shall not be allowed within three miles of an urban growth boundary unless an exception
6 is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is
7 an area devoted to overnight temporary use for vacation, recreational or emergency
8 purposes, but not for residential purposes and is established on a site or is contiguous to
9 lands with a park or other outdoor natural amenity that is accessible for recreational use
10 by the occupants of the campground. A campground shall be designed and integrated into
11 the rural agricultural and forest environment in a manner that protects the natural
12 amenities of the site and provides buffers of existing native trees and vegetation or other
13 natural features between campsites. Campgrounds authorized by this rule shall not
14 include intensively developed recreational uses such as swimming pools, tennis courts,
15 retail stores or gas stations. Overnight temporary use in the same campground by a
16 camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6
17 month period.

18 (b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle.
19 Separate sewer, water or electric service hook-ups shall not be provided to individual
20 camp sites except that electrical service may be provided to yurts allowed for by
21 subsection (19)(c) of this rule.

22 (c) Subject to the approval of the county governing body or its designee, a private
23 campground may provide yurts for overnight camping. No more than one-third or a
24 maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be
25 located on the ground or on a wood floor with no permanent foundation. Upon request of
26 a county governing body, the Land Conservation and Development Commission may
27 provide by rule for an increase in the number of yurts allowed on all or a portion of the
28 campgrounds in a county if the Commission determines that the increase will comply
29 with the standards described in ORS 215.296(1). As used in section (19) of this rule,
30 "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no
31 plumbing, sewage disposal hook-up or internal cooking appliance.

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

38 (a) A regulation 18 hole golf course is generally characterized by a site of about 120 to
39 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73
40 strokes;

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

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

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

10 (A) An accessory use to a golf course is a facility or improvement that is incidental to the
11 operation of the golf course and is either necessary for the operation and maintenance of
12 the golf course or that provides goods or services customarily provided to golfers at a
13 golf course. An accessory use or activity does not serve the needs of the non-golfing
14 public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart
15 storage and repair; practice range or driving range; clubhouse; restrooms; lockers and
16 showers; food and beverage service; pro shop; a practice or beginners course as part of an
17 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not
18 include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools,
19 and weight rooms; wholesale or retail operations oriented to the non-golfing public; or
20 housing[-];

21 (B) Accessory uses shall be limited in size and orientation on the site to serve the needs
22 of persons and their guests who patronize the golf course to golf. An accessory use that
23 provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather
24 than in separate buildings[-]; **and**

25 (C) Accessory uses may include one or more food and beverage service facilities in
26 addition to food and beverage service facilities located in a clubhouse. Food and beverage
27 service facilities must be part of and incidental to the operation of the golf course and
28 must be limited in size and orientation on the site to serve only the needs of persons who
29 patronize the golf course and their guests. Accessory food and beverage service facilities
30 shall not be designed for or include structures for banquets, public gatherings or public
31 entertainment.

32 (21) "Living History Museum" means a facility designed to depict and interpret everyday
33 life and culture of some specific historic period using authentic buildings, tools,
34 equipment and people to simulate past activities and events. As used in this rule, a living
35 history museum shall be related to resource based activities and shall be owned and
36 operated by a governmental agency or a local historical society. A living history museum
37 may include limited commercial activities and facilities that are directly related to the use
38 and enjoyment of the museum and located within authentic buildings of the depicted
39 historic period or the museum administration building, if areas other than an exclusive
40 farm use zone cannot accommodate the museum and related activities or if the museum

1 administration buildings and parking lot are located within one quarter mile of an urban
2 growth boundary. "Local historical society" means the local historical society, recognized
3 as such by the county governing body and organized under ORS chapter 65.

4 (22) A power generation facility may include on-site and off-site facilities for temporary
5 workforce housing for workers constructing a power generation facility. Such facilities
6 must be removed or converted to an allowed use under OAR 660-033-0130(19) or other
7 statute or rule when project construction is complete. Temporary workforce housing
8 facilities not included in the initial approval may be considered through a minor
9 amendment request. A minor amendment request shall be subject to OAR 660-033-
10 0130(5) and shall have no effect on the original approval. Permanent features of a power
11 generation facility shall not preclude more than 20 acres from use as a commercial
12 agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR
13 chapter 660, division 4.

14 (23) A farm stand may be approved if:

15 (a) The structures are designed and used for sale of farm crops and livestock grown on
16 the farm operation, or grown on the farm operation and other farm operations in the local
17 agricultural area, including the sale of retail incidental items and fee-based activity to
18 promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of
19 the incidental items and fees from promotional activity do not make up more than 25
20 percent of the total annual sales of the farm stand; and

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

24 (c) As used in this section, "farm crops or livestock" includes both fresh and processed
25 farm crops and livestock grown on the farm operation, or grown on the farm operation
26 and other farm operations in the local agricultural area. As used in this subsection,
27 "processed crops and livestock" includes jams, syrups, apple cider, animal products and
28 other similar farm crops and livestock that have been processed and converted into
29 another product but not prepared food items.

30 (d) As used in this section, "local agricultural area" includes Oregon or an adjacent
31 county in Washington, Idaho, Nevada or California that borders the Oregon county in
32 which the farm stand is located.

33 (24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be
34 considered customarily provided in conjunction with farm use if:

35 (a) Each accessory farm dwelling meets all the following requirements:

36 (A) The accessory farm dwelling will be occupied by a person or persons who will be
37 principally engaged in the farm use of the land and whose seasonal or year-round

1 assistance in the management of the farm use, such as planting, harvesting, marketing or
2 caring for livestock, is or will be required by the farm operator; ~~and~~

3 (B) The accessory farm dwelling will be located:

4 (i) On the same lot or parcel as the primary farm dwelling; or

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

8 (iii) On a lot or parcel on which the primary farm dwelling is not located, when the
9 accessory farm dwelling is limited to only a manufactured dwelling with a deed
10 restriction. The deed restriction shall be filed with the county clerk and require the
11 manufactured dwelling to be removed when the lot or parcel is conveyed to another
12 party. The manufactured dwelling may remain if it is reapproved under these rules; or

13 (iv) On a lot or parcel on which the primary farm dwelling is not located, when the
14 accessory farm dwelling is limited to only attached multi- unit residential structures
15 allowed by the applicable state building code or similar types of farm labor housing as
16 existing farm labor housing on the farm or ranch operation registered with the
17 Department of Consumer and Business Services, Oregon Occupational Safety and Health
18 Division under ORS 658.750. A county shall require all accessory farm dwellings
19 approved under this subparagraph to be removed, demolished or converted to a
20 nonresidential use when farm worker housing is no longer required; or

21 (v) On a lot or parcel on which the primary farm dwelling is not located, when the
22 accessory farm dwelling is located on a lot or parcel at least the size of the applicable
23 minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm
24 income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

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

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

30 (A) On land not identified as high-value farmland, the primary farm dwelling is located
31 on a farm or ranch operation that is currently employed for farm use, as defined in ORS
32 215.203, and produced in the last two years or three of the last five years the lower of the
33 following:

34 (i) At least \$40,000 in gross annual income from the sale of farm products. In
35 determining the gross income, the cost of purchased livestock shall be deducted from the
36 total gross income attributed to the tract[-] **or**

- 1 (ii) Gross annual income of at least the midpoint of the median income range of gross
2 annual sales for farms in the county with the gross annual sales of \$10,000 or more
3 according to the 1992 Census of Agriculture, Oregon. In determining the gross income,
4 the cost of purchased livestock shall be deducted from the total gross income attributed to
5 the tract; or
- 6 (B) On land identified as high-value farmland, the primary farm dwelling is located on a
7 farm or ranch operation that is currently employed for farm use, as defined in ORS
8 215.203, and produced at least \$80,000 in gross annual income from the sale of farm
9 products in the last two years or three of the last five years. In determining the gross
10 income, the cost of purchased livestock shall be deducted from the total gross income
11 attributed to the tract; or
- 12 (C) On land not identified as high-value farmland in counties that have adopted marginal
13 lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary
14 farm dwelling is located on a farm or ranch operation that meets the standards and
15 requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or
- 16 (D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and
- 17 (i) The building permits, if required, have been issued and construction has begun or been
18 completed for the buildings and animal waste facilities required for a commercial dairy
19 farm; ~~and~~
- 20 (ii) The Oregon Department of Agriculture has approved a permit for a "confined animal
21 feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and
- 22 (iii) A Producer License for the sale of dairy products under ORS 621.072.
- 23 (c) The governing body of a county shall not approve any proposed division of a lot or
24 parcel for an accessory farm dwelling approved pursuant to this section. If it is
25 determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-
26 0135, a parcel may be created consistent with the minimum parcel size requirements in
27 OAR 660-033-0100[;].
- 28 (d) An accessory farm dwelling approved pursuant to this section cannot later be used to
29 satisfy the requirements for a dwelling not provided in conjunction with farm use
30 pursuant to section (4) of this rule.
- 31 (e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all
32 types of residential structures allowed by the applicable state building code."
- 33 (25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
34 Edition) before January 1, 1993, an armed forces reserve center **is allowed**, if the center
35 is within one-half mile of a community college. An "armed forces reserve center"
36 includes an armory or National Guard support facility.

1 (26) Buildings and facilities shall not be more than 500 square feet in floor area or placed
2 on a permanent foundation unless the building or facility preexisted the use approved
3 under this section. The site shall not include an aggregate surface or hard surface area
4 unless the surface preexisted the use approved under this section. An owner of property
5 used for the purpose authorized in this paragraph may charge a person operating the use
6 on the property rent for the property. An operator may charge users of the property a fee
7 that does not exceed the operator's cost to maintain the property, buildings and facilities.
8 As used in this section, "model aircraft" means a small-scale version of an airplane,
9 glider, helicopter, dirigible or balloon that is used or intended to be used for flight and
10 controlled by radio, lines or design by a person on the ground.

11 (27) Insect species shall not include any species under quarantine by the State
12 Department of Agriculture or the United States Department of Agriculture. The county
13 shall provide notice of all applications under this section to the State Department of
14 Agriculture. Notice shall be provided in accordance with the county's land use regulations
15 but shall be mailed at least 20 calendar days prior to any administrative decision or initial
16 public hearing on the application.

17 (28) The farm on which the processing facility is located must provide at least one-
18 quarter of the farm crops processed at the facility. The building established for the
19 processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor
20 area designated for preparation, storage or other farm use or devote more than 10,000
21 square feet to the processing activities within another building supporting farm use. A
22 processing facility shall comply with all applicable siting standards but the standards
23 shall not be applied in a manner that prohibits the siting of the processing facility. A
24 county shall not approve any division of a lot or parcel that separates a processing facility
25 from the farm operation on which it is located.

26 (29)(a) Composting operations and facilities allowed on high-value farmland are limited
27 to those that are ~~[exempt from a permit from]~~ **deemed to be an accepted farming**
28 **practice in conjunction with and auxiliary to farm use on the subject tract, and that**
29 **meet the performance and permitting requirements of** the Department of
30 Environmental Quality (DEQ) under OAR 340-093-0050 **and 340-096-0060.** ~~only~~
31 ~~require approval of an Agricultural Compost Management Plan by the Oregon~~
32 ~~Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050~~
33 ~~where the compost is applied primarily on the subject farm or used to manage and~~
34 ~~dispose of by products generated on the subject farm.]~~ Excess compost may be sold to
35 neighboring farm operations in the local area and shall be limited to bulk loads of at least
36 one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the
37 composting operation shall only be those required for the operation of the subject facility.

38 (b) Composting operations and facilities allowed on land not defined as high-value
39 farmland shall ~~[be limited to the composting operations and facilities allowed by~~
40 ~~subsection (29)(a) of this rule or that require a permit from]~~ **meet the performance and**
41 **permitting requirements of** the Department of Environmental Quality under OAR 340-
42 093-0050 **and 340-096-0060.** Buildings and facilities used in conjunction with the

1 composting operation shall only be those required for the operation of the subject facility.
2 Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that
3 are transported in one vehicle.

4 (30) The County governing body or its designate shall require as a condition of approval
5 of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a
6 farm or forest zone, that the landowner for the dwelling sign and record in the deed
7 records for the county a document binding the landowner, and the landowner's successors
8 in interest, prohibiting them from pursuing a claim for relief or cause of action alleging
9 injury from farming or forest practices for which no action or claim is allowed under
10 ORS 30.936 or 30.937.

11 (31) Public parks including only the uses specified under OAR 660-034-0035 or 660-
12 034-0040, whichever is applicable.

13 (32) Utility facility service lines are utility lines and accessory facilities or structures that
14 end at the point where the utility service is received by the customer and that are located
15 on one or more of the following:

16 (a) A public right of way;

17 (b) Land immediately adjacent to a public right of way, provided the written consent of
18 all adjacent property owners has been obtained; or

19 (c) The property to be served by the utility.

20 (33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of **3,000**
21 **or** fewer [~~than 3,000~~] persons that is not anticipated to continue for more than 120 hours
22 in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or
23 subject to review under this Division.

24 (34) An[~~y~~] **outdoor mass gathering of more than 3,000 persons that is anticipated to**
25 **continue for more than 120 hours in any three-month planning period is** subject to
26 review by a county planning commission under the provisions of ORS 433.763. [~~These~~
27 ~~gatherings and any part of which is held in open spaces are those of more than 3,000~~
28 ~~persons which continue or can reasonably be expected to continue for more than 120~~
29 ~~hours within any three-month period.]~~

30 (35)(a) As part of the conditional use approval process under ORS 215.296 and OAR
31 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the
32 business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the
33 business may apply to the county and submit evidence including, but not limited to,
34 sworn affidavits or other documentary evidence that the business qualifies; and

1 (b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or
2 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and
3 (9).

4 (36) For counties subject to ORS 215.283 and not 215.213, a community center
5 authorized under this section may provide services to veterans, including but not limited
6 to emergency and transitional shelter, preparation and service of meals, vocational and
7 educational counseling and referral to local, state or federal agencies providing medical,
8 mental health, disability income replacement and substance abuse services, only in a
9 facility that is in existence on January 1, 2006. The services may not include direct
10 delivery of medical, mental health, disability income replacement or substance abuse
11 services.

12 (37) For purposes of this rule a wind power generation facility includes, but is not limited
13 to, the following system components: all wind turbine towers and concrete pads,
14 permanent meteorological towers and wind measurement devices, electrical cable
15 collection systems connecting wind turbine towers with the relevant power substation,
16 new or expanded private roads (whether temporary or permanent) constructed to serve
17 the wind power generation facility, office and operation and maintenance buildings,
18 temporary lay-down areas and all other necessary appurtenances, including but not
19 limited to on-site and off-site facilities for temporary workforce housing for workers
20 constructing a wind power generation facility. Such facilities must be removed or
21 converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when
22 project construction is complete. Temporary workforce housing facilities not included in
23 the initial approval may be considered through a minor amendment request filed after a
24 decision to approve a power generation facility. A minor amendment request shall be
25 subject to OAR 660-033-0130(5) and shall have no effect on the original approval. A
26 proposal for a wind power generation facility shall be subject to the following provisions:

27 (a) For high-value farmland soils described at ORS 195.300(10), the governing body or
28 its designate must find that all of the following are satisfied:

29 (A) Reasonable alternatives have been considered to show that siting the wind power
30 generation facility or component thereof on high-value farmland soils is necessary for the
31 facility or component to function properly or if a road system or turbine string must be
32 placed on such soils to achieve a reasonably direct route considering the following
33 factors:

34 (i) Technical and engineering feasibility;

35 (ii) Availability of existing rights of way; and

36 (iii) The long term environmental, economic, social and energy consequences of siting
37 the facility or component on alternative sites, as determined under OAR 660-033-
38 0130(37)(a)(B)[-];

1 (B) The long-term environmental, economic, social and energy consequences resulting
2 from the wind power generation facility or any components thereof at the proposed site
3 with measures designed to reduce adverse impacts are not significantly more adverse than
4 would typically result from the same proposal being located on other agricultural lands
5 that do not include high-value farmland soils[-];

6 (C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may
7 be considered, but costs alone may not be the only consideration in determining that
8 siting any component of a wind power generation facility on high-value farmland soils is
9 necessary[-];

10 (D) The owner of a wind power generation facility approved under OAR 660-033-
11 0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former
12 condition any agricultural land and associated improvements that are damaged or
13 otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.
14 Nothing in this subsection shall prevent the owner of the facility from requiring a bond or
15 other security from a contractor or otherwise imposing on a contractor the responsibility
16 for restoration[-]; **and**

17 (E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

18 (b) For arable lands, meaning lands that are cultivated or suitable for cultivation,
19 including high-value farmland soils described at ORS 195.300(10), the governing body
20 or its designate must find that:

21 (A) The proposed wind power facility will not create unnecessary negative impacts on
22 agricultural operations conducted on the subject property. Negative impacts could
23 include, but are not limited to, the unnecessary construction of roads, dividing a field or
24 multiple fields in such a way that creates small or isolated pieces of property that are
25 more difficult to farm, and placing wind farm components such as meteorological towers
26 on lands in a manner that could disrupt common and accepted farming practices; [~~and~~]

27 (B) The presence of a proposed wind power facility will not result in unnecessary soil
28 erosion or loss that could limit agricultural productivity on the subject property. This
29 provision may be satisfied by the submittal and county approval of a soil and erosion
30 control plan prepared by an adequately qualified individual, showing how unnecessary
31 soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and
32 clearly marked. The approved plan shall be attached to the decision as a condition of
33 approval; [~~and~~]

34 (C) Construction or maintenance activities will not result in unnecessary soil compaction
35 that reduces the productivity of soil for crop production. This provision may be satisfied
36 by the submittal and county approval of a plan prepared by an adequately qualified
37 individual, showing how unnecessary soil compaction will be avoided or remedied in a
38 timely manner through deep soil decompaction or other appropriate practices. The
39 approved plan shall be attached to the decision as a condition of approval; and

1 (D) Construction or maintenance activities will not result in the unabated introduction or
2 spread of noxious weeds and other undesirable weeds species. This provision may be
3 satisfied by the submittal and county approval of a weed control plan prepared by an
4 adequately qualified individual that includes a long-term maintenance agreement. The
5 approved plan shall be attached to the decision as a condition of approval.

6 (c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing
7 body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D)
8 are satisfied.

9 (d) In the event that a wind power generation facility is proposed on a combination of
10 arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the
11 approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

12 [Publications: Publications referenced are available from the agency.]

13 Stat. Auth.: ORS 197.040

14 Stats. Implemented: ORS 197.040 & 215.213

15 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94;
16 LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDC 5-
17 1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f.
18 & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef.
19 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04;
20 LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-
21 2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-
22 2010, f. & cert. ef. 6-17-10; LCDD 7-2010(Temp), f. & cert. ef. 6-17-10 thru 11-30-
23 10; LCDD 9-2010, f. & cert. ef. 9-24-10

24 **660-033-0135**

25 **Dwellings in Conjunction with Farm Use**

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

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

29 (A) 160 acres and not designated rangeland; or

30 (B) 320 acres and designated rangeland; or

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

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

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

4 (d) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p)(1999 Edition), there is
5 no other dwelling on the subject tract.

6 (2)(a) If a county prepares the potential gross sales figures pursuant to subsection [(4)]
7 (c) of this [rule] section, the county may determine that on land[;]not identified as high-
8 value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered
9 customarily provided in conjunction with farm use if:

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

14 [~~(b)~~] **(B)** The subject tract is capable of producing at least the median level of annual
15 gross sales of county indicator crops as the same commercial farm or ranch tracts used to
16 calculate the tract size in [~~subsection~~] paragraph [~~(a)~~] **(A)** of this subsection; [~~and~~]

17 [~~(c)~~] **(C)** The subject tract is currently employed for a farm use, as defined in ORS
18 215.203, at a level capable of producing the annual gross sales required in [~~subsection~~]
19 paragraph [~~(b)~~] **(B)** of this subsection; [~~and~~]

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

22 [~~(e)~~] **(E)** Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition),
23 there is no other dwelling on the subject tract; [~~and~~]

24 [~~(f)~~] **(F)** The dwelling will be occupied by a person or persons who will be principally
25 engaged in the farm use of the land, such as planting, harvesting, marketing or caring for
26 livestock, at a commercial scale; and

27 [~~(g)~~] **(G)** If no farm use has been established at the time of application, land use approval
28 shall be subject to a condition that no building permit may be issued prior to the
29 establishment of the farm use required by [~~subsection~~] paragraph [~~(e)~~] **(C)** of this
30 subsection.

31 [~~(3)~~] **(b)** In order to identify the commercial farm or ranch tracts to be used in section
32 (2)(a)(A) of this rule, the gross sales capability [~~of~~] of each tract in the study area
33 including the subject tract must be determined, using the gross sales figures prepared by
34 the county pursuant to subsection [(4)] **(2)(c)** of this [rule] section as follows:

- 1 [~~(a)~~] **(A)** Identify the study area. This includes all the land in the tracts wholly or partially
2 within one mile of the perimeter of the subject tract;
- 3 [~~(b)~~] **(B)** Determine for each tract in the study area the number of acres in every land
4 classification from the county assessors data;
- 5 [~~(c)~~] **(C)** Determine the potential earning capability for each tract by multiplying the
6 number of acres in each land class by the gross sales per acre for each land class provided
7 by the Commission pursuant to subsection [~~(4)~~] **(2)(c)** of this [~~rule~~] section. Add these to
8 obtain the potential earning capability for each tract;
- 9 [~~(d)~~] **(D)** Identify those tracts capable of grossing at least \$10,000 based on the data
10 generated in [~~subsection~~] paragraph [~~(3)(c)~~](C) of this [~~rule~~] subsection; and
- 11 [~~(e)~~] **(E)** Determine the median size and median gross sales capability for those tracts
12 capable of generating at least \$10,000 in annual gross sales to use in subsections
13 (2)(a)(A) and [~~(b)~~] **(B)** of this [~~rule~~] section.
- 14 [~~(4)~~] (c) In order to review a farm dwelling pursuant to section (2)(a) of this [~~rule~~]
15 section, a county may prepare, subject to review by the Director, a table of the estimated
16 potential gross sales per acre for each assessor land class (irrigated and nonirrigated)
17 required in section [~~(3)~~] **(2)(b)** of this [~~rule~~] section. The Director shall provide assistance
18 and guidance to a county in the preparation of this table. The table shall be prepared as
19 follows:
- 20 [~~(a)~~] **(A)** Determine up to three indicator crop types with the highest harvested acreage
21 for irrigated and for nonirrigated lands in the county using the most recent OSU
22 Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and State
23 Agricultural Estimates", or other USDA/Extension Service documentation;
- 24 [~~(b)~~] **(B)** Determine the combined weighted average of the gross sales per acre for the
25 three indicator crop types for irrigated and for nonirrigated lands, as follows:
- 26 [~~(A)~~] **(i)** Determine the gross sales per acre for each indicator crop type for the previous
27 five years (i.e., divide each crop type's gross annual sales by the harvested acres for each
28 crop type);
- 29 [~~(B)~~] **(ii)** Determine the average gross sales per acre for each crop type for three years,
30 discarding the highest and lowest sales per acre amounts during the five year period;
- 31 [~~(C)~~] **(iii)** Determine the percentage each indicator crop's harvested acreage is of the total
32 combined harvested acres for the three indicator crop types;
- 33 [~~(D)~~] **(iv)** Multiply the combined sales per acre for each crop type identified under
34 paragraph (B) of this subsection by its percentage of harvested acres to determine a
35 weighted sales per acre amount for each indicator crop; and

1 [~~(E)~~] **(v)** Add the weighted sales per acre amounts for each indicator crop type identified
2 in paragraph [~~(D)~~] **(iv)** of this subsection. The result provides the combined weighted
3 gross sales per acre.

4 [~~(e)~~] **(C)** Determine the average land rent value for irrigated and nonirrigated land classes
5 in the county's exclusive farm use zones according to the annual "income approach"
6 report prepared by the county assessor pursuant to ORS 308.345; **and**

7 [~~(d)~~] **(D)** Determine the percentage of the average land rent value for each specific land
8 rent for each land classification determined in ~~[subsection]~~ **paragraph** [~~(e)~~] **(C)** of this
9 **subsection**. Adjust the combined weighted sales per acre amount identified in paragraph
10 [~~(b)(E)~~] **(v)** of this **subsection** using the percentage of average land rent (i.e., multiply the
11 weighted average determined in paragraph [~~(4)(b)(E)~~] **(v)** of this ~~[rule]~~ **subsection** by the
12 percent of average land rent value from ~~[subsection]~~ **paragraph** (4)(c) of this ~~[rule]~~
13 **subsection**. The result provides the estimated potential gross sales per acre for each
14 assessor land class that will be provided to each county to be used as explained under
15 ~~[subsection]~~ **paragraph** [~~(3)(e)~~] **(2)(b)(C)** of this ~~[rule]~~ **subsection**.

16 [~~(5)~~] **(3)** On land not identified as high-value farmland, a dwelling may be considered
17 customarily provided in conjunction with farm use if:

18 (a) The subject tract is currently employed for the farm use, as defined in ORS 215.203,
19 that produced in the last two years or three of the last five years the lower of the
20 following:

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

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

25 (b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is
26 no other dwelling on lands designated for exclusive farm use pursuant to ORS Chapter
27 215 or for mixed farm/forest use pursuant to OAR 660-006-057 owned by the farm or
28 ranch operator or on the farm or ranch operation; ~~and~~

29 (c) The dwelling will be occupied by a person or persons who produced the commodities
30 ~~[which]~~ **that** grossed the income in subsection (a) of this section; **and**

31 (d) In determining the gross income required by subsection (a) of this section:

32 [~~(i)~~] **(A)** The cost of purchased livestock shall be deducted from the total gross income
33 attributed to the farm or ranch operation;

1 [(ii)] **(B)** Only gross income from land owned, not **currently** leased or rented, shall be
2 counted, **provided that any previously-leased or rented and currently-owned land**
3 **shall have been leased or rented for at least five years**; and

4 [(iii)] **(C)** Gross farm income earned from a lot or parcel [~~which~~] **that** has been used
5 previously to qualify another lot or parcel for the construction or siting of a primary farm
6 dwelling may not be used.

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

11 ~~[(7)]~~ **(4)** On land identified as high-value farmland, a dwelling may be considered
12 customarily provided in conjunction with farm use if:

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

16 (b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is
17 no other dwelling on lands designated for exclusive farm use pursuant to ORS Chapter
18 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or
19 ranch operator or on the farm or ranch operation; and

20 (c) The dwelling will be occupied by a person or persons who produced the commodities
21 [~~which~~] **that** grossed the income in subsection (a) of this section;

22 (d) In determining the gross income required by subsection (a) of this section;

23 [(i)] **(A)** The cost of purchased livestock shall be deducted from the total gross income
24 attributed to the farm or ranch operation;

25 [(ii)] **(B)** Only gross income from land owned, not leased or rented, shall be counted; and

26 [(iii)] **(C)** Gross farm income earned from a lot or parcel [~~which~~] **that** has been used
27 previously to qualify another lot or parcel for the construction or siting of a primary farm
28 dwelling may not be used.

29 ~~[(8)]~~ **(5)(a)** For the purpose of sections ~~[(5)]~~ **(3)** or ~~[(7)]~~ **(4)** of this rule, noncontiguous
30 lots or parcels zoned for farm use in the same county or contiguous counties may be used
31 to meet the gross income requirements. Except for Hood River and Wasco counties and
32 Jackson and Klamath counties, when a farm or ranch operation has lots or parcels in both
33 "Western" and "Eastern" Oregon as defined by this division, lots or parcels in Eastern or
34 Western Oregon may not be used to qualify a dwelling in the other part of the state.

1 [~~(9)(a)~~] **(b)** Prior to the final approval for a dwelling authorized by sections [~~(5)~~] **(3)** and
2 [~~(7)~~] **(4)** of this rule that requires one or more contiguous or non contiguous lots or
3 parcels of a farm or ranch operation to comply with the gross farm income requirements,
4 the applicant shall provide evidence that the covenants, conditions and restrictions form
5 adopted as "Exhibit A" has been recorded with the county clerk of the county or counties
6 where the property subject to the covenants, conditions and restrictions is located. The
7 covenants, conditions and restrictions shall be recorded for each lot or parcel subject to
8 the application for the primary farm dwelling and shall preclude:

9 [~~(i)~~] **(A)** All future rights to construct a dwelling except for accessory farm dwellings,
10 relative farm assistance dwellings, temporary hardship dwellings or replacement
11 dwellings allowed by ORS Chapter 215; and

12 [~~(ii)~~] **(B)** The use **of** any gross farm income earned on the lots or parcels to qualify
13 another lot or parcel for a primary farm dwelling.

14 [~~(b)~~] **(c)** The covenants, conditions and restrictions are irrevocable, unless a statement of
15 release is signed by an authorized representative of the county or counties where the
16 property subject to the covenants, conditions and restrictions is located[-];

17 [~~(e)~~] **(d)** Enforcement of the covenants, conditions and restrictions may be undertaken by
18 the Department of Land Conservation and Development or by the county or counties
19 where the property subject to the covenants, conditions and restrictions is located;

20 [~~(d)~~] **(e)** The failure to follow the requirements of this section shall not affect the validity
21 of the transfer of property or the legal remedies available to the buyers of property
22 [~~which~~] **that** is subject to the covenants, conditions and restrictions required by this
23 section;

24 [~~(e)~~] **(f)** The county planning director shall maintain a copy of the covenants, conditions
25 and restrictions filed in the county deed records pursuant to this section and a map or
26 other record depicting the lots and parcels subject to the covenants, conditions and
27 restrictions filed in the county deed records pursuant to this section. The map or other
28 record required by this subsection shall be readily available to the public in the county
29 planning office.

30 **(6) In counties that have adopted marginal lands provisions under ORS 197.247**
31 **(1991 Edition) before January 1, 1993, a dwelling may be considered customarily**
32 **provided in conjunction with farm use if it is not on a lot or parcel identified as**
33 **high-value farmland and it meets the standards and requirements of ORS**
34 **215.213(2)(a) or (b).**

35 [~~(10)~~] **(7)** A dwelling may be considered customarily provided in conjunction with a
36 commercial dairy farm as defined by OAR 660-033-0135[~~(11)~~] **(8)** if:

- 1 (a) The subject tract will be employed as a commercial dairy as defined by OAR 660-
2 033-0135[~~(11)~~] **(8)**; [~~and~~]
- 3 (b) The dwelling is sited on the same lot or parcel as the buildings required by the
4 commercial dairy; [~~and~~]
- 5 (c) Except as permitted by ORS 215.213(r) and 215.283(1)(p) (1999 Edition), there is no
6 other dwelling on the subject tract; [~~and~~]
- 7 (d) The dwelling will be occupied by a person or persons who will be principally engaged
8 in the operation of the commercial dairy farm, such as the feeding, milking or pasturing
9 of the dairy animals or other farm use activities necessary to the operation of the
10 commercial dairy farm; [~~and~~]
- 11 (e) The building permits, if required, have been issued for and construction has begun for
12 the buildings and animal waste facilities required for a commercial dairy farm; and
- 13 (f) The Oregon Department of Agriculture has approved the following:
- 14 (A) A permit for a "confined animal feeding operation" under ORS 468B.050 and
15 468B.200 to 468B.230; and
- 16 (B) A Producer License for the sale of dairy products under ORS 621.072.
- 17 [~~(11)~~] **(8)** As used in this division, the following definitions apply:
- 18 (a) "Commercial dairy farm" is a dairy operation that owns a sufficient number of
19 producing dairy animals capable of earning the gross annual income required by OAR
20 660-033-0135[~~(5)~~]**(3)**(a) or [~~(7)~~]**(4)**(a), whichever is applicable, from the sale of fluid
21 milk; and
- 22 (b) "Farm or ranch operation" means all lots or parcels of land in the same ownership that
23 are used by the farm or ranch operator for farm use as defined in ORS 215.203.
- 24 (12) A dwelling may be considered customarily provided in conjunction with farm use if:
- 25 (a) Within the previous two years, the applicant owned and operated a farm or ranch
26 operation that earned the gross farm income in the last five years or four of the last seven
27 years as required by OAR 660-033-0135[~~(5)~~]**(3)** or [~~(7)~~]**(4)** of this rule, whichever is
28 applicable;
- 29 (b) The subject lot or parcel on which the dwelling will be located is:
- 30 (A) Currently employed for the farm use, as defined in ORS 215.203, that produced in
31 the last two years or three of the last five years the gross farm income required by OAR
32 660-033-0135[~~(5)~~] **(3)** or [~~(7)~~] **(4)** of this rule, whichever is applicable; and

- 1 (B) At least the size of the applicable minimum lot size under OAR 215.780; and
- 2 [~~(a)~~] **(c)** Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition),
 3 there is no other dwelling on the subject tract; [~~and~~]
- 4 [~~(b)~~] **(d)** The dwelling will be occupied by a person or persons who produced the
 5 commodities [~~which~~] **that** grossed the income in subsection (a) of this section; **and**
- 6 [~~(c)~~] **(e)** In determining the gross income required by subsections (a) and (b)(A) of this
 7 section:
- 8 (A) The cost of purchased livestock shall be deducted from the total gross income
 9 attributed to the tract; and
- 10 (B) Only gross income from land owned, not leased or rented, shall be counted.

11 [ED. NOTE: Exhibits referenced are available from the agency.]

12 Stat. Auth.: ORS 183, ORS 197.040, 197.230 & 197.245
 13 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243,
 14 215.283, 215.700 - 215.710 & 215.780
 15 Hist.: LCDC 3-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD
 16 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04

17 **660-033-0140**
 18 **Permit Expiration Dates**

- 19 (1) Except as provided for in subsection (5) of this rule, a discretionary decision, except
 20 for a land division, made after the effective date of this division approving a proposed
 21 development on agricultural or forest land outside an urban growth boundary under ORS
 22 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation
 23 adopted pursuant thereto is void two years from the date of the final decision if the
 24 development action is not initiated in that period.
- 25 (2) A county may grant one extension period of up to 12 months if:
- 26 (a) An applicant makes a written request for an extension of the development approval
 27 period;
- 28 (b) The request is submitted to the county prior to the expiration of the approval period;
- 29 (c) The applicant states reasons that prevented the applicant from beginning or continuing
 30 development within the approval period; and

- 1 (d) The county determines that the applicant was unable to begin or continue
2 development during the approval period for reasons for which the applicant was not
3 responsible.
- 4 (3) Approval of an extension granted under this rule is an administrative decision, is not a
5 land use decision as described in ORS 197.015 and is not subject to appeal as a land use
6 decision.
- 7 (4) Additional one year extensions may be authorized where applicable criteria for the
8 decision have not changed.
- 9 (5)(a) If a permit is approved for a proposed residential development on agricultural or
10 forest land outside of an urban growth boundary, the permit shall be valid for four years.
- 11 (b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for
12 two years.
- 13 (6) For the purposes of subsection (5) of this rule, "residential development" only
14 includes the dwellings provided for under ORS 215.213(1)(t), (3) and (4), 215.283(1)(s),
15 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).

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

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

18 Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2002, f. & cert. ef. 5-22-
19 02

20 **660-033-0145**

21 **Agriculture/Forest Zones**

22 (1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-
23 006-0050;

24 (2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR
25 660-006-0055; and

26 (3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 666-
27 006-0057.

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

29 Stats. Implemented: ORS 197.040, ORS 197.213, ORS 197.215, ORS 197.230, ORS
30 197.245, ORS 197.283, ORS 197.700, ORS 197.705, ORS 197.720, ORS 197.740, ORS
31 197.750 & ORS 197.780

32 Hist.: LCDD 2-1998, f. & cert. ef. 6-1-98

33 **660-033-0150**

1 **Notice of Decisions in Agriculture Zones**

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

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

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

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

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

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

13 **660-033-0160**

14 **Effective Date**

15 The provisions of this division shall become effective upon filing.

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

17 Stats. Implemented: ORS 215

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

19 LCDC 5-1996, 12-23-96

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 033, RULE 0120, TABLE 1

Uses Authorized on Agricultural Lands

OAR 660-033-0120 The specific development and uses listed in the following table are ~~permitted~~ **allowed** 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:

A Use ~~may be~~ **is** 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~~ **only to the extent** authorized by law.

R Use may be ~~approved~~ **allowed**, 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~~.

* Use not ~~permitted~~ **allowed**.

Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

HV All
Farmland Other USES

Farm/Forest Resource

A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R6	R6	A facility for the primary processing of forest products.
R28	R28	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.

Natural Resource

A	A	Creation of, restoration of, or enhancement of wetlands.
R5,27	R5,27	The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species.

Residential

A1,30	A1,30	Dwelling customarily provided in conjunction with farm use.
R9,30	R9,30	A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, brother, sister, sibling, step-sibling, niece, nephew, or first cousin of either, if the farm operator does, or will, require the assistance of the relative in the management of the farm use.
A24,30	A24,30	Accessory Farm Dwellings for year-round and seasonal farm workers.
A3,30	A3,30	One single-family dwelling on a lawfully created lot or parcel.

R5,10 30	R5,10, 30	One manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.
R4,30	R4,30	Single-family residential dwelling, not provided in conjunction with farm use.
R5,30	R5,30	Residential home or facility as defined in ORS 197.660, in existing dwellings.
R5, 0	R5,30	Room and board arrangements for a maximum of five unrelated persons in existing residences.
R12,30	R12,30	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.
A8,30	A8,30	Alteration, restoration, or replacement of a lawfully established dwelling.
R5,	R5	A wildlife habitat conservation and management plan pursuant to ORS 215.800 to 215.808.

Commercial Uses

R5	R5	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or ORS 215.213(1)(x) and 215.283(1)(u).
R5,14	R5,14	Home occupations as provided in ORS 215.448.
*18(a)	R5	Dog kennels.
R5,35	R5,35	An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks.
*18(a)	R5	Destination resort which is approved consistent with the requirements of Goal 8.
A	A	A winery as described in ORS 215.452.
A23	A23	Farm stands.
R5	R5	A landscap[ing] contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

Mineral, Aggregate, Oil, and Gas Uses

A	A	Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
A	A	Operations for the exploration for minerals as defined by ORS 517.750.
R5	R5	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under this rule.
R5	R5	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
R5,15	R5,15	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
R5	R5	Processing of other mineral resources and other subsurface resources.

Transportation

R5,7	R5,7	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.
A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.

- R5 R5 Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.
- A A Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
- R5 R5 Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
- A A Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- A A Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
- R5 R5 Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
- R13 R13 Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
- R R Transportation improvements on rural lands allowed by OAR 660-012-0065.

Utility/Solid Waste Disposal Facilities

- R16 R16 Utility facilities necessary for public service, including wetland waste treatment systems but not including Commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.
- R5 R5 Transmission towers over 200 feet in height.
- A A Fire service facilities providing rural fire protection services.
- A A Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.
- A32 A32 Utility facility service lines.
- R5,17 R5,22 Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities.
- R5,37 R5,37 Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
- *18(a) R5 A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation
- 18(a) R5, 29(b) Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-~~093~~-0050 **and 340-096-0060.**

Parks/Public/Quasi-Public

- *18(a) R2,5, 18(b-c) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.
- *18(a) R2 Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
- *18(a) R2,5,19 Private parks, playgrounds, hunting and fishing preserves, and campgrounds.

- R2,5,31 R2,5,31 Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
- R2,5,36 R2,5,36 Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
- 2,18(a) R2,5,20 Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.
- R2,5,21 R2,5,21 Living history museum
- R2 R2 Firearms training facility as provided in ORS 197.770.
- R2, 25 R2, 25 Armed forces reserve center as provided for in ORS 215.213(1).
- A A Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.
- R5 R5 Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.
- A26 A26 A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.
- R5 R5 Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
- R5 R5 Operations for the extraction and bottling of water.
- A11 A11 Land application of reclaimed water, agricultural or industrial process water or biosolids.
- R5 R5 A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(2).

Outdoor Gatherings

- A33 A33 An outdoor gathering described in ORS 197.015(10)(d).
- R34 R34 An[~~y~~] outdoor mass gathering subject to review of a county planning commission under ORS 433.763.

(The numbers in the table above refer to the section numbers in OAR 660-33-130)

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Land Conservation and Development		660
Agency and Division		Administrative Rules Chapter Number
Casaria Tuttle	635 Capitol St. NE, Suite 150, Salem, OR 97301	503-373-0050 ext. 322
Rules Coordinator	Address	Telephone

RULE CAPTION

Minor and technical amendments to conform to law, clarify wording and correct references
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

December 2, 2010	Meeting begins 9:00AM	635 Capitol Street, Salem; Basement Hearing Room	LCDC
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

- AMEND:** OAR chapter 660, division 1 (Administrative Procedures)
OAR chapter 660, division 3 (Acknowledgment Process)
OAR chapter 660, division 4 (Interpretation of Exceptions Process)
OAR chapter 660, division 6 (Forest Lands)
OAR chapter 660, division 11 (Public Facilities Planning)
OAR chapter 660, division 18 (Plan and Land Use Regulation Review Rule)
OAR chapter 660, division 21 (Urban Reserves)
OAR chapter 660, division 23 (Natural Resources)
OAR chapter 660, division 25 (Metro Urban and Rural Reserves)
OAR chapter 660, division 27 (Metro Urban and Rural Reserves)
OAR chapter 660, division 30 (State Agency Coordination)
OAR chapter 660, division 33 (Agricultural Lands)

REPEAL:

- Stat. Auth.: ORS 197.040; 195.145; ORS 195, 197, 215 & 227
Other Auth.: Statewide planning goals (OAR 660, div 15)
Stats. Implemented: ORS 195, 197, 215, 227

RULE SUMMARY

The proposed amendments would modify rules to make minor and technical amendments to: conform to statutes, laws and rules; respond to Land Use Board of Appeals or other court opinions; clarify ambiguous or unclear wording consistent with the intent of the rule; update or correct rule, statutory or other references; and correct grammar.

The Commission may consider other minor amendments to rules in the divisions specified above based on testimony and comments received during the public comment period, and may adopt minor clarifications or technical corrections and amendments to these divisions that may be proposed during the public comment period.

Under ORS 183.335(2)(b)(G), the agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

December 2, 2010

Last Day for Public Comment

	Casaria Tuttle	10/14/2010
Signature	Printed name	Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Agency and Division: Department of Land Conservation and Development

Administrative Rules Chapter Number: OAR 660, chapters 1, 3, 4, 6, 9, 11, 18, 21, 23, 25, 27, 30, 33

In the Matter of: Minor and technical rule amendments for clarity, consistency with statutes and case law, and to correct grammar, spelling and references.

Statutory Authority: ORS 197.040; 195.145; ORS 195, 197, 215, 227

Other Authority: Statewide Planning Goals (OAR 660, div 15)

Statutes Implemented: ORS 195.137 – 195.145; ORS 183; ORS 195, 197, 215, 227

Need for the Rule(s): The proposed minor and technical amendments are needed in order to conform existing rules to new or amended statutes, rules or to other laws, to clarify ambiguous wording and make other adjustments consistent with the intent of law, to update or correct statutory or other references, and to correct grammar and spelling.

The Commission may consider other minor and technical amendments to rules in the divisions specified above based on testimony and comments received during the public comment period, and may adopt amendments to these divisions that may be proposed during the public comment period.

Effective date: Rules will be effective upon filing with the Secretary of State Office, or by a time specified in the adopted rules.

Documents Relied Upon: ORS 195.137-195.145; Statewide Planning Goals (OAR 660, division 15);

Fiscal and Economic Impact: Statutory provisions (ORS 183.335(2)(b)(E) and (G), 183.540) require the agency to consider whether a proposed rule amendment will have any significant economic impact on business and whether options should be considered to reduce any negative impacts of the rule on business:

The proposed amendments will not have economic affects on business because the proposed amendments will generally clarify rather than amend current policies established by the rules. Where the amendments conform rules to existing statutes the department cannot propose alternative rules that would achieve the underlying lawful governmental objective because amendments to rule requirements would only be in conformance with current law. The proposed rule amendments would primarily be applied in local land use decisions, and as such, economic and property interests will be considered in the local decision making process. Although not determinative, this will help assure the proper balance of economic and property interests, consistent with the purpose of the statutes or rules.

Statutory provisions also require the agency to estimate the effect of proposed rules on the cost to construct a 1,200 square foot dwelling on a 6,000 square foot parcel (ORS 183.534).

The proposed amendments would not affect approval standards for dwellings and thus will not affect the cost to construct a dwelling.

ORS 183.335(2)(b)(E) and 183.530 require the agency to prepare a Housing Cost Impact Statement on a form prepared by the State Housing Council and incorporate that statement into this statement of need required by ORS 183.335(5) (*See* ORS 183.534).

The Housing Cost Impact Statement is attached and is incorporated into this statement by this reference.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The amendments will not have impacts to state agencies, units of local government and the public because the proposed amendments will generally clarify rather than amend current policies established by the rules.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The rules subject to this rulemaking affect small businesses throughout the state. However, it is not possible to estimate the number and type of such businesses. In general, all businesses in the state are subject to the statewide planning rules proposed for amendment. The proposed amendments will generally clarify rather than amend current policies established by the rules, and as such, there should be no or hardly any affects on small business.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The department generally monitors plan amendments, new uses in farm and forest land (through annual reporting required of counties), and destination resorts. These rule amendments will not change current monitoring, and no professional service costs are anticipated for such monitoring,

c. Equipment, supplies, labor and increased administration required for compliance:

No additional costs of supplies, labor and administration are anticipated as a result of these rule amendments.

How were small businesses involved in the development of this rule?

Because these amendments primarily concern clarification of current policy, conformance with amended statutes or court decisions, or other minor and technical changes, the department did not consult with small businesses.

Statutory provisions (ORS 197.040) also require the agency to “Assess what economic and property interests will be, or are likely to be, affected by the proposed rule; ... assess the likely degree of economic impact on identified property and economic interests; [and] assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.” These requirements “shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule.”:

Economic interests and property owners will not be affected by the amended rules because the proposed minor and technical amendments are for clarification, conformity to existing rules or statutes.

Administrative Rule Advisory Committee consulted?: No If not, why?: For the same reasons provided above concerning small business involvement.

Richard Whitman

Signature

Printed Name

Date

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534) FOR ADMINISTRATIVE RULES

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

AGENCY NAME:

Department of Land Conservation and Development

HEARING DATE:

December 2, 2010

ADDRESS: 635 Capitol Street NE

CITY/STATE: Salem, OR 97301

PHONE: (503) 373-0050

PERMANENT:

TEMPORARY:

EFFECTIVE DATE: Upon Filing

**BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT
WILL RESULT FROM THIS PROPOSED CHANGE.**

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

Minor or amendments to conform rules to statutes, rules or to other laws, to clarify ambiguous or unclear wording consistent with the intent of the rule, to update or correct rule, statutory or other references, and to correct grammar.

Description of the need for, and objectives of the rule:

These minor and technical rule amendments are needed in order to conform existing rules to statutes, rules or to other laws, to clarify ambiguous or unclear wording consistent with the intent of the rule, to update or correct rule and statutory references, or to correct grammar and spelling.

List of rules amended: OAR chapter 660, division 1 (Administrative Procedures); OAR chapter 660, division 3 (Acknowledgment Process); OAR chapter 660, division 4 (Interpretation of Exceptions Process); OAR chapter 660, division 6 (Forest Lands); OAR chapter 660, division 9 (Economic Development); OAR chapter 660, division 11 (Public Facilities Planning); OAR chapter 660, division 18 (Plan and Land Use Regulation Review Rule); OAR chapter 660, division 21 (Urban Reserves); OAR chapter 660, division 23 (Natural Resources); OAR chapter 660, division 25 (Metro Urban and Rural Reserves); OAR chapter 660, division 27 (Metro Urban and Rural Reserves); OAR chapter 660, division 30 (State Agency Coordination); OAR chapter 660, division 33 (Agricultural Lands)

Materials and labor costs increase or savings: The amendments will not affect the cost of housing materials or labor costs because the amendments will not create new substantive or procedural provisions not already required by rule, statute or other law with respect to housing.

Estimated administrative, construction or other costs increase or savings: The amendments will not affect administrative, construction, or other housing costs, for the same reasons described above concerning materials and labor costs, above.

Land costs increase or savings: The amendments will not affect land costs, for the same reasons described above concerning materials and labor costs.

Other costs increase or savings: None anticipated

PREPARERS NAME: Bob Rindy, Senior Policy Analyst **EMAIL ADDRESS:** bob.rindy@state.or.us



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

November 15, 2010

TO: The Honorable Peter Courtney, President of the Senate
The Honorable Dave Hunt, Speaker of the House

FROM: Richard Whitman, Director
Department of Land Conservation and Development (DLCD)

SUBJECT: Notice of Proposed Minor and Housekeeping Amendments to DLCD Rules

Enclosed are notices announcing that the Land Conservation and Development Commission (LCDC) is considering minor amendments to administrative rules. The proposed minor or technical amendments to the agency's administrative rules are necessary to conform rules to current statutes, laws and rules, respond to Land Use Board of Appeals or other court opinions, clarify ambiguous or unclear wording consistent with the intent of the rules, and update or correct references or to correct grammar. LCDC may consider other minor amendments to rules in the divisions specified based on testimony and comments received during the public comment period, and may adopt minor clarifications or technical corrections and amendments to these divisions that may be proposed during the public comment period. The rules subject to proposed amendments are as follows: OAR 660, divisions 1, 3, 4, 6, 11, 18, 21, 23, 25, 27, 30 and 33.

LCDC will hold a public hearing to consider the proposed rule amendments in Salem on December 2, 2010. The meeting, which includes other agenda items, will begin at 9:00 a.m. at the Agriculture Building, 635 Capitol Street NE, Salem. Interested persons may address LCDC concerning the proposal at that time, or may provide written comments. Written comments are encouraged, and will be accepted until the close of the hearing. After completion of public testimony, LCDC may amend these rules, and if so, the amendments would become effective upon filing with the Secretary of State. A draft and other information about the proposed rules will be posted on DLCD's website at: <http://www.oregon.gov/LCD/rulemaking.shtml>

Address written comments to the Chair of the Land Conservation and Development Commission care of Casaria Tuttle at the department's address above, or email comments to casaria.r.tuttle@state.or.us. Fax comments to 503-378-5518. If you have questions about the proposed rules, contact Bob Rindy at (503) 373-0050 Ext. 229; email bob.rindy@state.or.us.

This notice is also being provided to the chairs of interim or session committees with authority over the subject matter of these rules, as required by ORS 183.335(15)(b).

Copies:

- Sen. Dingfelder
- Rep. Clem
- Rep. Riley
- Rep. VanOrman
- Rep. Read
- Sen. Atkinson
- Rep. Krieger
- Rep. Cannon
- Rep. Smith
- Rep. Bentz

Enclosures