



# Oregon

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TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Katherine Daniels, Farm and Forest Lands Specialist  
Rob Hallyburton, Community Services Division Manager

SUBJECT: **Agenda Item 9 March 10-11, 2016 LCDC Meeting**

**PUBLIC HEARING AND PROPOSED ADOPTION OF MINOR, TECHNICAL,  
AND CONFORMING AMENDMENTS TO OREGON ADMINISTRATIVE RULES  
CHAPTER 660, DIVISION 33 (AGRICULTURAL LANDS)**

**I. AGENDA ITEM SUMMARY**

The Department of Land Conservation and Development (DLCD or department) requests that the Land Conservation and Development Commission (LCDC or commission) consider the proposed adoption of amendments to OAR chapter 660, division 33 to make changes to conform to recent legislation and make other minor and technical amendments to certain rules related to Exclusive Farm Use (EFU) zones.

For additional information about this report, please contact Katherine Daniels, Farm and Forest Lands Specialist, at 503-934-0069 or [katherine.daniels@state.or.us](mailto:katherine.daniels@state.or.us).

**II. RECOMMENDED ACTION**

The department recommends that the commission conduct a hearing on the rule amendments proposed by the department and adopt the amendments as proposed in Attachment A.

**III. BACKGROUND**

The 2015 legislative session resulted in the passage of [HB 2457](#) pertaining to agricultural and forest lands that require amendments to rules to achieve conformance with this bill.

Conformance changes pertaining to forest land were adopted at the commission's January 14, 2016, meeting. Similar conformance changes pertaining to agricultural land are now proposed to be adopted. In addition, several minor and technical amendments that provide clarification of certain rule requirements and update information sources are proposed. These recommended changes are explained in section IV and do not represent new policy or new interpretations of rule requirements.

#### **IV. PROPOSED RULE AMENDMENTS**

This section provides a brief summary of proposed rule amendments included in the attachments, and the department's reasons for the amendments. The department proposes the following amendments to division 33.

***Create a definition for NRCS soils survey and delete out-of-date references.*** This proposal would create a definition for the Natural Resource Conservation Service (NRCS) web soil survey to reflect the most recent update of January 1, 2016, at OAR 660-033-0020(12), and would delete other earlier and varying NRCS date references in division 33 (660-033-0030(5)(b), (7)(b) and (8)). The new definition would not apply to high-value soils, which are identified in statute as of December 6, 2007. (*See Attachment A, p. 5, lines 22-25.*)

***Clarify use of land divisions and property line adjustments.*** Land divisions in the EFU zone are prohibited where they would separate several types of uses from the parcel on which the primary dwelling or use exists. These include: temporary hardship dwellings, relative farm help dwellings, small-scale farm processing facilities, and home occupations. Proposed amendments to OAR 660-033-0100 would extend this requirement to also prohibit property line adjustments from separating the above uses from the parcel on which the primary dwelling or primary use exists. (OAR 660-033-0100(8)). (*See Attachment A, p. 9, lines 28-31.*)

Finally, ORS 215.263(8) prohibits further division of certain lots or parcels in the Willamette Valleys on which a nonfarm dwelling was approved. The proposed OAR 660-033-0100(9) puts this prohibition in the rule. (*See Attachment A, p. 9, lines 32-34.*)

***Conform to 2015 legislation.*** [HB 2457 \(2015\)](#) allows a split-zoned parcel straddling an urban growth boundary to be partitioned along the boundary notwithstanding the minimum parcel size of a farm zone. This proposal includes amendments to conform to this legislation. (OAR 660-033-0100(10)). (*See Attachment A, p. 9, lines 35-39 and p. 10, lines 1-8.*)

#### **V. COMMISSION OPTIONS**

Possible alternatives for the commission include:

1. Adopt the proposed rule amendments as drafted.
2. Adopt the proposed rule amendments with revisions by the commission.
3. Direct staff to prepare revisions to the proposed amendments for the commission to consider at a later meeting.
4. Not adopt the proposed rule amendments, as presented, or with revisions.

#### **VI. RECOMMENDATION**

The department recommends the commission, after holding a public hearing on the proposed amendments described in Section IV and presented in Attachment A of this report, adopt the rule amendments as proposed with any modifications resulting from testimony received.

***Recommended motion:*** I move that the commission approve the amendments to Oregon Administrative Rules chapter 660, division 33, as recommended by the department in Attachment A and explained in the staff report.

***Alternative motion:*** I move that the commission approved the amendments to Oregon Administrative Rules chapter 660, division 33, with the following modifications: [*proposed changes to the department recommendation*].

**VII. ATTACHMENTS**

- A. Proposed amendments to OAR 660, division 33
- B. [Notices of proposed rulemaking hearing and related statements](#)

**DIVISION 33  
AGRICULTURAL LAND**

**660-033-0020**

**Definitions**

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

\* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

5 (B) Subclassification IIIw, specifically, Brenner and Chitwood;

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

8 (D) Subclassification IVw, specifically, Coquille.

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

13 (A) Subclassification IIIw, specifically, Ettersburg Silt Loam and Crofland Silty  
14 Clay Loam;

15 (B) Subclassification IIIe, specifically, Klooqueh Silty Clay Loam and Winchuck  
16 Silt Loam; and

17 (C) Subclassification IVw, specifically, Huffling Silty Clay Loam.

18 (f) Lands designated as "marginal lands" according to the marginal lands provisions  
19 adopted before January 1, 1993, and according to the criteria in *former* ORS 215.247  
20 (1991), are excepted from this definition of "high-value farmlands";

21 \* \* \*

22 **(12) "NRCS Web Soil Survey" means the official source of certified soils data available**  
23 **online that identifies agricultural land capability classes, developed and maintained by the**  
24 **Natural Resources Conservation Service as of January 1, 2016, for agricultural soils that**  
25 **are not high-value, and as of December 6, 2007, for high-value agricultural soils.**

26 **(13)** "Parcel" shall have the meaning set forth in ORS 215.010.

27 ~~[(13)]~~**(14)** "Tract" means one or more contiguous lots or parcels under the same ownership.

28 ~~[(14)]~~**(15)** "Western Oregon" means that portion of the state lying west of a line beginning at the  
29 intersection of the northern boundary of the State of Oregon and the western boundary of Wasco  
30 County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes  
31 and Klamath to the southern boundary of the State of Oregon.

32 ~~[(15)]~~**(16)** "Willamette Valley" is Clackamas, Linn, Marion, Multnomah, Polk, Washington and  
33 Yamhill Counties and that portion of Benton and Lane Counties lying east of the summit of the  
34 Coast Range.

35

1 **660-033-0030**

2 **Identifying Agricultural Land**

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

5 (2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel  
6 it need only look to the land within the lot or parcel being inventoried. However, whether land is  
7 "suitable for farm use" requires an inquiry into factors beyond the mere identification of  
8 scientific soil classifications. The factors are listed in the definition of agricultural land set forth  
9 at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing  
10 outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV  
11 soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "Lands in other classes  
12 which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A  
13 determination that a lot or parcel is not agricultural land requires findings supported by  
14 substantial evidence that addresses each of the factors set forth in 660-033-0020(1).

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

19 (4) When inventoried land satisfies the definition requirements of both agricultural land and  
20 forest land, an exception is not required to show why one resource designation is chosen over  
21 another. The plan need only document the factors that were used to select an agricultural, forest,  
22 agricultural/forest, or other appropriate designation.

23 (5) (a) More detailed data on soil capability than is contained in the USDA Natural  
24 Resources 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 NRCS land  
26 capability classification system.

27 (b) If a person concludes that more detailed soils information than that contained in the  
28 NRCS Web Soil Survey [~~operated by the NRCS as of January 2, 2012~~], would assist a  
29 county to make a better determination of whether land qualifies as agricultural land, the  
30 person must request that the department arrange for an assessment of the capability of the  
31 land by a professional soil classifier who is chosen by the person, using the process  
32 described in OAR 660-033-0045.

33 (c) This section and OAR 660-033-0045 apply to:

34 (A) A change to the designation of a lot or parcel planned and zoned for exclusive  
35 farm use, forest use or mixed farm-forest use to a non-resource plan designation  
36 and zone on the basis that such land is not agricultural land; and

37 (B) Excepting land use decisions under section (7) of this rule, any other proposed  
38 land use decision in which more detailed data is used to demonstrate that a lot or  
39 parcel planned and zoned for exclusive farm use does not meet the definition of  
40 agricultural land under OAR 660-033-0020(1)(a)(A).

1 (d) This section and OAR 660-033-0045 implement ORS 215.211, effective on October  
2 1, 2011. After this date, only those soils assessments certified by the department under  
3 section (9) of this rule may be considered by local governments in land use proceedings  
4 described in subsection (c) of this section. However, a local government may consider  
5 soils assessments that have been completed and submitted prior to October 1, 2011.

6 (e) This section and OAR 660-033-0045 authorize a person to obtain additional  
7 information for use in the determination of whether a lot or parcel qualifies as agricultural  
8 land, but do not otherwise affect the process by which a county determines whether land  
9 qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.

10 (6) Any county that adopted marginal lands provisions before January 1, 1993, may continue to  
11 designate lands as “marginal lands” according to those provisions and criteria in former ORS  
12 197.247 (1991), as long as the county has not applied the provisions of ORS 215.705 to 215.750  
13 to lands zoned for exclusive farm use.

14 (7) (a) For the purposes of approving a land use application on high-value farmland under  
15 ORS 215.705, the county may change the soil class, soil rating or other soil designation  
16 of a specific lot or parcel if the property owner:

17 (A) Submits a statement of agreement from the NRCS that the soil class, soil  
18 rating or other soil designation should be adjusted based on new information; or

19 (B) Submits a report from a soils scientist whose credentials are acceptable to the  
20 Oregon Department of Agriculture that the soil class, soil rating or other soil  
21 designation should be changed; and

22 (C) Submits a statement from the Oregon Department of Agriculture that the  
23 Director of Agriculture or the director’s designee has reviewed the report  
24 described in paragraph (a)(B) of this section and finds the analysis in the report to  
25 be soundly and scientifically based.

26 (b) Soil classes, soil ratings or other soil designations used in or made pursuant to this  
27 section are those of the NRCS Web Soil Survey for that class, rating or designation  
28 [~~before November 4, 1993~~], except for changes made pursuant to subsection (a) of this  
29 section.

30 (8) For the purposes of approving a land use application on high-value farmland under OAR  
31 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other  
32 soil designations used in or made pursuant to this definition are those of the NRCS Web Soil  
33 Survey [~~as of January 2, 2012~~] for that class, rating or designation.

#### 34 **660-033-0100**

#### 35 **Minimum Parcel Size Requirements**

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

39 (2) A county may adopt a minimum parcel size lower than that described in section (1) of this  
40 rule by demonstrating to the Commission that it can do so while continuing to meet the

1 requirements of ORS 215.243 and that parcel sizes below the 80 or 160 acre minimum sizes are  
2 appropriate to maintain the existing commercial agricultural enterprise within an area. This  
3 standard is intended to prevent division of farmland into parcels that are too small to contribute  
4 to commercial agriculture in an area. This standard does not require that every new parcel  
5 created be as large as existing farms or ranches in an area. The minimum parcel size may allow  
6 creation of parcels smaller than the size of existing farms or ranches. However, the minimum  
7 parcel size shall be large enough to keep commercial farms and ranches in the area successful  
8 and not contribute to their decline. Lots or parcels used, or to be used, for training or stabling  
9 facilities shall not be considered appropriate to maintain the existing commercial agricultural  
10 enterprise in any area where other types of agriculture occur.

11 (a) To determine a minimum parcel size under this section, the county shall complete the  
12 following steps:

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

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

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

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

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

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

35 (d) To determine the minimum parcel size, a county shall evaluate available data and  
36 choose a size that maintains the existing commercial agricultural enterprise within the  
37 county or within each area of the county. In areas where the size of commercial farms  
38 and ranches is mixed, and the size of parcels needed to maintain those commercial farms  
39 and ranches varies, the county shall not choose a minimum parcel size that allows larger  
40 farms, lots or parcels to be divided to the size of the smallest farms, lots or parcels in the  
41 area. The activities of the larger as well as smaller holdings must be maintained.

1 (3) A minimum size for new parcels for farm use does not mean that dwellings may be approved  
2 automatically on parcels that satisfy the minimum parcel size for the area. New dwellings in  
3 conjunction with farm use shall satisfy the criteria for such dwellings set forth in OAR 660-033-  
4 0130(1).

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

8 (5) A county may choose to establish a different minimum parcel size for distinct commercial  
9 agricultural areas of the county. The appropriate minimum lot or parcel size for each area shall  
10 reflect the type of commercial agriculture in the area, consistent with section (2) of this rule.

11 (6) Counties may allow the creation of new parcels for nonfarm uses only as authorized by ORS  
12 215.263. Such new parcels shall be the minimum size needed to accommodate the use in a  
13 manner consistent with other provisions of law except as required for the nonfarm dwellings  
14 authorized by section (7) of this rule.

15 (7) (a) Counties may allow the creation of new lots or parcels for dwellings not in  
16 conjunction with farm use pursuant to ORS 215.263(4) or (5), whichever is applicable.

17 (b) In the Willamette Valley, a new lot or parcel may be allowed if the originating lot or  
18 parcel is equal to or larger than the applicable minimum lot or parcel size, and:

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

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

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

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

24 (c) No new lot or parcel may be created for this purpose until the county finds that the  
25 dwelling to be sited on the new lot or parcel has been approved under the requirements  
26 for dwellings not in conjunction with farm use in ORS 215.284(3) or (4), 215.236 and  
27 OAR 660-033-0130(4).

28 **(8) The county governing body or its designate may not approve a land division or property**  
29 **line adjustment of a lot or parcel that separates a temporary hardship dwelling, relative**  
30 **farm help dwelling, home occupation or processing facility from the parcel on which the**  
31 **primary residential or other primary use exists.**

32 **(9) The county governing body or its designate may not approve a land division of a lot or**  
33 **parcel created before January 1, 1993, on which a nonfarm dwelling was approved**  
34 **pursuant to ORS 215.284(1).**

35 **(10) A division of a lawfully established unit of land may occur along an urban growth**  
36 **boundary where the parcel remaining outside the urban growth boundary is zoned for**  
37 **agricultural uses and is smaller than the minimum parcel size, provided that:**

38 **(a) If the parcel contains a dwelling, the parcel must be large enough to support**  
39 **continued residential use.**

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**(b) If the parcel does not contain a dwelling, it:**

**(A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;**

**(B) May not be considered in approving or denying an application for any other dwelling; and**

**(C) May not be considered in approving a redesignation or rezoning of agricultural lands, except to allow a public park, open space or other natural resource use.”**