



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



May 24, 2010

TO: Land Conservation and Development Commission

FROM: Michael Morrissey, Policy Analyst

SUBJECT: **Agenda Item 7, June 2-4, 2010, LCDC Meeting**

**PUBLIC HEARING AND POSSIBLE ADOPTION OF PROPOSED
PERMANENT RULES AMENDING OAR CHAPTER 660, DIVISION 33,
AGRICULTURAL LANDS, FOR THE PURPOSE OF CONSISTENCY
WITH THE RELIGIOUS LAND USE AND INSTITUTIONALIZED
PERSONS ACT (RLUIPA)**

I. SUMMARY

This item is a rulemaking hearing for the commission to consider adoption of amendments to OAR 660-033-0120 and 0130 -- relating to uses allowed on EFU zoned lands within three miles of an urban growth boundary. The proposed amendments are for the purpose of addressing a recent decision by the Oregon Land Use Board of Appeals (LUBA) that found that the rules in question as applied to a particular land use application in Jackson County were not consistent with the "equal terms" provisions of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).¹ The proposed rules are a product of a rules advisory committee that met four times between October of 2009 and April 2010, chaired by LCDC commissioner Greg Macpherson.

II. RECOMMENDED ACTION

The department recommends that the commission hold a public hearing and adopt the proposed rule amendments.

III. BACKGROUND

OAR-660-033-0130 sets forth standards for permitted and conditional non-farm uses on agricultural lands. That rule and OAR 660-033-0120 prohibit new schools, new churches, and

¹ Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), Pub. L. No. 106-274, 114 Stat. 803 (codified as amended at 42 U.S.C. § 2000cc (2006)).

new private parks, playgrounds, hunting and fishing preserves and campgrounds within three miles of an urban growth boundary (UGB) unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. The genesis for the three-mile limitation was to protect the integrity of UGBs in preventing urban-level uses on rural agricultural lands near UGBs. Schools, churches and parks are relatively land-extensive uses that often seek land to purchase outside of a UGB, but close enough to serve their predominantly urban communities. Land outside UGBs is significantly less expensive than land inside UGBs due to the limits on rural and resource uses and the lack of available services. Uses regularly drawing from and serving urban populations, with urban impacts, are effectively urban uses. Under Goal 14, the state's long-standing policy is that urban uses of land should occur within urban growth boundaries.

The case which calls the application of the commission's rule into question is *Young v. Jackson County*, LUBA No. 2008-076 (affirmed without opinion by the Oregon Court of Appeals in 2009). The LUBA opinion states that the application of the 3-mile rule with regard to the proposed church in that case violated the "equal terms" provisions in RLUIPA. The "equal terms" provision of RLUIPA, 42 USC section 2000cc-(b)(1) provides that:

"No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."

This portion of RLUIPA (unlike the "general rule" of that statute) does not require that a showing of substantial burden on religious exercise be made. *Digrugilliers v. Consolidated City of Indianapolis*, 506 F.3d 612 (7th Cir. 2007). Under the equal terms provisions of RLUIPA, it also is not relevant whether the proposed religious use is allowed elsewhere. *Id.* Under the equal terms provisions of RLUIPA, the two pertinent questions are: (a) first, whether the regulation in question permits some secular assemblies or institutions while excluding religious ones; and (b) if the regulation does so, whether there is a neutral and generally applicable basis for doing so. *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 615 F. Supp 2d 980 (D. Ariz. 2009). If the answer to the first question is positive, then the burden shifts to the government to prove a neutral and generally applicable basis for the disparate treatment. *Id.*²

² "If a city permits a few nonreligious assemblies or institutions in a given district, that does not necessarily mean that it must permit all religious assemblies or institutions under RLUIPA. In such a hypothetical case, numerous other secular assemblies and institutions would be excluded from the district in addition to religious organizations. The government might be able to prove that some neutral and generally applicable principle causes the disadvantage, not religion. Read in the greater context of RLUIPA, the principal effect of the equal terms provisions is to enable a religious organization to easily shift to the zoning authority the burden of proving that the regulation is neutral and generally applicable. This serves Congress's purpose of rooting out covert discrimination without overreaching existing *Free Exercise Clause* principles by exempting religious uses from zoning regulation. A zoning regulation does not violate the equal terms provision, even if it permits some secular assemblies or institutions, so long as there is a neutral and generally applicable principle for doing so." *Id.* at 996

IV. ANALYSIS

With the proposed rule amendments in OAR 660-033-0120, table 1, and 0130 **Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses**, new uses involving the assembly of a significant number of people within a structure would generally be prohibited on agricultural lands within three miles of an urban growth boundary unless an exception is taken. The proposed amendments to the rules focus on assemblies in structures. In limiting the design capacity of an enclosed structure or group of structures to no greater than 100 persons, the proposed rules at 660-033-0130(2)(a) intend that the use of the structure remain rural in orientation and intensity, thus supporting the underlying purposes of statewide land use planning goals 3 and 14. Structures exceeding the capacity limits may be developed only if an exception is approved under ORS 197.732 and OAR 660-004, or if they are described in state and local park master plans adopted through a comprehensive plan amendment under provisions of OAR 660, division 34 (those rules contain their own limitations on uses and the intensity of uses).³

Section (2)(b) further reinforces the underlying purpose of avoiding urban uses on rural lands by imposing a minimum distance of one half mile between qualifying structures or groups of structures. This is intended to prevent development of a cluster of smaller structures that would function as an urban use in a rural area. Consideration was given by the rules committee to substituting or adding an acreage provision instead of a linear provision. Under this concept, the number of structures would be scaled to the acreage of the ownership. However, the advisory committee felt that a distance limitation was a more direct means of assuring that structures not function as an urban use.

The limitation of the design capacity of structures in the 0130 rule would apply to schools, parks (except as provided in OAR 660-034⁴), playgrounds, hunting and fishing preserves, campgrounds, community centers, golf courses, living history museums, firearms training facilities, and armed forces reserves centers as well as religious institutions to the extent such uses are allowed on agricultural lands zoned for exclusive farm use. These uses comprise all uses allowed (without an exception) on agricultural lands zoned EFU that involve assembly within a structure, and they are all limited for the same reason – to ensure that these uses are allowed within three miles of a UGB only if they are rural in nature, as contemplated by Goal 14. Of course, other land uses involving a structure for an assembly generally are not permitted on agricultural lands (such as a university facility, a sports stadium, retail, industrial and residential uses involving large numbers of people) without an exception to Goal 3 and Goal 14.

³ OAR 660-034-0035(2). That rule provides that if the uses listed at OAR 660-034-0035(2) must “* * * meet all other applicable requirements of statewide goals, * * *” which include the Goal 14 requirement that urban uses be located within an urban growth boundary. In other words, if a use listed at OAR 660-034-0035(2) is urban in nature, a Goal 14 exception is required.

⁴ The proposed standards in OAR 660-033-0130(2)(a), (b) and (c) apply only to park facilities that have are not approved through the (alternate path of a) master plan process under OAR chapter 660, division 34.

V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends the commission adopt proposed rule amendments to OAR 660-033-0120 Table 1, and OAR 660-033-0130 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses, limiting allowed uses on EFU zoned lands within three miles of urban growth boundaries.

Proposed Motion: I move the commission adopt amendments to OAR 660-033-0120 Table 1, and OAR 660-033-0130 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses.

ATTACHMENT A. Proposed Amendments to OAR 660-033-0120, Table 1, and OAR 660-033-0130 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses.

1 660-033-0120

2 Uses Authorized on Agricultural Lands

3 The specific development and uses listed in the following table are permitted in the areas that
4 qualify for the designation pursuant to this division. All uses are subject to the general
5 provisions, special conditions, additional restrictions and exceptions set forth in this division.

6 The abbreviations used within the schedule shall have the following meanings:

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

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

16 (3) * -- Use not permitted.

17 (4) # -- Numerical references for specific uses shown on the chart refer to the corresponding
18 section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this
19 rule does not establish criteria for the use.

20 [ED. NOTE: Tables referenced are available from the agency.]

1
2 **LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

3
4 **OREGON ADMINISTRATIVE RULES**

5
6 **CHAPTER 660, DIVISION 033, RULE 0120, TABLE 1**
7

8
9 **Uses Authorized on Agricultural Lands**

10 **OAR 660-033-0120** The specific development and uses listed in the following table are permitted in the areas that qualify for the
11 designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and
12 exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

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

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

20 * Use not permitted.

21 # Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no
22 numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.
23

24 HV All
25 Farmland Other USES

26
27 **Farm/Forest Resource**

28
29 A A Farm use as defined in ORS 215.203.
30 A A Other buildings customarily provided in conjunction with farm use.
31
32 A A Propagation or harvesting of a forest product.
33
34 R6 R6 A facility for the primary processing of forest products.
35
36 R28 R28 A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.
37

38 **Natural Resource**

39
40 A A Creation of, restoration of, or enhancement of wetlands.
41
42 R5,27 R5,27 The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the
43 State Fish and Wildlife Commission or insect species.
44

45 **Residential**

46
47 A1,30 A1,30 Dwelling customarily provided in conjunction with farm use.
48
49 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
50 occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent,
51 grandchild, parent, step-parent, child, brother, sister, sibling, step-sibling, niece, nephew, or first cousin of either,, if
52 the farm operator does, or will, require the assistance of the relative in the management of the farm use.
53
54 A24, 30 A24, 30 Accessory Farm Dwellings for year-round and seasonal farm workers.
55
56 A3, 30 A3, 30 One single-family dwelling on a lawfully created lot or parcel.
57
58 R5, 10 R5, 10, One manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building in
59 30 30 conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or
60 a relative of the resident.
61
62 R4, 30 R4,30 Single-family residential dwelling, not provided in conjunction with farm use.
63

1	R5, 30	R5,30	Residential home or facility as defined in ORS 197.660, in existing dwellings.
2			
3	R5, 30	R5,30	Room and board arrangements for a maximum of five unrelated persons in existing residences.
4			
5	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.
6			
7			
8	A8, 30	A8, 30	Alteration, restoration, or replacement of a lawfully established dwelling.
9			
10	R5,	R5	A wildlife habitat conservation and management plan pursuant to ORS 215.800 to 215.808.

11 **Commercial Uses**

12	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).
13			
14			
15	R5,14	R5,14	Home occupations as provided in ORS 215.448.
16			
17	*18(a)	R5	Dog kennels.
18			
19	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.
20			
21			
22	*18(a)	R5	Destination resort which is approved consistent with the requirements of Goal 8.
23			
24	A	A	A winery as described in ORS 215.452.
25			
26	A23	A23	Farm stands.
27			
28	R5	R5	A landscaping 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.
29			
30			
31			

32 **Mineral, Aggregate, Oil, and Gas Uses**

33			
34	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.
35			
36			
37			
38	A	A	Operations for the exploration for minerals as defined by ORS 517.750.
39			
40	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.
41			
42			
43	R5	R5	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
44			
45			
46	R5,15	R5,15	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
47			
48	R5	R5	Processing of other mineral resources and other subsurface resources.
49			

50 **Transportation**

51			
52	R5,7	R5,7	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.
53			
54	A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.
55			
56	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.
57			
58			
59	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.
60			
61			
62			
63	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.
64			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65

- 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
- A29(a) Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality
- 18(a) R5, 29(b) under ORS 459.245 and OAR 340-093-0050.

Parks/Public/Quasi-Public

- *18(a) R2,5, Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a or (b-c) 18(b-c) 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.
- R5, 31 R2, 5, 31 Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
- R5, 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.
- 18(a) R2,5,20 Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.
- R5,21 R2,5,21 Living history museum
- R R2 Firearms training facility as provided in ORS 197.770.
- R25 R2, 25 Armed forces reserve center as provided for in ORS 215.213(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

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	Any 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)

660-033-0130. Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses. The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

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

~~_____ (2) The use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.~~

_____ (2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

_____ (b) Any new enclosed structure or group of enclosed structures as described in subsection (a) shall be situated no less than one-half mile from other enclosed structures subject to this section on the same tract. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.

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

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

1 (ii) By devise or by intestate succession from a person who acquired and had owned
2 continuously the lot or parcel since prior to January 1, 1985.

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

4 (C) The lot or parcel on which the dwelling will be sited was part of a tract on November
5 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

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

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

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

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

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

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

20 (B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-
21 0020(8)(a); and

22 (C) A hearings officer of a county determines that:

23 (i) The lot or parcel cannot practicably be managed for farm use, by itself or in
24 conjunction with other land, due to extraordinary circumstances inherent in the land or its
25 physical setting that do not apply generally to other land in the vicinity. For the purposes of this
26 section, this criterion asks whether the subject lot or parcel can be physically put to farm use
27 without undue hardship or difficulty because of extraordinary circumstances inherent in the land
28 or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate
29 that a lot or parcel cannot be practicably managed for farm use. Examples of "extraordinary
30 circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines,
31 rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by
32 themselves or in combination separate the subject lot or parcel from adjacent agricultural land
33 and prevent it from being practicably managed for farm use by itself or together with adjacent or
34 nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural
35 barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

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

37 (iii) The dwelling will not materially alter the stability of the overall land use pattern in
38 the area by applying the standards set forth in paragraph (4)(a)(D) of this rule.

39 (D) A local government shall provide notice of all applications for dwellings allowed
40 under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be
41 provided in accordance with the governing body's land use regulations but shall be mailed at
42 least 20 calendar days prior to the public hearing before the hearings officer under paragraph
43 (3)(c)(C) of this rule.

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

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

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

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

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

3 (iii) Twenty-one acres or less in size; and

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

6 (ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by
7 tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993,
8 within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within
9 an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

10 (D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts
11 that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4
12 mile of the center of the subject tract and on the same side of the public road that provides access
13 to the subject tract. The governing body of a county must interpret the center of the subject tract
14 as the geographic center of the flaglot if the applicant makes a written request for that
15 interpretation and that interpretation does not cause the center to be located outside the flaglot.
16 Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject
17 tract abuts an urban growth 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 flaglot, at
22 a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent
23 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 ORS
26 chapter 215, a county may apply the standards for siting a dwelling under either section (3) of
27 this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1,
28 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 that
31 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.

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

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

43 (i) When a local government approves an application for a single-family dwelling under
44 section (3) of this rule, the application may be transferred by a person who has qualified under
45 section (3) of this rule to any other person after the effective date of the land use decision.

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

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

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

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

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

9 (D) The dwelling will not materially alter the stability of the overall land use pattern of
10 the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land
11 use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm
12 dwellings and parcels on other lots or parcels in the area similarly situated. To address this
13 standard, the county shall:

14 (i) Identify a study area for the cumulative impacts analysis. The study area shall include
15 at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct
16 agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch
17 operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall
18 describe the study area, its boundaries, the location of the subject parcel within this area, why the
19 selected area is representative of the land use pattern surrounding the subject parcel and is
20 adequate to conduct the analysis required by this standard. Lands zoned for rural residential or
21 other urban or nonresource uses shall not be included in the study area;

22 (ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated
23 crops, pasture or grazing lands), the number, location and type of existing dwellings (farm,
24 nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the
25 potential number of nonfarm/lot-of-record dwellings that could be approved under subsections
26 (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil
27 classifications, the parcels created prior to January 1, 1993 and the parcels larger than the
28 minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS
29 215.263(4). The findings shall describe the existing land use pattern of the study area including
30 the distribution and arrangement of existing uses and the land use pattern that could result from
31 approval of the possible nonfarm dwellings under this subparagraph;

32 (iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings
33 together with existing nonfarm dwellings will materially alter the stability of the land use pattern
34 in the area. The stability of the land use pattern will be materially altered if the cumulative effect
35 of existing and potential nonfarm dwellings will make it more difficult for the existing types of
36 farms in the area to continue operation due to diminished opportunities to expand, purchase or
37 lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a
38 manner that will destabilize the overall character of the study area;

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

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

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

46 (B) The dwelling will not materially alter the stability of the overall land use pattern of
47 the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land

1 use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on
2 other lots or parcels in the area similarly situated and whether creation of the parcel will lead to
3 creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the
4 standards set forth in paragraph (4)(a)(D) of this rule; and

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

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

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

11 (B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is
12 generally unsuitable land for the production of farm crops and livestock or merchantable tree
13 species, considering the terrain, adverse soil or land conditions, drainage and flooding,
14 vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be
15 considered unsuitable solely because of size or location if it can reasonably be put to farm or
16 forest use in conjunction with other land; and

17 (ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply
18 because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or
19 parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch,
20 then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel
21 or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed
22 predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class
23 I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use
24 does not mean it is not suitable for another farm use; or

25 (iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally
26 unsuitable land for the production of merchantable tree species recognized by the Forest
27 Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding,
28 vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is
29 not "generally unsuitable" simply because it is too small to be managed for forest production
30 profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or
31 otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or
32 parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed
33 predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in
34 Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of
35 wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible
36 and not seriously interfere with forest uses on surrounding land it must not force a significant
37 change in forest practices or significantly increase the cost of those practices on the surrounding
38 land;

39 (C) The dwelling will not materially alter the stability of the overall land use pattern of
40 the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land
41 use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on
42 other lots or parcels in the area similarly situated by applying the standards set forth in paragraph
43 (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm
44 dwelling, a county shall consider whether creation of the parcel will lead to creation of other
45 nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in
46 paragraph (4)(a)(D) of this rule; and

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

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

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

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

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

13 (b) Will not significantly increase the cost of accepted farm or forest practices on lands
14 devoted to farm or forest use.

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

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

36 (b) In the case of replacement, the dwelling to be replaced shall be:

37 (i) Removed, demolished, or converted to an allowable use within three months of the
38 completion of the replacement dwelling. A replacement dwelling may be sited on any part of the
39 same lot or parcel. A dwelling established under this section shall comply with all applicable
40 siting standards. However, the standards shall not be applied in a manner that prohibits the siting
41 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not
42 zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record
43 in the deed records for the county where the property is located a deed restriction prohibiting the
44 siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be
45 irrevocable unless a statement of release is placed in the deed records for the county. The release
46 shall be signed by the county or its designee and state that the provisions of this section
47 regarding replacement dwellings have changed to allow the siting of another dwelling. The

1 county planning director or the director's designee shall maintain a record of the lots and parcels
2 that do not qualify for the siting of a new dwelling under the provisions of this section, including
3 a copy of the deed restrictions and release statements filed under this section; and

4 (ii) For which the applicant has requested a deferred replacement permit, is removed or
5 demolished within three months after the deferred replacement permit is issued. A deferred
6 replacement permit allows construction of the replacement dwelling at any time. If, however, the
7 established dwelling is not removed or demolished within three months after the deferred
8 replacement permit is issued, the permit becomes void. The replacement dwelling must comply
9 with applicable building codes, plumbing codes, sanitation codes and other requirements relating
10 to health and safety or to siting at the time of construction. A deferred replacement permit may
11 not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the
12 applicant.

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

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

21 (b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements
22 under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains
23 construction financing or other financing secured by the dwelling and the secured party
24 forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in
25 ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new
26 parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

27 (c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those
28 foreclosures that are exempt from partition under ORS 92.010(7)(a).

29 (10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of
30 an existing building allowed under this provision is a temporary use for the term of the hardship
31 suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured
32 dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if
33 that disposal system is adequate to accommodate the additional dwelling. If the manufactured
34 home will use a public sanitary sewer system, such condition will not be required. Governing
35 bodies shall review the permit authorizing such manufactured homes every two years. Within
36 three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall
37 be removed or demolished or, in the case of an existing building, the building shall be removed,
38 demolished or returned to an allowed nonresidential use. A temporary residence approved under
39 this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p). Oregon
40 Department of Environmental Quality review and removal requirements also apply. As used in
41 this section "hardship" means a medical hardship or hardship for the care of an aged or infirm
42 person or persons.

43 (11) Subject to the issuance of a license, permit or other approval by the Department of
44 Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in
45 compliance with rules adopted under ORS 468B.095, and with the requirements of ORS
46 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural
47 process or industrial process water or biosolids for agricultural, horticultural or silvicultural

1 production, or for irrigation in connection with a use allowed in an exclusive farm use zones
2 under this division.

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

5 (13) Such uses may be established, subject to the adoption of the governing body or its
6 designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with
7 which the facility or improvement does not comply. In addition, transportation uses and
8 improvements may be authorized under conditions and standards as set forth in OAR 660-012-
9 0035 and 660-012-0065.

10 (14) Home occupations and the parking of vehicles may be authorized. Home
11 occupations shall be operated substantially in the dwelling or other buildings normally associated
12 with uses permitted in the zone in which the property is located. A home occupation shall be
13 operated by a resident or employee of a resident of the property on which the business is located,
14 and shall employ on the site no more than five full-time or part-time persons.

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

19 (16)(a) A utility facility is necessary for public service if the facility must be sited in an
20 exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is
21 necessary, an applicant must show that reasonable alternatives have been considered and that the
22 facility must be sited in an exclusive farm use zone due to one or more of the following factors:

23 (A) Technical and engineering feasibility;

24 (B) The proposed facility is locationally dependent. A utility facility is locationally
25 dependent if it must cross land in one or more areas zoned for exclusive farm use in order to
26 achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied
27 on other lands;

28 (C) Lack of available urban and nonresource lands;

29 (D) Availability of existing rights of way;

30 (E) Public health and safety; and

31 (F) Other requirements of state and federal agencies.

32 (b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be
33 considered, but cost alone may not be the only consideration in determining that a utility facility
34 is necessary for public service. Land costs shall not be included when considering alternative
35 locations for substantially similar utility facilities and the siting of utility facilities that are not
36 substantially similar.

37 (c) The owner of a utility facility approved under this section shall be responsible for
38 restoring, as nearly as possible, to its former condition any agricultural land and associated
39 improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or
40 reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility
41 facility from requiring a bond or other security from a contractor or otherwise imposing on a
42 contractor the responsibility for restoration.

43 (d) The governing body of the county or its designee shall impose clear and objective
44 conditions on an application for utility facility siting to mitigate and minimize the impacts of the
45 proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a
46 significant change in accepted farm practices or a significant increase in the cost of farm
47 practices on surrounding farmlands.

1 (e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment
2 or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use
3 zone shall be subject to the provisions of OAR 660-011-0060.

4 (f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural
5 gas pipelines and associated facilities authorized by and subject to regulation by the Federal
6 Energy Regulatory Commission.

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

10 (18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or
11 expanded on the same tract, subject to other requirements of law. An existing golf course may be
12 expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be
13 expanded to contain more than 36 total holes.

14 (b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter,
15 restore or replace a use that has been disallowed by the enactment or amendment of a zoning
16 ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283
17 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be
18 expanded subject to:

19 (A) The requirements of subsection (c) of this section; and

20 (B) Conditional approval of the county in the manner provided in ORS 215.296.

21 (c) A nonconforming use described in subsection (b) of this section may be expanded
22 under this section if:

23 (A) The use was established on or before January 1, 2009; and

24 (B) The expansion occurs on:

25 (i) The tax lot on which the use was established on or before January 1, 2009; or

26 (ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this
27 paragraph and that was owned by the applicant on January 1, 2009.

28 (19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds
29 shall not be allowed within three miles of an urban growth boundary unless an exception is
30 approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area
31 devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for
32 residential purposes and is established on a site or is contiguous to lands with a park or other
33 outdoor natural amenity that is accessible for recreational use by the occupants of the
34 campground. A campground shall be designed and integrated into the rural agricultural and
35 forest environment in a manner that protects the natural amenities of the site and provides buffers
36 of existing native trees and vegetation or other natural features between campsites. Campgrounds
37 authorized by this rule shall not include intensively developed recreational uses such as
38 swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same
39 campground by a camper or camper's vehicle shall not exceed a total of 30 days during any
40 consecutive 6 month period.

41 (b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle.
42 Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites
43 except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this
44 rule.

45 (c) Subject to the approval of the county governing body or its designee, a private
46 campground may provide yurts for overnight camping. No more than one-third or a maximum of
47 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground

1 or on a wood floor with no permanent foundation. Upon request of a county governing body, the
2 Land Conservation and Development Commission may provide by rule for an increase in the
3 number of yurts allowed on all or a portion of the campgrounds in a county if the Commission
4 determines that the increase will comply with the standards described in ORS 215.296(1). As
5 used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a
6 collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

7 (20) "Golf Course" means an area of land with highly maintained natural turf laid out for
8 the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green,
9 and often one or more natural or artificial hazards. A "golf course" for purposes of ORS
10 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a
11 combination 9 and 18 hole regulation golf course consistent with the following:

12 (a) A regulation 18 hole golf course is generally characterized by a site of about 120 to
13 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

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

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

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

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

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

36 (C) Accessory uses may include one or more food and beverage service facilities in
37 addition to food and beverage service facilities located in a clubhouse. Food and beverage
38 service facilities must be part of and incidental to the operation of the golf course and must be
39 limited in size and orientation on the site to serve only the needs of persons who patronize the
40 golf course and their guests. Accessory food and beverage service facilities shall not be designed
41 for or include structures for banquets, public gatherings or public entertainment.

42 (21) "Living History Museum" means a facility designed to depict and interpret everyday
43 life and culture of some specific historic period using authentic buildings, tools, equipment and
44 people to simulate past activities and events. As used in this rule, a living history museum shall
45 be related to resource based activities and shall be owned and operated by a governmental
46 agency or a local historical society. A living history museum may include limited commercial
47 activities and facilities that are directly related to the use and enjoyment of the museum and

1 located within authentic buildings of the depicted historic period or the museum administration
2 building, if areas other than an exclusive farm use zone cannot accommodate the museum and
3 related activities or if the museum administration buildings and parking lot are located within
4 one quarter mile of an urban growth boundary. "Local historical society" means the local
5 historical society, recognized as such by the county governing body and organized under ORS
6 chapter 65.

7 (22) A power generation facility shall not preclude more than 20 acres from use as a
8 commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and
9 OAR chapter 660, division 4.

10 (23) A farm stand may be approved if:

11 (a) The structures are designed and used for sale of farm crops and livestock grown on
12 the farm operation, or grown on the farm operation and other farm operations in the local
13 agricultural area, including the sale of retail incidental items and fee-based activity to promote
14 the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental
15 items and fees from promotional activity do not make up more than 25 percent of the total annual
16 sales of the farm stand; and

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

20 (c) As used in this section, "farm crops or livestock" includes both fresh and processed
21 farm crops and livestock grown on the farm operation, or grown on the farm operation and other
22 farm operations in the local agricultural area. As used in this subsection, "processed crops and
23 livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and
24 livestock that have been processed and converted into another product but not prepared food
25 items.

26 (d) As used in this section, "local agricultural area" includes Oregon or an adjacent
27 county in Washington, Idaho, Nevada or California that borders the Oregon county in which the
28 farm stand is located.

29 (24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be
30 considered customarily provided in conjunction with farm use if:

31 (a) Each accessory farm dwelling meets all the following requirements:

32 (A) The accessory farm dwelling will be occupied by a person or persons who will be
33 principally engaged in the farm use of the land and whose seasonal or year-round assistance in
34 the management of the farm use, such as planting, harvesting, marketing or caring for livestock,
35 is or will be required by the farm operator; and

36 (B) The accessory farm dwelling will be located:

37 (i) On the same lot or parcel as the primary farm dwelling; or

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

41 (iii) On a lot or parcel on which the primary farm dwelling is not located, when the
42 accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The
43 deed restriction shall be filed with the county clerk and require the manufactured dwelling to be
44 removed when the lot or parcel is conveyed to another party. The manufactured dwelling may
45 remain if it is reappraised under these rules; or

46 (iv) On a lot or parcel on which the primary farm dwelling is not located, when the
47 accessory farm dwelling is limited to only attached multi-unit residential structures allowed by

1 the applicable state building code or similar types of farm labor housing as existing farm labor
2 housing on the farm or ranch operation registered with the Department of Consumer and
3 Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A
4 county shall require all accessory farm dwellings approved under this subparagraph to be
5 removed, demolished or converted to a nonresidential use when farm worker housing is no
6 longer required; or

7 (v) On a lot or parcel on which the primary farm dwelling is not located, when the
8 accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum
9 lot size under ORS 215.780 and the lot or parcel complies with the gross farm income
10 requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

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

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

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

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

22 (ii) Gross annual income of at least the midpoint of the median income range of gross
23 annual sales for farms in the county with the gross annual sales of \$10,000 or more according to
24 the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased
25 livestock shall be deducted from the total gross income attributed to the tract; or

26 (B) On land identified as high-value farmland, the primary farm dwelling is located on a
27 farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and
28 produced at least \$80,000 in gross annual income from the sale of farm products in the last two
29 years or three of the last five years. In determining the gross income, the cost of purchased
30 livestock shall be deducted from the total gross income attributed to the tract; or

31 (C) On land not identified as high-value farmland in counties that have adopted marginal
32 lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm
33 dwelling is located on a farm or ranch operation that meets the standards and requirements of
34 ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

35 (D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and

36 (i) The building permits, if required, have been issued and construction has begun or been
37 completed for the buildings and animal waste facilities required for a commercial dairy farm; and

38 (ii) The Oregon Department of Agriculture has approved a permit for a "confined animal
39 feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

40 (iii) A Producer License for the sale of dairy products under ORS 621.072.

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

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

1 (e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all
2 types of residential structures allowed by the applicable state building code."

3 (25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
4 Edition) before January 1, 1993, an armed forces reserve center, if the center is within one-half
5 mile of a community college. An "armed forces reserve center" includes an armory or National
6 Guard support facility.

7 (26) Buildings and facilities shall not be more than 500 square feet in floor area or placed
8 on a permanent foundation unless the building or facility preexisted the use approved under this
9 section. The site shall not include an aggregate surface or hard surface area unless the surface
10 preexisted the use approved under this section. An owner of property used for the purpose
11 authorized in this paragraph may charge a person operating the use on the property rent for the
12 property. An operator may charge users of the property a fee that does not exceed the operator's
13 cost to maintain the property, buildings and facilities. As used in this section, "model aircraft"
14 means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or
15 intended to be used for flight and controlled by radio, lines or design by a person on the ground.

16 (27) Insect species shall not include any species under quarantine by the State
17 Department of Agriculture or the United States Department of Agriculture. The county shall
18 provide notice of all applications under this section to the State Department of Agriculture.
19 Notice shall be provided in accordance with the county's land use regulations but shall be mailed
20 at least 20 calendar days prior to any administrative decision or initial public hearing on the
21 application.

22 (28) The farm on which the processing facility is located must provide at least one-
23 quarter of the farm crops processed at the facility. The building established for the processing
24 facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for
25 preparation, storage or other farm use or devote more than 10,000 square feet to the processing
26 activities within another building supporting farm use. A processing facility shall comply with all
27 applicable siting standards but the standards shall not be applied in a manner that prohibits the
28 siting of the processing facility. A county shall not approve any division of a lot or parcel that
29 separates a processing facility from the farm operation on which it is located.

30 (29)(a) Composting operations and facilities allowed on high-value farmland are limited
31 to those that are exempt from a permit from the Department of Environmental Quality (DEQ)
32 under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan
33 by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-
34 093-0050 where the compost is applied primarily on the subject farm or used to manage and
35 dispose of by-products generated on the subject farm. Excess compost may be sold to
36 neighboring farm operations in the local area and shall be limited to bulk loads of at least one
37 unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting
38 operation shall only be those required for the operation of the subject facility.

39 (b) Composting operations and facilities allowed on land not defined as high-value
40 farmland shall be limited to the composting operations and facilities allowed by subsection
41 (29)(a) of this rule or that require a permit from the Department of Environmental Quality under
42 OAR 340-093-0050 . Buildings and facilities used in conjunction with the composting operation
43 shall only be those required for the operation of the subject facility. Onsite sales shall be limited
44 to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

45 (30) The County governing body or its designate shall require as a condition of approval
46 of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or
47 forest zone, that the landowner for the dwelling sign and record in the deed records for the

1 county a document binding the landowner, and the landowner's successors in interest, prohibiting
2 them from pursuing a claim for relief or cause of action alleging injury from farming or forest
3 practices for which no action or claim is allowed under ORS 30.936 or 30.937.

4 (31) Public parks including only the uses specified under OAR 660-034-0035 or 660-
5 034-0040, whichever is applicable.

6 (32) Utility facility service lines are utility lines and accessory facilities or structures that
7 end at the point where the utility service is received by the customer and that are located on one
8 or more of the following:

9 (a) A public right of way;

10 (b) Land immediately adjacent to a public right of way, provided the written consent of
11 all adjacent property owners has been obtained; or

12 (c) The property to be served by the utility.

13 (33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than
14 3,000 persons that is not anticipated to continue for more than 120 hours in any three month
15 period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this
16 Division.

17 (34) Any gathering subject to review by a county planning commission under the
18 provisions of ORS 433.763. These gatherings and any part of which is held in open spaces are
19 those of more than 3,000 persons which continue or can reasonably be expected to continue for
20 more than 120 hours within any three-month period.

21 (35)(a) As part of the conditional use approval process under ORS 215.296 and OAR
22 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the
23 business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may
24 apply to the county and submit evidence including, but not limited to, sworn affidavits or other
25 documentary evidence that the business qualifies; and

26 (b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or
27 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

28 (36) For counties subject to ORS 215.283 and not 215.213, a community center
29 authorized under this section may provide services to veterans, including but not limited to
30 emergency and transitional shelter, preparation and service of meals, vocational and educational
31 counseling and referral to local, state or federal agencies providing medical, mental health,
32 disability income replacement and substance abuse services, only in a facility that is in existence
33 on January 1, 2006. The services may not include direct delivery of medical, mental health,
34 disability income replacement or substance abuse services.

35 (37) For purposes of this rule a wind power generation facility includes, but is not limited
36 to, the following system components: all wind turbine towers and concrete pads, permanent
37 meteorological towers and wind measurement devices, electrical cable collection systems
38 connecting wind turbine towers with the relevant power substation, new or expanded private
39 roads (whether temporary or permanent) constructed to serve the wind power generation facility,
40 office and operation and maintenance buildings, temporary lay-down areas and all other
41 necessary appurtenances. A proposal for a wind power generation facility shall be subject to the
42 following provisions:

43 (a) For high-value farmland soils described at ORS 195.300(10), the governing body or
44 its designate must find that all of the following are satisfied:

45 (A) Reasonable alternatives have been considered to show that siting the wind power
46 generation facility or component thereof on high-value farmland soils is necessary for the facility

1 or component to function properly or if a road system or turbine string must be placed on such
2 soils to achieve a reasonably direct route considering the following factors:

3 (i) Technical and engineering feasibility;

4 (ii) Availability of existing rights of way; and

5 (iii) The long term environmental, economic, social and energy consequences of siting
6 the facility or component on alternative sites, as determined under OAR 660-033-
7 0130(37)(a)(B).

8 (B) The long-term environmental, economic, social and energy consequences resulting
9 from the wind power generation facility or any components thereof at the proposed
10 site with measures designed to reduce adverse impacts are not significantly more
11 adverse than would typically result from the same proposal being located on other
12 agricultural lands that do not include high-value farmland soils.

13 (C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A)
14 may be considered, but costs alone may not be the only consideration in determining that siting
15 any component of a wind power generation facility on high-value farmland soils is necessary.

16 (D) The owner of a wind power generation facility approved under OAR 660-033-
17 0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any
18 agricultural land and associated improvements that are damaged or otherwise disturbed by the
19 siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall
20 prevent the owner of the facility from requiring a bond or other security from a contractor or
21 otherwise imposing on a contractor the responsibility for restoration.

22 (E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

23 (b) For arable lands, meaning lands that are cultivated or suitable for cultivation,
24 including high-value farmland soils described at ORS 195.300(10), the governing body or its
25 designate must find that:

26 (A) The proposed wind power facility will not create unnecessary negative impacts on
27 agricultural operations conducted on the subject property. Negative impacts could include, but
28 are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in
29 such a way that creates small or isolated pieces of property that are more difficult to farm, and
30 placing wind farm components such as meteorological towers on lands in a manner that could
31 disrupt common and accepted farming practices; and

32 (B) The presence of a proposed wind power facility will not result in unnecessary soil
33 erosion or loss that could limit agricultural productivity on the subject property. This provision
34 may be satisfied by the submittal and county approval of a soil and erosion control plan prepared
35 by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or
36 remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan
37 shall be attached to the decision as a condition of approval; and

38 (C) Construction or maintenance activities will not result in unnecessary soil compaction
39 that reduces the productivity of soil for crop production. This provision may be satisfied by the
40 submittal and county approval of a plan prepared by an adequately qualified individual, showing
41 how unnecessary soil compaction will be avoided or remedied in a timely manner through deep
42 soil decompaction or other appropriate practices. The approved plan shall be attached to the
43 decision as a condition of approval; and

44 (D) Construction or maintenance activities will not result in the unabated introduction or
45 spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by
46 the submittal and county approval of a weed control plan prepared by an adequately qualified

1 individual that includes a long-term maintenance agreement. The approved plan shall be attached
2 to the decision as a condition of approval.

3 (c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing
4 body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are
5 satisfied.

6 (d) In the event that a wind power generation facility is proposed on a combination of
7 arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval
8 criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

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