



# 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](http://www.oregon.gov/LCD)

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TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director  
Michael Morrissey, Policy Analyst  
Katherine Daniels, Farm and Forest Lands Specialist

SUBJECT: **Agenda Item 6, November 5-6 LCDC Meeting**



**PUBLIC HEARING AND POSSIBLE ADOPTION OF “HOUSEKEEPING”  
AMENDMENTS TO OREGON ADMINISTRATIVE RULE 660, DIVISION 33 IN  
RESPONSE TO HOUSE BILL 3099**

**I. AGENDA ITEM SUMMARY**

This item involves a public hearing and an opportunity for the Land Conservation and Development Commission (LCDC) to receive testimony, deliberate, and decide whether to adopt proposed new “housekeeping” administrative rule amendments to Oregon Administrative Rule (OAR) chapter 660, division 33 regarding changes to uses in the exclusive farm use (EFU) zone (Attachment A). The proposed rule amendments are intended to provide consistency in administrative rule language with the provisions of House Bill (HB) 3099, passed in the 2009 legislative session, which takes effect January 1, 2010. As such, the changes to rule exactly reflect statutory language in HB 3099. The proposed amendments change OAR 660-033- 0120, Table 1, and OAR 660-033-0130, and would take effect January 1, 2010.

For additional information, please contact Michael Morrissey, Policy Analyst or Katherine Daniels, Farm and Forest Lands Specialist. Michael can be reached at 503-373-0050 ext. 320 or [michael.morrissey@state.or.us](mailto:michael.morrissey@state.or.us). Katherine can be reached at 503-373-0050 ext. 329 or [katherine.daniels@state.or.us](mailto:katherine.daniels@state.or.us).

**II. SUMMARY OF RECOMMENDATIONS**

The department recommends the commission receive testimony on the proposed administrative rule amendments and, at the conclusion of the public hearing, adopt the proposed administrative rule amendments.

### **III. BACKGROUND**

On July 30, 2009, the commission adopted its 2009-11 policy and rulemaking agenda, which included the initiation of a number of legislatively mandated rule amendments from the 2009 legislative session. Among these are “housekeeping” changes to administrative rules to provide consistency with the provisions of HB 3099 and anticipated changes to ORS 215. This report describes minor or technical changes to the Goal 3 rule. When the commission amends rules for this reason, it does not appoint a rulemaking workgroup, and does not generally consider substantive rule amendments other than those necessary to respond to legislation and to clarify and synchronize proposed rules with existing rules.

ORS 215.213 (1) and 215.283 (1) list uses that counties permit in EFU zones subject only to standards in administrative rules. That is, counties are not permitted to prohibit or limit uses listed in subsection (1) of these sections of statute. ORS 215.213 (2) and 215.283 (2) list uses that counties may permit, subject to approval criteria in ORS 215.296.<sup>1</sup> Counties may opt to prohibit uses in the subsection (2) list.

### **IV. PROPOSED ADMINISTRATIVE RULE**

HB 3099 amended ORS 215 regarding EFU zones to delete the following two uses from ORS 215.213 (1) and 215.283 (1):

1. The breeding, kenneling and training of greyhounds for racing; and
2. A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.

These two uses are proposed to be deleted as well from OAR 660-033-0120, Table 1.

HB 3099 amended the review standards for the following uses in ORS 215.213 (2) and 215.283 (2):

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<sup>1</sup> **215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.** (1) A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (2) or 215.283 (2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

1. Public or private schools, including all buildings essential to the operation of a school
2. Golf courses on high value farmland
3. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.

Language reflecting the amended review standards for schools and model aircraft sites is proposed as well to be incorporated into OAR 660-033-0130; no new amended language is needed for golf courses (see discussion below).

**A. OAR 660-033-0120 – Summary of Changes**

*OAR 660-033-0120, Table 1.* Table 1 of OAR 660-033-0120 identifies all the various uses that may occur on lands protected by Goal 3, and sets forth the applicable review criteria, including those for where the use would be located on high-value farmland.

Breeding, kenneling and training of greyhounds for racing will no longer be a use permitted in EFU zones, and is deleted from Table 1; other dog kennels continue to be allowed subject to approval criteria. The authorization for solid waste disposal sites ordered by the Environmental Quality Commission was rarely used and is deleted from Table 1. Other solid waste disposal sites continue to be allowed by the statute, subject to approval standards.

Golf courses on high-value farmland will no longer be an allowed use in EFU zones. However, Table 1 already prohibits golf courses on high-value farmland and therefore no change to the table is needed.

The most significant changes in HB 3099 involve schools. The existing provision for schools as a permitted use<sup>2</sup> is modified as follows: “Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.”

The statutory amendments involve three changes. First, new schools are moved from subsection (1) to subsection (2) of ORS 215.213 and 215.283, so they will be allowed subject to approval criteria rather than as outright permitted uses. This means they will be subject to the review standards of ORS 215.296. Second, the proposed K-12 language effectively codifies case law that currently interprets “schools” to mean traditional educational facilities only. Third, the requirement that new schools in EFU zones primarily serve rural residents is consistent with existing rule language that applies to community centers, and will help assure that schools intended to serve primarily urban populations do not seek rural sites. Rule amendments are proposed for OAR 660-033-0120, Table 1 that would exactly reflect statutory language.

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<sup>2</sup> “Public or private schools, including all buildings essential to the operation of a school.”

**B. OAR 660-033-0130 – Summary of Changes**

***OAR 660-033-0130(1)***. The deletion of two uses from ORS 215 permitted use lists will change the alphabetic references in statute for all subsequent uses. OAR 660-033-0130 makes only two cross-references to permitted EFU uses where a reference change will be needed. Subsection (10) currently references ORS 215.213(1)(u) and 215.283(1)(t); these are proposed to be changed to ORS 215.213(1)(q) and 215.283(p).

***OAR 660-033-0130(26)***. Owners of sites for the takeoff and landing of model aircraft will now, by statute, be able to charge rent or a fee for the use of the property. The same language is proposed to be included at OAR 660-033-0130(26).

***OAR 660-033-0130(18)***. HB 3099 includes language that would allow, subject to criteria, schools that were established on or before January 1, 2009 to be expanded onto the existing or an adjacent tax lot in the same ownership. The bill did not affect the existing rule provision that allows the expansion of several types of uses on high-value farmland in the EFU zone, including schools, under slightly different circumstances. OAR 660-033-0130(18) is proposed to allow the expansion of schools on high-value farmland if they are “on the same tract” without a date reference, whereas the new standard is to allow expansion on the existing or adjacent tax lot as of January 1, 2009. Thus, while existing schools on high-value farmland that serve primarily urban populations would be subject to the new standard, those that serve primarily rural populations would be subject to the existing standard.

**V. LCDC RULEMAKING AUTHORITY AND REQUIREMENTS**

The commission is authorized to adopt administrative rules under ORS 197.040, which indicates certain requirements for rulemaking. These assessments were completed as part of the notices submitted for publication in the Secretary of State Bulletin on September 8 (See Attachment B). ORS 197.040 states that

(1) The Land Conservation and Development Commission shall:

\* \* \* \* \*

(b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. \* \* \* [I]n designing its administrative requirements, the commission shall:

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

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

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

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

Additional sources of authority for the proposed rule amendments are ORS 197.045 (LCDC authorized to “perform other functions required to carry out ORS chapters 195, 196 and 197”); 197.090 (coordinating land conservation and development functions with other government entities); 197.175 (comprehensive planning responsibilities of cities and counties); and 197.180 (land use planning responsibilities of state agencies).

ORS 183.335 Provides requirements for notice of such rule adoption:

(1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency’s proposed action[.]

The department has issued rulemaking notice for publication in the October 2009 Secretary of State’s Bulletin, and has provided notice to legislators (Sept. 23, 2009) (Attachment B).

In 2004, the commission approved “Citizen Involvement Guidelines for Policy Development” intended to guide the commission and the department in promoting public involvement in the development of commission policy on land use, including new or amended administrative rules. With regard to this rulemaking, the guidelines provide that:

the commission and the department shall adhere to the following guidelines to the extent practicable:

1. Consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy;
2. Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;
3. Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the department’s website, and provide copies via paper mail upon request;
4. Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; and
5. Provide background information on the policy issues under discussion via posting on the department’s website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.

The department has followed the above guidelines with respect to the housekeeping rulemaking. The department sent broad public notice about this rulemaking (October 21, 2009), and has

maintained a website describing the rulemaking and listing the notices and other pertinent information.

We note that the CIG authorizes LCDC to “choose to not establish an advisory committee or workgroup, provided LCDC and the department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.” In this case (and in all previous LCDC “housekeeping” rulemaking), a workgroup was not appointed because the rulemaking is “policy neutral” and involves rule amendments that are already required by statute.

## **VI. RECOMMENDATION**

The department recommends that the commission receive testimony on the proposed rule amendments. Following testimony, the department recommends that the commission close the public hearing, consider the testimony and other information provided and adopt the proposed rule amendments, to be effective January 1, 2010.

## **ATTACHMENTS**

- A. Proposed amended administrative rules: OAR 660-033-0120, Table 1 and OAR 660-033-0130 (10), (18) and (26)
- B. Rulemaking notices

## LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

### DIVISION 33 AGRICULTURAL LAND

#### 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.]

21 Stat. Auth.: ORS 197.040, 197.245

22 Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283,  
23 215.700 - 215.710 & 215.780

#### 24 **660-033-0130**

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

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

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

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

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

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

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

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

43 (B) The tract on which the dwelling will be sited does not include a dwelling;  
44

- 1 (C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4,  
2 1993, no dwelling exists on another lot or parcel that was part of that tract;
- 3 (D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the  
4 acknowledged comprehensive plan and land use regulations and other provisions of law;
- 5 (E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as  
6 provided in subsections (3)(c) and (d) of this rule;
- 7 (F) When the lot or parcel on which the dwelling will be sited lies within an area designated in  
8 an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is  
9 consistent with the limitations on density upon which the acknowledged comprehensive plan and  
10 land use regulations intended to protect the habitat are based.
- 11 (b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining  
12 portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;
- 13 (c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling  
14 may be sited on high-value farmland if:
- 15 (A) It meets the other requirements of subsections (3)(a) and (b) of this rule;
- 16 (B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);  
17 and
- 18 (C) A hearings officer of a county determines that:
- 19 (i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with  
20 other land, due to extraordinary circumstances inherent in the land or its physical setting that do  
21 not apply generally to other land in the vicinity. For the purposes of this section, this criterion  
22 asks whether the subject lot or parcel can be physically put to farm use without undue hardship  
23 or difficulty because of extraordinary circumstances inherent in the land or its physical setting.  
24 Neither size alone nor a parcel's limited economic potential demonstrate that a lot of parcel  
25 cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent  
26 in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads,  
27 railroad or utility lines or other similar natural or physical barriers that by themselves or in  
28 combination separate the subject lot or parcel from adjacent agricultural land and prevent it from  
29 being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot  
30 or parcel that has been put to farm use despite the proximity of a natural barrier or since the  
31 placement of a physical barrier shall be presumed manageable for farm use.
- 32 (ii) The dwelling will comply with the provisions of ORS 215.296(1);
- 33 (iii) The dwelling will not materially alter the stability of the overall land use pattern in the area  
34 by applying the standards set forth in paragraph (4)(a)(D) of this rule.
- 35 (D) A local government shall provide notice of all applications for dwellings allowed under  
36 subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be provided in  
37 accordance with the governing body's land use regulations but shall be mailed at least 20  
38 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of  
39 this rule.
- 40 (d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family  
41 dwelling may be sited on high-value farmland if:
- 42 (A) It meets the other requirements of subsections (3)(a) and (b) of this rule;
- 43 (B) The tract on which the dwelling will be sited is:
- 44 (i) Identified in OAR 660-033-0020(8)(c) or (d); and
- 45 (ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and
- 46 (iii) Twenty-one acres or less in size; and

- 1 (C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than  
2 21 acres, and at least two such tracts had dwellings on January 1, 1993; or  
3 (ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that  
4 are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile  
5 of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth  
6 boundary, but only if the subject tract abuts an urban growth boundary; or  
7 (D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are  
8 smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of  
9 the center of the subject tract and on the same side of the public road that provides access to the  
10 subject tract. The governing body of a county must interpret the center of the subject tract as the  
11 geographic center of the flaglot if the applicant makes a written request for that interpretation  
12 and that interpretation does not cause the center to be located outside the flaglot. Up to two of the  
13 four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an  
14 urban growth boundary:  
15 (i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from  
16 the public road to the rest of the tract.  
17 (ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines  
18 of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to  
19 the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.  
20 (e) If land is in a zone that allows both farm and forest uses is acknowledged to be in compliance  
21 with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215,  
22 a county may apply the standards for siting a dwelling under either section (3) of this rule or  
23 OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;  
24 (f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling  
25 allowed under section (3) of this rule in any area where the county determines that approval of  
26 the dwelling would:  
27 (A) Exceed the facilities and service capabilities of the area;  
28 (B) Materially alter the stability of the overall land use pattern of the area; or  
29 (C) Create conditions or circumstances that the county determines would be contrary to the  
30 purposes or intent of its acknowledged comprehensive plan or land use regulations.  
31 (g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son,  
32 daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-  
33 law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or  
34 grandchild of the owner or a business entity owned by any one or a combination of these family  
35 members;  
36 (h) The county assessor shall be notified that the governing body intends to allow the dwelling.  
37 (i) When a local government approves an application for a single-family dwelling under section  
38 (3) of this rule, the application may be transferred by a person who has qualified under section  
39 (3) of this rule to any other person after the effective date of the land use decision.  
40 (4) Requires approval of the governing body or its designate in any farmland area zoned for  
41 exclusive farm use:  
42 (a) In the Willamette Valley, the use may be approved if:  
43 (A) The dwelling or activities associated with the dwelling will not force a significant change in  
44 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
45 to farm or forest use;

- 1 (B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV  
2 through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II  
3 soils;
- 4 (C) The dwelling will be sited on a lot or parcel created before January 1, 1993;
- 5 (D) The dwelling will not materially alter the stability of the overall land use pattern of the area.  
6 In determining whether a proposed nonfarm dwelling will alter the stability of the land use  
7 pattern in the area, a county shall consider the cumulative impact of possible new nonfarm  
8 dwellings and parcels on other lots or parcels in the area similarly situated. To address this  
9 standard, the county shall:
- 10 (i) Identify a study area for the cumulative impacts analysis. The study area shall include at least  
11 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural  
12 area based on topography, soil types, land use pattern, or the type of farm or ranch operations or  
13 practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the  
14 study area, its boundaries, the location of the subject parcel within this area, why the selected  
15 area is representative of the land use pattern surrounding the subject parcel and is adequate to  
16 conduct the analysis required by this standard. Lands zoned for rural residential or other urban or  
17 nonresource uses shall not be included in the study area;
- 18 (ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops,  
19 pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm,  
20 hardship, etc.), and the dwelling development trends since 1993. Determine the potential number  
21 of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and  
22 section (4) of this rule, including identification of predominant soil classifications, the parcels  
23 created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be  
24 divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall  
25 describe the existing land use pattern of the study area including the distribution and arrangement  
26 of existing uses and the land use pattern that could result from approval of the possible nonfarm  
27 dwellings under this subparagraph;
- 28 (iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with  
29 existing nonfarm dwellings will materially alter the stability of the land use pattern in the area.  
30 The stability of the land use pattern will be materially altered if the cumulative effect of existing  
31 and potential nonfarm dwellings will make it more difficult for the existing types of farms in the  
32 area to continue operation due to diminished opportunities to expand, purchase or lease  
33 farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a  
34 manner that will destabilize the overall character of the study area;
- 35 (E) The dwelling complies with such other conditions as the governing body or its designate  
36 considers necessary.
- 37 (b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this  
38 rule, the use may be approved if:
- 39 (A) The dwelling or activities associated with the dwelling will not force a significant change in  
40 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
41 to farm or forest use;
- 42 (B) The dwelling will not materially alter the stability of the overall land use pattern of the area.  
43 In determining whether a proposed nonfarm dwelling will alter the stability of the land use  
44 pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other  
45 lots or parcels in the area similarly situated and whether creation of the parcel will lead to  
46 creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the  
47 standards setforth in paragraph (4)(a)(D) of this rule; and

- 1 (C) The dwelling complies with such other conditions as the governing body or its designate  
2 considers necessary.
- 3 (c) In counties located outside the Willamette Valley require findings that:
- 4 (A) The dwelling or activities associated with the dwelling will not force a significant change in  
5 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
6 to farm or forest use;
- 7 (B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is  
8 generally unsuitable land for the production of farm crops and livestock or merchantable tree  
9 species, considering the terrain, adverse soil or land conditions, drainage and flooding,  
10 vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be  
11 considered unsuitable solely because of size or location if it can reasonably be put to farm or  
12 forest use in conjunction with other land; and
- 13 (ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is  
14 too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be  
15 sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or  
16 parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a  
17 lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of  
18 Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just  
19 because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it  
20 is not suitable for another farm use; or
- 21 (iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally  
22 unsuitable land for the production of merchantable tree species recognized by the Forest  
23 Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding,  
24 vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is  
25 not "generally unsuitable" simply because it is too small to be managed for forest production  
26 profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or  
27 otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or  
28 parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed  
29 predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in  
30 Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of  
31 wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible  
32 and not seriously interfere with forest uses on surrounding land it must not force a significant  
33 change in forest practices or significantly increase the cost of those practices on the surrounding  
34 land;
- 35 (C) The dwelling will not materially alter the stability of the overall land use pattern of the area.  
36 In determining whether a proposed nonfarm dwelling will alter the stability of the land use  
37 pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other  
38 lots or parcels in the area similarly situated by applying the standards set forth in paragraph  
39 (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm  
40 dwelling, a county shall consider whether creation of the parcel will lead to creation of other  
41 nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in  
42 paragraph (4)(a)(D) of this rule; and
- 43 (D) The dwelling complies with such other conditions as the governing body or its designate  
44 considers necessary.
- 45 (d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this  
46 rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of  
47 section (4) of this rule;

- 1 (e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the  
2 standards in ORS 215.213(3) -- (8) for nonfarm dwellings on lands zoned exclusive farm use that  
3 are not designated marginal or high-value farmland.
- 4 (5) Approval requires review by the governing body or its designate under ORS 215.296. Uses  
5 may be approved only where such uses:
- 6 (a) Will not force a significant change in accepted farm or forest practices on surrounding lands  
7 devoted to farm or forest use; and
- 8 (b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted  
9 to farm or forest use.
- 10 (6) Such facility shall not seriously interfere with accepted farming practices and shall be  
11 compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a  
12 one-year period which is renewable and is intended to be only portable or temporary in nature.  
13 The primary processing of a forest product, as used in this section, means the use of a portable  
14 chipper or stud mill or other similar methods of initial treatment of a forest product in order to  
15 enable its shipment to market. Forest products as used in this section means timber grown upon a  
16 tract where the primary processing facility is located.
- 17 (7) A personal use airport as used in this section means an airstrip restricted, except for aircraft  
18 emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests,  
19 and by commercial aviation activities in connection with agricultural operations. No aircraft may  
20 be based on a personal use airport other than those owned or controlled by the owner of the  
21 airstrip. Exceptions to the activities permitted under this definition may be granted through  
22 waiver action by the Oregon Department of Aviation in specific instances. A personal use airport  
23 lawfully existing as of September 13, 1975, shall continue to be permitted subject to any  
24 applicable rules of the Oregon Department of Aviation.
- 25 (8)(a) A lawfully established dwelling is a single family dwelling which:
- 26 (A) Has intact exterior walls and roof structure;
- 27 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a  
28 sanitary waste disposal system;
- 29 (C) Has interior wiring for interior lights; and
- 30 (D) Has a heating system.
- 31 (b) In the case of replacement, the dwelling to be replaced shall be:
- 32 (i) Removed, demolished, or converted to an allowable use within three months of the  
33 completion of the replacement dwelling. A replacement dwelling may be sited on any part of the  
34 same lot or parcel. A dwelling established under this section shall comply with all applicable  
35 siting standards. However, the standards shall not be applied in a manner that prohibits the siting  
36 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not  
37 zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record  
38 in the deed records for the county where the property is located a deed restriction prohibiting the  
39 siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be  
40 irrevocable unless a statement of release is placed in the deed records for the county. The release  
41 shall be signed by the county or its designee and state that the provisions of this section  
42 regarding replacement dwellings have changed to allow the siting of another dwelling. The  
43 county planning director or the director's designee shall maintain a record of the lots and parcels  
44 that do not qualify for the siting of a new dwelling under the provisions of this section, including  
45 a copy of the deed restrictions and release statements filed under this section; and
- 46 (ii) For which the applicant has requested a deferred replacement permit, is removed or  
47 demolished within three months after the deferred replacement permit is issued. A deferred

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

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

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

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

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

23 (10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an  
24 existing building allowed under this provision is a temporary use for the term of the hardship  
25 suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured  
26 dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if  
27 that disposal system is adequate to accommodate the additional dwelling. If the manufactured  
28 home will use a public sanitary sewer system, such condition will not be required. Governing  
29 bodies shall review the permit authorizing such manufactured homes every two years. Within  
30 three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall  
31 be removed or demolished or, in the case of an existing building, the building shall be removed,  
32 demolished or returned to an allowed nonresidential use. A temporary residence approved under  
33 this section is not eligible for replacement under ORS 215.213(1)(~~u~~ **q**) or 215.283(1)(~~t~~ **p**).

34 Oregon Department of Environmental Quality review and removal requirements also apply. As  
35 used in this section "hardship" means a medical hardship or hardship for the care of an aged or  
36 infirm person or persons.

37 (11) Subject to the issuance of a license, permit or other approval by the Department of  
38 Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in  
39 compliance with rules adopted under ORS 468B.095, and with the requirements of ORS  
40 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural  
41 process or industrial process water or biosolids for agricultural, horticultural or silvicultural  
42 production, or for irrigation in connection with a use allowed in an exclusive farm use zones  
43 under this division.

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

46 (13) Such uses may be established, subject to the adoption of the governing body or its designate  
47 of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the

1 facility or improvement does not comply. In addition, transportation uses and improvements may  
2 be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-  
3 0065.

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

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

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

17 (A) Technical and engineering feasibility;

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

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

23 (D) Availability of existing rights of way;

24 (E) Public health and safety; and

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

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

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

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

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

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

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

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

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

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

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

14 **(c) A nonconforming use described in subsection (b) of this section may be expanded under**  
15 **this section if:**

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

17 **(B) The expansion occurs on:**

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

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

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

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

37 (c) Subject to the approval of the county governing body or its designee, a private campground  
38 may provide yurts for overnight camping. No more than one-third or a maximum of 10  
39 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or  
40 on a wood floor with no permanent foundation. Upon request of a county governing body, the  
41 Land Conservation and Development Commission may provide by rule for an increase in the  
42 number of yurts allowed on all or a portion of the campgrounds in a county if the Commission  
43 determines that the increase will comply with the standards described in ORS 215.296(1). As  
44 used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a  
45 collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

46 (20) "Golf Course" means an area of land with highly maintained natural turf laid out for the  
47 game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green,

1 and often one or more natural or artificial hazards. A "golf course" for purposes of ORS  
2 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a  
3 combination 9 and 18 hole regulation golf course consistent with the following:  
4 (a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres  
5 of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;  
6 (b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of  
7 land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;  
8 (c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf  
9 course" means a golf course or golf course-like development that does not meet the definition of  
10 golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses,  
11 pitch and putt golf courses, miniature golf courses and driving ranges;  
12 (d) Counties shall limit accessory uses provided as part of a golf course consistent with the  
13 following standards:  
14 (A) An accessory use to a golf course is a facility or improvement that is incidental to the  
15 operation of the golf course and is either necessary for the operation and maintenance of the golf  
16 course or that provides goods or services customarily provided to golfers at a golf course. An  
17 accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a  
18 golf course may include: Parking; maintenance buildings; cart storage and repair; practice range  
19 or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro  
20 shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf  
21 tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to  
22 golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations  
23 oriented to the non-golfing public; or housing.  
24 (B) Accessory uses shall be limited in size and orientation on the site to serve the needs of  
25 persons and their guests who patronize the golf course to golf. An accessory use that provides  
26 commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate  
27 buildings.  
28 (C) Accessory uses may include one or more food and beverage service facilities in addition to  
29 food and beverage service facilities located in a clubhouse. Food and beverage service facilities  
30 must be part of and incidental to the operation of the golf course and must be limited in size and  
31 orientation on the site to serve only the needs of persons who patronize the golf course and their  
32 guests. Accessory food and beverage service facilities shall not be designed for or include  
33 structures for banquets, public gatherings or public entertainment.  
34 (21) "Living History Museum" means a facility designed to depict and interpret everyday life  
35 and culture of some specific historic period using authentic buildings, tools, equipment and  
36 people to simulate past activities and events. As used in this rule, a living history museum shall  
37 be related to resource based activities and shall be owned and operated by a governmental  
38 agency or a local historical society. A living history museum may include limited commercial  
39 activities and facilities that are directly related to the use and enjoyment of the museum and  
40 located within authentic buildings of the depicted historic period or the museum administration  
41 building, if areas other than an exclusive farm use zone cannot accommodate the museum and  
42 related activities or if the museum administration buildings and parking lot are located within  
43 one quarter mile of an urban growth boundary. "Local historical society" means the local  
44 historical society, recognized as such by the county governing body and organized under ORS  
45 chapter 65.

- 1 (22) A power generation facility shall not preclude more than 20 acres from use as a commercial  
2 agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter  
3 660, division 4.
- 4 (23) A farm stand may be approved if:
- 5 (a) The structures are designed and used for sale of farm crops and livestock grown on the farm  
6 operation, or grown on the farm operation and other farm operations in the local agricultural  
7 area, including the sale of retail incidental items and fee-based activity to promote the sale of  
8 farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees  
9 from promotional activity do not make up more than 25 percent of the total annual sales of the  
10 farm stand; and
- 11 (b) The farm stand does not include structures designed for occupancy as a residence or for  
12 activities other than the sale of farm crops and livestock and does not include structures for  
13 banquets, public gatherings or public entertainment.
- 14 (c) As used in this section, "farm crops or livestock" includes both fresh and processed farm  
15 crops and livestock grown on the farm operation, or grown on the farm operation and other farm  
16 operations in the local agricultural area. As used in this subsection, "processed crops and  
17 livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and  
18 livestock that have been processed and converted into another product but not prepared food  
19 items.
- 20 (d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in  
21 Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand  
22 is located.
- 23 (24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be  
24 considered customarily provided in conjunction with farm use if:
- 25 (a) Each accessory farm dwelling meets all the following requirements:
- 26 (A) The accessory farm dwelling will be occupied by a person or persons who will be principally  
27 engaged in the farm use of the land and whose seasonal or year-round assistance in the  
28 management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or  
29 will be required by the farm operator; and
- 30 (B) The accessory farm dwelling will be located:
- 31 (i) On the same lot or parcel as the primary farm dwelling; or
- 32 (ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory  
33 farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and  
34 parcels in the tract; or
- 35 (iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory  
36 farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed  
37 restriction shall be filed with the county clerk and require the manufactured dwelling to be  
38 removed when the lot or parcel is conveyed to another party. The manufactured dwelling may  
39 remain if it is reappraised under these rules; or
- 40 (iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory  
41 farm dwelling is limited to only attached multi- unit residential structures allowed by the  
42 applicable state building code or similar types of farm labor housing as existing farm labor  
43 housing on the farm or ranch operation registered with the Department of Consumer and  
44 Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A  
45 county shall require all accessory farm dwellings approved under this subparagraph to be  
46 removed, demolished or converted to a nonresidential use when farm worker housing is no  
47 longer required; or

- 1 (v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory  
2 farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size  
3 under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in  
4 OAR 660-033-0135(5) or (7), whichever is applicable; and
- 5 (C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm  
6 operator that is vacant or currently occupied by persons not working on the subject farm or ranch  
7 and that could reasonably be used as an accessory farm dwelling.
- 8 (b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to  
9 which the proposed dwelling would be accessory, meets one of the following:
- 10 (A) On land not identified as high-value farmland, the primary farm dwelling is located on a  
11 farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and  
12 produced in the last two years or three of the last five years the lower of the following:
- 13 (i) At least \$40,000 in gross annual income from the sale of farm products. In determining the  
14 gross income, the cost of purchased livestock shall be deducted from the total gross income  
15 attributed to the tract.
- 16 (ii) Gross annual income of at least the midpoint of the median income range of gross annual  
17 sales for farms in the county with the gross annual sales of \$10,000 or more according to the  
18 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased  
19 livestock shall be deducted from the total gross income attributed to the tract; or
- 20 (B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or  
21 ranch operation that is currently employed for farm use, as defined in ORS 215.203, and  
22 produced at least \$80,000 in gross annual income from the sale of farm products in the last two  
23 years or three of the last five years. In determining the gross income, the cost of purchased  
24 livestock shall be deducted from the total gross income attributed to the tract; or
- 25 (C) On land not identified as high-value farmland in counties that have adopted marginal lands  
26 provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling  
27 is located on a farm or ranch operation that meets the standards and requirements of ORS  
28 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or
- 29 (D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and
- 30 (i) The building permits, if required, have been issued and construction has begun or been  
31 completed for the buildings and animal waste facilities required for a commercial dairy farm; and
- 32 (ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding  
33 operation" under ORS 468B.050 and 468B.200 to 468B.230; and
- 34 (iii) A Producer License for the sale of dairy products under ORS 621.072.
- 35 (c) The governing body of a county shall not approve any proposed division of a lot or parcel for  
36 an accessory farm dwelling approved pursuant to this section. If it is determined that an  
37 accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be  
38 created consistent with the minimum parcel size requirements in OAR 660-033-0100;
- 39 (d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy  
40 the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4)  
41 of this rule.
- 42 (e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of  
43 residential structures allowed by the applicable state building code."
- 44 (25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition)  
45 before January 1, 1993, an armed forces reserve center, if the center is within one-half mile of a  
46 community college. An "armed forces reserve center" includes an armory or National Guard  
47 support facility.

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

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

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

24 (29)(a) Composting operations and facilities allowed on high-value farmland are limited to those  
25 that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR  
26 340-093-0050, only require approval of an Agricultural Compost Management Plan by the  
27 Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050  
28 where the compost is applied primarily on the subject farm or used to manage and dispose of by-  
29 products generated on the subject farm. Excess compost may be sold to neighboring farm  
30 operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards)  
31 in size. Buildings and facilities used in conjunction with the composting operation shall only be  
32 those required for the operation of the subject facility.

33 (b) Composting operations and facilities allowed on land not defined as high-value farmland  
34 shall be limited to the composting operations and facilities allowed by subsection (29)(a) of this  
35 rule or that require a permit from the Department of Environmental Quality under OAR 340-093-  
36 0050 . Buildings and facilities used in conjunction with the composting operation shall only be  
37 those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads  
38 of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

39 (30) The County governing body or its designate shall require as a condition of approval of a  
40 single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest  
41 zone, that the landowner for the dwelling sign and record in the deed records for the county a  
42 document binding the landowner, and the landowner's successors in interest, prohibiting them  
43 from pursuing a claim for relief or cause of action alleging injury from farming or forest  
44 practices for which no action or claim is allowed under ORS 30.936 or 30.937.

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

- 1 (32) Utility facility service lines are utility lines and accessory facilities or structures that end at  
2 the point where the utility service is received by the customer and that are located on one or more  
3 of the following:
- 4 (a) A public right of way;
  - 5 (b) Land immediately adjacent to a public right of way, provided the written consent of all  
6 adjacent property owners has been obtained; or
  - 7 (c) The property to be served by the utility.
- 8 (33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than  
9 3,000 persons that is not anticipated to continue for more than 120 hours in any three month  
10 period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this  
11 Division.
- 12 (34) Any gathering subject to review by a county planning commission under the provisions of  
13 ORS 433.763. These gatherings and any part of which is held in open spaces are those of more  
14 than 3,000 persons which continue or can reasonably be expected to continue for more than 120  
15 hours within any three-month period.
- 16 (35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-  
17 0130(5), for the purpose of verifying the existence, continuity and nature of the business  
18 described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to  
19 the county and submit evidence including, but not limited to, sworn affidavits or other  
20 documentary evidence that the business qualifies; and
- 21 (b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or  
22 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).
- 23 (36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under  
24 this section may provide services to veterans, including but not limited to emergency and  
25 transitional shelter, preparation and service of meals, vocational and educational counseling and  
26 referral to local, state or federal agencies providing medical, mental health, disability income  
27 replacement and substance abuse services, only in a facility that is in existence on January 1,  
28 2006. The services may not include direct delivery of medical, mental health, disability income  
29 replacement or substance abuse services.
- 30 (37) For purposes of this rule a wind power generation facility includes, but is not limited to, the  
31 following system components: all wind turbine towers and concrete pads, permanent  
32 meteorological towers and wind measurement devices, electrical cable collection systems  
33 connecting wind turbine towers with the relevant power substation, new or expanded private  
34 roads (whether temporary or permanent) constructed to serve the wind power generation facility,  
35 office and operation and maintenance buildings, temporary lay-down areas and all other  
36 necessary appurtenances. A proposal for a wind power generation facility shall be subject to the  
37 following provisions:
- 38 (a) For high-value farmland soils described at ORS 195.300(10), the governing body or its  
39 designate must find that all of the following are satisfied:
    - 40 (A) Reasonable alternatives have been considered to show that siting the wind power generation  
41 facility or component thereof on high-value farmland soils is necessary for the facility or  
42 component to function properly or if a road system or turbine string must be placed on such soils  
43 to achieve a reasonably direct route considering the following factors:
      - 44 (i) Technical and engineering feasibility;
      - 45 (ii) Availability of existing rights of way; and
      - 46 (iii) The long term environmental, economic, social and energy consequences of siting the  
47 facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

- 1 (B) The long-term environmental, economic, social and energy consequences resulting  
2 from the wind power generation facility or any components thereof at the proposed  
3 site with measures designed to reduce adverse impacts are not significantly more  
4 adverse than would typically result from the same proposal being located on other  
5 agricultural lands that do not include high-value farmland soils.
- 6 (C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A)  
7 may be considered, but costs alone may not be the only consideration in determining that siting  
8 any component of a wind power generation facility on high-value farmland soils is necessary.
- 9 (D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a)  
10 shall be responsible for restoring, as nearly as possible, to its former condition any agricultural  
11 land and associated improvements that are damaged or otherwise disturbed by the siting,  
12 maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the  
13 owner of the facility from requiring a bond or other security from a contractor or otherwise  
14 imposing on a contractor the responsibility for restoration.
- 15 (E) The criteria of OAR 660-033-0130(37)(b) are satisfied.
- 16 (b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-  
17 value farmland soils described at ORS 195.300(10), the governing body or its designate must  
18 find that:
- 19 (A) The proposed wind power facility will not create unnecessary negative impacts on  
20 agricultural operations conducted on the subject property. Negative impacts could include, but  
21 are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in  
22 such a way that creates small or isolated pieces of property that are more difficult to farm, and  
23 placing wind farm components such as meteorological towers on lands in a manner that could  
24 disrupt common and accepted farming practices; and
- 25 (B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or  
26 loss that could limit agricultural productivity on the subject property. This provision may be  
27 satisfied by the submittal and county approval of a soil and erosion control plan prepared by an  
28 adequately qualified individual, showing how unnecessary soil erosion will be avoided or  
29 remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan  
30 shall be attached to the decision as a condition of approval; and
- 31 (C) Construction or maintenance activities will not result in unnecessary soil compaction that  
32 reduces the productivity of soil for crop production. This provision may be satisfied by the  
33 submittal and county approval of a plan prepared by an adequately qualified individual, showing  
34 how unnecessary soil compaction will be avoided or remedied in a timely manner through deep  
35 soil decompaction or other appropriate practices. The approved plan shall be attached to the  
36 decision as a condition of approval; and
- 37 (D) Construction or maintenance activities will not result in the unabated introduction or spread  
38 of noxious weeds and other undesirable weeds species. This provision may be satisfied by the  
39 submittal and county approval of a weed control plan prepared by an adequately qualified  
40 individual that includes a long-term maintenance agreement. The approved plan shall be attached  
41 to the decision as a condition of approval.
- 42 (c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body  
43 or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.
- 44 (d) In the event that a wind power generation facility is proposed on a combination of arable and  
45 nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR  
46 660-033-0130(37)(b) shall apply to the entire project.
- 47 [Publications: Publications referenced are available from the agency.]

- 1 Stat. Auth.: ORS 197.040
- 2 Stats. Implemented: ORS 197.040 & 215.213

**LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**OREGON ADMINISTRATIVE RULES**

**CHAPTER 660, DIVISION 033, RULE 0120, TABLE 1**

**Uses Authorized on Agricultural Lands**

**OAR 660-33-120** The specific development and uses listed in the following table are permitted in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

**A** Use may be allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-33-130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

**R** Use may be approved, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-33-130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

\* Use not permitted.

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

HV	All	
<u>Farm</u>	<u>Other</u>	<u>USES</u>

**Farm/Forest Resource**

A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R6	R6	A facility for the primary processing of forest products.
R28	R28	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.

**Natural Resource**

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

**Residential**

A1,30	A1,30	Dwelling customarily provided in conjunction with farm use.
R9,30	R9,30	A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, brother, sister, sibling, step-sibling, niece,

nephew, or first cousin of either, if the farm operator does, or will, require the assistance of the relative in the management of the farm use.

A24, 30	A24, 30	Accessory Farm Dwellings for year-round and seasonal farm workers.
A3, 30	A3, 30	One single-family dwelling on a lawfully created lot or parcel.
R5, 10	R5, 10	One manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.
R4, 30	R4,30	Single-family residential dwelling, not provided in conjunction with farm use.
R5, 30	R5,30	Residential home or facility as defined in ORS 197.660, in existing dwellings.
R5, 30	R5,30	Room and board arrangements for a maximum of five unrelated persons in existing residences.
R12, 30	R12, 30	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.
A8, 30	A8, 30	Alteration, restoration, or replacement of a lawfully established dwelling.
R5,	R5	A wildlife habitat conservation and management plan pursuant to ORS 215.800 to 215.808.
<b>Commercial</b>		
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).
<del>*18</del>	<del>A</del>	<del>The breeding, kenneling and training of greyhounds for racing.</del>
R5,14	R5,14	Home occupations as provided in ORS 215.448.
*18(a)	R5	Dog kennels.
R5,35	R5,35	An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks.
*18(a)	R5	Destination resort which is approved consistent with the requirements of Goal 8.
A	A	A winery as described in ORS 215.452.

A23	A23	Farm stands.	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	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.	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.
<b>Mineral, Aggregate, Oil, and Gas Uses</b>					
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.	R13	R13	Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
A	A	Operations for the exploration for minerals as defined by ORS 517.750.	R	R	Transportation improvements on rural lands allowed by OAR 660-012-0065.
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.	<b>Utility/Solid Waste Disposal Facilities</b>		
R5	R5	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.	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.
R5,15	R5,15	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.	R5	R5	Transmission towers over 200 feet in height.
R5	R5	Processing of other mineral resources and other subsurface resources.	<del>*18</del>	<del>R</del>	<del>A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.</del>
R5	R5	Processing of other mineral resources and other subsurface resources.	A	A	Fire service facilities providing rural fire protection services.
<b>Transportation</b>					
R5,7	R5,7	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.	A	A	Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.
A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.	A32	A32	Utility facility service lines.
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.	R5,17	R5,22	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities.
A	A	Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.	R5, 37	R5, 37	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
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.	<u>*18(a)</u>	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
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.	A29(a)	.	.
			<u>18(a)</u>	R5, 29(b)	Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-093-0050.

**Parks/Public/Quasi-Public**

(The numbers in the table above refer to the section numbers in OAR 660-33-130)

- \*18(a) R2,5, ~~Public or private schools, including all buildings essential to the operation of a school.~~  
 or (b-c) 18(b-c) **Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.**
- \*18(a) R2 Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
- \*18(a) R5,19 Private parks, playgrounds, hunting and fishing preserves and campgrounds.
- R5, 31 R5, 31 Parks, and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
- R5, 36 R5, 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) R5,20 Golf courses.
- R5,21 R5,21 Living history museum
- R R Firearms training facility as provided in ORS 197.770.
- R25 R25 Armed forces reserve center as provided for in ORS 215.213(1).
- A A Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.
- R5 R5 Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.
- A26 A26 A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.
- R5 R5 Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
- R5 R5 Operations for the extraction and bottling of water.
- A11 A11 Land application of reclaimed water, agricultural or industrial process water or biosolids.
- R5 R5 A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(2).

**Outdoor Gatherings**

- A33 A33 An outdoor gathering described in ORS 197.015(10)(d).
- R34 R34 Any gathering subject to review of a county planning commission under ORS 433.763.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Department of Land Conservation and Development	OAR Chapter 660	
Agency and Division	Administrative Rules Chapter Number	
Casaria Tuttle	635 Capitol Street NE, Suite 150, Salem, Oregon 97301	503-373-0050 ext. 322
Rules Coordinator	Address	Telephone

**RULE CAPTION**  
Permanent Rules amending OAR 660 division 33, modifying uses on agricultural lands  
**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

November 5, 2009	9:00 a.m.	xxxxx Springfield, Oregon	LCDC
Hearing Date	Time	Location	Hearings Officer

*Auxillary aids for persons with disabilities are available upon advanced request*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:**

**AMEND:** OAR 660-033-0120 and 660-033-0130

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 197.040

Other Auth.: Statewide Planning Goals 3 and 4

Stats. Implemented: ORS 215

**RULE SUMMARY**

The proposed permanent rules amend OAR Chapter 660 division 33. The purpose of amending the rules is for consistency with House Bill 3099, enacted by the 2009 legislature. HB 3099 amended ORS 215 modifying certain conditional and outright permitted uses or criteria for such uses, on land zoned for exclusive farm use, including golf courses, schools, solid waste disposal sites, model airplane sites, and breeding and kenneling of greyhounds.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

November 5, 2009

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Signature	Printed name	Date
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\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

Secretary of State

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Land Conservation and Development

660

Agency and Division

Administrative Rules Chapter Number

Permanent Rules amending OAR 660 division 33, modifying uses on agricultural lands

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

**In the Matter of:** Housekeeping rulemaking conforming amendments due to statutes amended in the 2009 legislative session

**Statutory Authority:** ORS 197.040

**Other Authority:**

**Stats. Implemented:** ORS

**Need for the Rule(s):** There is a need to conform OAR 660 division 33 rules to amended statutes at ORS 215.213 to 215.283 (resulting from House Bill 3099). HB 3099 amended ORS 215 modifying certain conditional and outright permitted uses or criteria for such uses, on land zoned for exclusive farm use, including golf courses, schools, solid waste disposal sites, model airplane sites, and breeding and kenneling of greyhounds.

**Documents Relied Upon, and where they are available:** ORS 215. Administrative rules regarding uses authorized on agricultural lands (OAR chapter 660, division 33), House Bill 3099. All these documents are available at the Department of Land Conservation and Development's website, and at 635 Capitol St. NE, Suite 150, Salem. Oregon 97301-2540.

**Fiscal and Economic Impact:** The statutory changes in HB 3099 and resulting proposed rules are for the purpose of "cleaning up" only a few of the many uses allowed on agricultural lands, and should have a minimal or no impact on businesses. Two uses which become disallowed based on the proposed rules: breeding, kenneling and training of greyhounds for racing, and sites for disposal for solid waste ordered established by the Environmental Quality Commission (EQC) have reportedly only been used once (greyhound related), or not used at all (solid waste disposal sites ordered sited by the EQC). If there is an existing greyhound related use, it would be allowed to continue.

Authorized operators of model airplane sites will henceforth be allowed to charge a fee for the use of the site, and therefore will be receiving from the rule, as specified in legislation.

School uses on land zoned for exclusive farm use may have a variable impact depending on the situation. In some cases, existing schools located outside urban growth boundaries and serving urban populations may have new opportunities to expand their operations on-site. In other cases, school districts will no longer be able to site schools outside UGB's without going through a conditional use process (i.e. such siting will no longer be an outright use), and new schools outside urban growth boundaries will be required to serve primarily residents of the rural area in which the school is located.

Administrative Rule Advisory Committee consulted?: No

If not, why?: These rules are housekeeping amendments conforming to House Bill 3099

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Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

## HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING  
A \*TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.  
(ORS 183.534) *FOR ADMINISTRATIVE RULES*

**AGENCY NAME:**

Department of Land Conservation and Development

**ADDRESS:** 635 Capitol Street NE, Suite 150

**CITY/STATE:** Salem, Oregon 97301

**PHONE:** (503) 373-0050, ext 320

**PERMANENT:**

**TEMPORARY:**

**HEARING DATES:** November 5, 2009

**EFFECTIVE DATE:**

**BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL  
RESULT FROM THIS PROPOSED CHANGE.**

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.  
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

**Description of proposed change:** (Please attach any draft or permanent rule or ordinance)

The proposed permanent rules amend OAR Chapter 660 division 33. The rule changes are house keeping to conform to statutory changes resulting from 2009 legislatively enacted HB 3009.

**Description of the need for, and objectives of the rule:**

The purpose of amending the rules is for consistency with House Bill 3099, enacted by the 2009 legislature. HB 3099 amends ORS 215, modifying certain conditional and outright permitted uses, or criteria for such uses, on land zoned for exclusive farm use, including golf courses, schools, solid waste disposal sites, model airplane sites, and breeding and kenneling of greyhounds.

**List of rules adopted or amended:** Amend: OAR 660-033-0120 and 660-033-0130

**Materials and labor costs increase or savings:** The proposed rules are not intended to or expected to result in increases in materials or labor costs or in savings.

**Estimated administrative, construction or other costs increase or savings:** Administrative savings will apply to the department and to counties in that HB 3099 exempts them from possible Measure 56 notice and reduces requirements to counties to hold public hearings and adopt findings when amending their code to comply with requirements of HB 3099.

No construction costs or savings are expected to result from these rule changes

**Land costs increase or savings:** With regard to school siting outside urban growth boundaries, it is unclear what effects the proposed rules might have. Urban school districts have reportedly been purchasing future school outside UGBs in some cases because land is less expensive outside UGBs, than inside. To the extent that the district did not intend to develop the site until it was brought into the UGB, these rules should not affect land costs.

**Other costs increase or savings:** None expected based on available information.

\*Typical-Single story 3 bedrooms, 1 1/2 bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

**PREPARERS NAME: EMAIL ADDRESS:**