Oregon
Kate Brown, Governor

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January 11, 2018

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Jon Jinings, Community Services Specialist

SUBJECT: **Agenda Item 10, January 25-26, 2018, LCDC Meeting**

HOUSE BILL 3012 (2017) RULE MAKING – HISTORIC HOUSES AS ACCESSORY DWELLING UNITS

I. AGENDA ITEM SUMMARY

The Land Conservation and Development Commission (commission) will hold a public hearing and consider adoption of proposed permanent rule amendments to OAR 660-004-0040. The revisions are necessary to ensure that the commission's administrative rule is consistent with HB 3012, enacted by the 2017 Legislature, which authorizes a historic home located in a rural residential exception area to be converted to an accessory dwelling unit[1] (ADU) and a new single family dwelling to be constructed on the same lot or parcel. As defined by HB 3012, historic home means a single-family dwelling constructed between 1850 and 1945.

For further information about this report, please contact Jon Jinings, Community Services Specialist at 541-325-6928, or at jon.jinings@state.or.us.

II. BACKGROUND

The commission adopted OAR 660-004-0040 in 2004 to provide guidance and clarity in planning for rural residential areas where an exception to Goal 3 (agricultural lands) or Goal (forest lands) had been taken. The original motivation for this rule and a companion revision to Goal 14 (urbanization) was to establish appropriate residential densities compliant with Goal 14's mandate that lands outside of urban growth boundaries be rural. Although the rule does allow "temporary hardship dwellings" consistent with the agricultural lands statute, an accessory dwelling unit has not been identified as an allowed use.

[1] "Accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling.

During 2017, the Oregon Legislature considered multiple bills concerning ADUs inside and outside of urban growth boundaries, as well as on lands protected for farm and forest uses and rural "exception" lands. HB 3012 was among these pieces of legislation and was signed into law by Governor Brown.

Under HB 3012, a county may allow construction of a new single-family dwelling on a lot or parcel in a rural residential area provided:

(a) The lot or parcel is not located in an area designated as an urban reserve;

(b) The lot or parcel is at least two acres in size;

(c) A historic home is sited on the lot or parcel;

(d) The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling; and

(e) The accessory dwelling unit complies with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.

Additional provisions limiting future land divisions, renovation and replacement are also included as required by the new law.

In conclusion, the proposed changes to OAR 660-004-0040 fall into two categories. First, most all of the changes are necessary to comply with HB 3012. Second, other changes, which are not substantial in nature include consolidating definitions into a single location, using consistent terminology and removing unnecessary language. Department staff believes that the second category of changes improve the rule's readability and should lead to easier implementation.

III. RECOMMENDED ACTION

The Department of Land Conservation and Development recommends the commission adopt the rule amendments to OAR 660-004-0040 as shown in Attachment A.

Recommended motion: I move the commission adopt the proposed amendments to OAR 660 004-0040 as recommended by the department and explained in the staff report.

ATTACHMENTS

A. Proposed Revisions to OAR 660-004-0040

B. HB 3012 (2017)

660-004-0040
Application of Goal 14 to Rural Residential Areas

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

(2)~~(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 "Agricultural Lands", Goal 4 "Forest Lands", or both has been taken. Such land~~ For purposes of this rule, the definitions in ORS 197.015, the Statewide Planning Goals and OAR 660-004-0005 shall apply. In addition, the following definitions shall apply:

(a)"Accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling.

(b)"Habitable dwelling" means a dwelling that meets the criteria set forth in ORS 215.213(1)(q)(A)-(D) or ORS 215.283(1)(p)(A)-(D), whichever is applicable.

(c)"Historic home" means a single-family dwelling constructed between 1850 and 1945.

(d)"Minimum lot size" means the minimum area for any new lot or parcel that is to be created in a rural residential area.

(e)"New single-family dwelling" means that the dwelling being constructed did not previously exist in residential or nonresidential form. New single-family dwelling does not include the acquisition, alteration, renovation or remodeling of an existing structure.

(f)"Rural residential areas" means lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 "Agricultural Lands," Goal 4 "Forest Lands," or both has been taken.

(g)"Rural residential zone currently in effect" means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.

(h)"Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

(3)(a) This rule applies to rural residential areas~~"~~.

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

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

(A) Land inside an acknowledged urban growth boundary;

(B) Land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 22;

(C) Land in an acknowledged urban reserve area established pursuant to OAR chapter 660, divisions 21 or 27;

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

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

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

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

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

(~~3~~4)(a) Sections 1, 3-9 and 13 of ~~T~~this rule took effect on October 4, 2000.

(b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County), and before October 4, 2000. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.

(~~4~~5) The rural residential areas described in subsection (2)(~~a~~f) of this rule are "rural lands." Division and development of such lands are subject to Goal 14, which prohibits urban use of rural lands.

(~~5~~6)(a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (~~7~~8) of this rule.

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

(c) ~~For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.~~

(~~6~~7) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

(~~7~~8)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

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

(c) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect.

(d) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.

(e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new single-family dwellings in a rural residential area only if all conditions set forth in paragraphs ~~(7)(e)~~(A) through ~~(78)(e)~~(H) are met:

(A) The number of new single-family dwellings ~~units~~ to be clustered or developed as a PUD does not exceed 10;

(B) The number of new lots or parcels to be created for new single-family dwellings does not exceed 10;

(C) None of the new lots or parcels will be smaller than two acres;

(D) The development is not to be served by a new community sewer system;

(E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community;

(F) The overall density of the development will not exceed one single-family dwelling for each unit of acreage specified in the local government's land use regulations on October 4, 2000 as the minimum lot size for the area;

(G) Any group or cluster of two or more single-family dwellings ~~units~~ will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there; and

(H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

(f) Except as provided in subsection (e) of this section or section (10) of this rule, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.

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

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

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

(B) The permanent habitable dwellings on the parcel to be divided were established there before October 4, 2000;

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

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

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

(i) For rural residential areas designated after October 4, 2000, the affected county shall either:

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

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

(~~8~~9)(a) Notwithstanding the provisions of section (~~7~~8) of this rule, divisions of rural residential land within one mile of an urban growth boundary for any city or urban area listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions of subsections (~~8~~9)(b) and (~~8~~9)(c).

(A) Ashland;

(B) Central Point;

(C) Medford;

(D) Newberg;

(E) Sandy.

(b) Any division of rural residential land in an urban reserve area shall be done in accordance with the acknowledged urban reserve ordinance or acknowledged regional growth plan of a city or urban area listed in subsection (~~8~~9)(a) that:

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

(B) Is part of a regional growth plan that contains at least a twenty-year regional urban reserve of land beyond the land contained within the collective urban growth boundaries of the participating cities, and that has been acknowledged through the process prescribed for Regional Problem Solving in ORS 197.652 through 197.658.

(c) Notwithstanding the provisions of section (~~7~~8) of this rule, if any part of a lot or parcel to be divided is less than one mile from an urban growth boundary for a city or urban area listed in subsection (~~8~~9)(a), and if that city or urban area does not have an urban reserve area acknowledged to comply with OAR chapter 660, division 21, or is not part of an acknowledged regional growth plan as described in subsection (b), paragraph (B), of this section, the minimum area of any new lot or parcel there shall be ten acres.

(d) Notwithstanding the provisions of section (~~7~~8), if Metro has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR chapter 660, division 21 or division 27, any land division of rural residential land in that urban reserve shall be done in accordance with the applicable acknowledged comprehensive plan and zoning provisions adopted to implement the urban reserve.

(e) Notwithstanding the provisions of section (~~7~~8), if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if Metro has not designated an urban reserve that contains at least a twenty-year reserve of land acknowledged to comply with either OAR chapter 660, division 21 or division 27, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.

(f) Notwithstanding the provisions of section (~~7~~8) and subsection (~~8~~9)(e), a local government may establish minimum area requirements smaller than twenty acres for some of the lands described in subsection (~~8~~9)(e). The selection of those lands and the minimum established for them shall be based on an analysis of the likelihood that such lands will urbanize, of their current parcel and lot sizes, and of the capacity of local governments to serve such lands efficiently with urban services at densities of at least 10 units per net developable acre. In no case shall the minimum parcel area requirement set for such lands be smaller than 10 acres.

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

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

(B) The permanent, habitable dwellings on the parcel to be divided were established there before October 4, 2000;

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

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

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

~~(F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria set forth in ORS 215.213(1)(q)(A)-(D) or 215.283(1)(p)(A)-(D), whichever is applicable; and~~

(~~G~~F) The parcel is not in an area designated as rural reserve under OAR chapter 660, division 27, except as provided under OAR 660-027-0070.

(h) Notwithstanding the provisions of subsection (g) of this section, a county may allow the creation of lots or parcels as small as two acres without an exception to Goal 14 in an existing rural residential exception area as a designated receiving area for the transfer of Measure 49 development interests, as provided in OAR 660-029- 0080 and 660-029-0090.

(~~9~~10) Notwithstanding any local zoning or local regulation or ordinance pertaining to the siting of accessory dwelling units in rural residential areas, a county may allow an owner of a lot or parcel within an area zoned for rural residential use to construct a new single-family dwelling on the lot or parcel, provided:

(a)The lot or parcel is not located in an area designated as an urban reserve;

(b)The lot or parcel is at least two acres in size;

(c)A historic home is sited on the lot or parcel;

(d)The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling; and

(e)The accessory dwelling unit complies with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.

(11) An owner that constructs a new single-family dwelling under section (10) of this rule may not:

(a)Subdivide, partition or otherwise divide the lot or parcel so that the new single-family dwelling is situated on a different lot or parcel from the accessory dwelling unit.

(b)Alter, renovate or remodel the accessory dwelling unit so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single- family dwelling commenced.

(c)Rebuild the accessory dwelling unit if the structure is lost to fire.

(d)Construct an additional accessory dwelling unit on the same lot or parcel.

(12) For a new single-family dwelling approved under section (10) of this rule a county may:

(a) Require that a new single-family dwelling be served by the same water supply source as the accessory dwelling unit.

(b) Impose additional conditions of approval for construction of a new single-family dwelling or conversion of a historic home to an accessory dwelling unit.

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

Statutory/Other Authority: ORS 197.040, 195.141
Statutes/Other Implemented: ORS 195.141, 195.145, 195.300-195.336, 197.175 & 197.732; 2007 OL, ch. 424

79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

Enrolled
House Bill 3012

Sponsored by Representatives LININGER, MEEK, SMITH DB; Representatives NEARMAN, STARK

CHAPTER .....

AN ACT

Relating to siting of residential structures on land zoned for certain uses.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 215.

SECTION 2. (1) As used in this section:

(a) "Accessory dwelling unit" means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling.

(b) "Area zoned for rural residential use" means land that is not located inside an urban growth boundary as defined in ORS 195.060 and that is subject to an acknowledged exception to a statewide land use planning goal relating to farmland or forestland and planned and zoned by the county to allow residential use as a primary use.

(c) "Historic home" means a single-family dwelling constructed between 1850 and 1945.

(d) "New" means that the dwelling being constructed did not previously exist in residential or nonresidential form. "New" does not include the acquisition, alteration, renovation or remodeling of an existing structure.

(e) "Single-family dwelling" means a residential structure designed as a residence for one family and sharing no common wall with another residence of any type.

(2) Notwithstanding any local zoning or local regulation or ordinance pertaining to the siting of accessory dwelling units in areas zoned for rural residential use, a county may allow an owner of a lot or parcel within an area zoned for rural residential use to construct a new single-family dwelling on the lot or parcel, provided:

(a) The lot or parcel is not located in an area designated as an urban reserve as defined in ORS 195.137;

(b) The lot or parcel is at least two acres in size;

(c) A historic home is sited on the lot or parcel;

(d) The owner converts the historic home to an accessory dwelling unit upon completion of the new single-family dwelling; and

(e) The accessory dwelling unit complies with all applicable laws and regulations relating to sanitation and wastewater disposal and treatment.

(3) An owner that constructs a new single-family dwelling under subsection (2) of this section may not:

(a) Subdivide, partition or otherwise divide the lot or parcel so that the new single-family dwelling is situated on a different lot or parcel from the accessory dwelling unit.

(b) Alter, renovate or remodel the accessory dwelling unit so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single-family dwelling commenced.

(c) Rebuild the accessory dwelling unit if the structure is lost to fire.

(d) Construct an additional accessory dwelling unit on the same lot or parcel.

(4) A county may require that a new single-family dwelling constructed under this section be served by the same water supply source as the accessory dwelling unit.

(5) A county may impose additional conditions of approval for construction of a new single-family dwelling or conversion of a historic home to an accessory dwelling unit under this section.

Passed by House April 27, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 6, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State