



Oregon

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March 5, 2020

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Gordon Howard, Community Services Division Manager

SUBJECT: **Agenda Item 9, March 19-20, 2020, LCDC Meeting**



RULEMAKING TO CONFORM TO 2019 LEGISLATION

I. AGENDA ITEM SUMMARY

The Department of Land Conservation and Development (DLCD or department) requests the Land Conservation and Development Commission (LCDC or commission) consider the adoption of amendments to Oregon Administrative Rules (OAR) 660-033-0130 (Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses) and 660-033-0135 (Dwellings in Conjunction with Farm Use).

Purpose. Rule amendments are necessary to accommodate changes to Oregon Revised Statutes Chapter 215 resulting from 2019 legislation, specifically: House Bill (HB) 3024 (farm replacement dwellings) HB 2573 (cranberry bog dwellings), and HB 2106 (dog testing and training facilities). The department has published proper notice for the proposed rulemaking (see Attachment D).

The department has several additional conforming rulemaking changes to bring before the commission at its May, 2020 meeting. The recent hiring of our new farm and forest specialist, Hilary Foote, will allow the department to complete the processing of these various rule changes necessary to conform to the statutes adopted by the 2019 Legislature.

Objective. To conform Oregon Administrative Rules to recent statutory changes.

For further information about this report, please contact Gordon Howard, Community Services Division Manager, at 503-934-0034 or gordon.howard@state.or.us.

II. BACKGROUND

A rulemaking advisory committee was not established because the proposed rulemaking is limited to amending the rules to conform to statute. Below is a summary of the adopted bills and proposed amendments.

A. FARM REPLACEMENT DWELLINGS

This rule change amends OAR 660-033-0130 regarding farm replacement dwellings, governing the rules under which a property owner may replace an existing dwelling on farmland with a new dwelling. The amendments modify requirements for a lawfully established dwelling to be altered, restored, or replaced to allow a county to approve a replacement dwelling if the existing dwelling was removed, destroyed, or demolished after January 1, 1973. Previous rules required existing dwelling to have been removed, destroyed, or demolished within the past five years.

Additionally, the amended rules would specify that a county may not approve a replacement dwelling if the parcel has a lien for delinquent property taxes. However, a county may approve a replacement dwelling despite a lien for delinquent property taxes if the current dwelling is in such a state of disrepair as to be unsafe for occupancy or constitute an attractive nuisance (generally, a legal term used to describe property that would be dangerous to visitors, whether they were invited or trespassing).

This legislation follows up on previous legislation on this issue from 2013, which was ambiguously drafted and led to a series of cases at the Land Use Board of Appeals, Oregon Court of Appeals, and Oregon Supreme Court involving a replacement dwelling application in the coastal portion of Lane County. The intent of HB 3024 (2019) was to resolve the ambiguities and express the legislative intent that a property owner can replace a lawfully established dwelling that was removed, destroyed, or demolished at any time after the initiation of the statewide planning program by SB 100 in 1973.

B. CRANBERRY BOG DWELLINGS

This rule change amends OAR 660-033-0135 and authorizes, under prescribed circumstances, the construction of a farm dwelling on cranberry bogs showing a gross annual income of at least \$40,000, subject to limitations regarding other existing housing on the farm tract and limitations on future residential use of a dwelling. The rule will allow a limited number of cranberry farmers to construct a dwelling on property used for farming purposes so that those farmers can directly manage the intensive business of growing and harvesting cranberries. For farmers of other crops in Oregon the gross annual income to justify a farm dwelling is at least \$80,000.

C. DOG TESTING AND TRAINING FACILITIES

This rule change amends OAR 660-033-0130 regarding facilities on farmland for dog training classes or testing trials. The rule amendment allows such activities in pre-existing buildings as of January 1, 2019, whereas previously such buildings had to be existing as of January 1, 2013.

D. SUMMARY OF CONSIDERATIONS AND CONSTRAINTS

As this is conforming rulemaking, the department does not identify any particular considerations or constraints at this time.

III. **RECOMMENDED ACTION/CONCLUSION**

The department recommends the commission, after holding a public hearing on the proposed amendments described in this report, adopt the rule amendments as proposed in Attachments A-C with any modifications resulting from testimony received.

Recommended motion: I move that the commission approve the amendments to Oregon Administrative Rule 660-006-0130 related to Farm Replacement Dwellings, as recommended by the department and explained in the staff report and as seen in Attachment A.

Recommended motion: I move that the commission approve the amendments to Oregon Administrative Rule 660-006-0135 related to Cranberry Bog Dwellings, as recommended by the department and explained in the staff report and as seen in Attachment B.

Recommended motion: I move that the commission approve the amendments to Oregon Administrative Rule 660-006-0130 related to Dog Training Classes and Testing Trials, as recommended by the department and explained in the staff report and as seen in Attachment C.

Alternative motion: I move that the commission approve the amendments to Oregon Administrative Rule 660-006-0130 related to Farm Replacement Dwellings, as recommended by the department and explained in the staff report and as seen in Attachment A and with the following modifications: [itemize or cite changes to the department recommendation].

Alternative motion: I move that the commission approve the amendments to Oregon Administrative Rule 660-006-0135 related to Cranberry Bog Dwellings, as recommended by the department and explained in the staff report and as seen in Attachment B and with the following modifications: [itemize or cite changes to the department recommendation].

Alternative motion: I move that the commission approve the amendments to Oregon Administrative Rule 660-006-0130 related to Dog Training Classes and Testing Trials, as recommended by the department and explained in the staff report and as seen in Attachment C and with the following modifications: [itemize or cite changes to the department recommendation].

IV. **ATTACHMENTS**

A. **FARM REPLACEMENT DWELLINGS PROPOSED RULE**

B. **CRANBERRY BOG DWELLINGS PROPOSED RULE**

C. **DOG TRAINING FACILITIES AND TESTING TRIALS PROPOSED RULE**

D. NOTICE OF PROPOSED RULEMAKING

- 1. FARM REPLACEMENT DWELLING NOTICE OF PROPOSED RULEMAKING**
- 2. CRANBERRY BOG DWELLING NOTICE OF PROPOSED RULEMAKING**
- 3. DOG TRAINING FACILITIES NOTICE OF PROPOSED RULEMAKING**