Oregon
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To: Land Conservation and Development Commission

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Subject: Agenda Item 7, September 26 to 27, 2024, LCDC Meeting

Rulemaking: Farm & Forest Modernization Program

I. Agenda Item Summary

The Land Conservation and Development Commission (LCDC or commission) will consider proposed amendments to various rules guiding development on farm and forest lands in Oregon. These rule amendments are proposed as requested by the commission at its January 2024 and April 2024 meetings. Staff ask that the commission consider the Department of Land Conservation and Development's (DLCD or department) proposed amendments, consider public testimony, and give the department direction to support the commission in making a final decision on these amendments at its December 2024 meeting.

a. Purpose

Staff will brief the commission on draft farm and forest lands rule amendments. The commission will also receive public comment on the rulemaking proposal.

b. Objective

Staff request direction from the commission on any issues they would like the department to further address in advance of the December 2024 adoption hearing.

For further information about this report, please contact Hilary Foote, Farm and Forest Specialist at hilary.foote@dlcd.oregon.gov or 503-881-9249.

II. Background

Oregon's zoning-based farm and forest land conservation programs have been in place for approximately 50 years. During that time, the Oregon Legislature, the commission, and the courts have expanded, modified and re-designed the program to improve its performance in achieving the objectives of Statewide Land Use Planning Goals 3: Agricultural Lands and 4:

Forest Lands, and to adapt to changes in public priorities. These programs are living, dynamic regulatory structures, subject to amendments to state statutes, amendments to administrative rules that interpret and clarify the statutes, and court interpretations that establish case law standards.

Oregon's farm and forest conservation program attempts to balance the need for clear and objective statewide standards with provisions for local discretion and the flexibility to adapt the program to the unique circumstances of individual counties. In some cases, ambiguity in use definitions or rule language has resulted in more frequent appeals of certain types of use applications, and repeated requests for department guidance from local jurisdictions.

In January 2024, the commission initiated the Farm and Forest Modernization Project initial rulemaking and directed the department to appoint a Rules Advisory Committee (RAC). DLCD staff had proposed topics in the rulemaking charge in areas where counties or interested parties have expressed a need for additional clarity in rules.

This rulemaking is intended to improve the clarity and consistency of farm and forest program implementation across the state. The initial charge from the commission directed staff to propose rule changes that will:

- Codify identified case law standards.
- Result in more consistent implementation of case law standards.
- Provide additional clarity to counties and potential land use permit applicants with the intent of reducing unnecessary appeals.

In response, RAC members considered standards related to: ORS 215.296 (the "farm impacts test"), commercial activities in conjunction with farm use, agri-tourism and other commercial events "incidental and subordinate" and "necessary to support" standards, and transportation facilities on rural lands.

In April 2024, the commission expanded the scope of the rulemaking charge to include technical corrections, revisions, and clarifications. They directed staff and RAC members to consider:

- Codification of caselaw related to the definition of a "private park".
- Definitions of "preparation" and "processing".
- Clarification of alignment methodologies in performing a template test.
- Evidentiary standard for the verification of income for certain uses.
- Multi-path permitting uses.

The commission also directed staff and the RAC to discuss replacement dwellings, bringing their initial thoughts and any additional information the commission might need to consider in order to conduct rulemaking on this topic in 2025 or beyond.

This staff report reviews the need, the staff recommendation, and key discussion points for each of these items. Staff have grouped the charge topics into three categories: 1) proposed rule amendments for items codifying caselaw; 2) proposed rule amendments for other items; and 3) items with no proposed rule amendment.

The rulemaking notice to the Oregon Secretary of State includes the full text of revised rules and is available online here and included in the packet as Attachment A.
https://www.oregon.gov/lcd/LAR/Documents/FarmForest_NoticeFilingTrackedChanges.pdf

The rulemaking charge from the commission is available online here and included in the packet as Attachment B:
https://www.oregon.gov/lcd/LAR/Documents/2024.05.02_FF_Rulemaking_Charge_Revised.pdf

The RAC membership roster is available online at https://www.oregon.gov/lcd/lar/pages/farmforestrule.aspx and included in this packet as Attachment C.

a. Proposed Rule Amendments for Codification of Case Law

Common law (or "case law") is the body of law derived from judicial decisions by the courts. In this context, these are interpretations of statutory provisions by the Oregon Land Use Board of Appeals (LUBA), the Oregon Court of Appeals, and the Oregon Supreme Court. In the American common law system, even when a statute is at issue, determinations made in earlier court cases are extremely critical to the court's resolution of the matter.

A large body of common law exists on aspects of the farm and forest program. While these rulings have not been codified in statute or rule, they are routinely applied to reviews on appeal of land use decisions.

County planning departments have varying degrees of resources and ability to apply un-codified common law when reviewing applications. The result is unequal implementation of these caselaw standards across the state and unnecessary legal challenges when counties do not apply the standards appropriately. Codifying common law standards related to frequently applied and subjective criteria and uses will improve consistency of application of these standards and reduce unnecessary appeals.

i. The Farm Impacts Test for Conditional Uses in Exclusive Farm Use Zones

Exclusive Farm Use (EFU) zoning is established at the state level with the purpose of protecting agricultural land for farming. Use of land zoned EFU is limited to farm use and those uses that the legislature has determined are compatible with farm and forest operations or uses which may be compatible with farm and forest operations. EFU statutes in ORS 215.203 contain a definition of "farm use", and then two lists of uses which the legislature has determined may be permitted in exclusive farm use zones.

The first list contains uses which are understood to be compatible with farm and forest operations as long as they are developed and operated within the parameters established for those uses in the enacted statute and are thus permitted uses. The second list contains uses which, depending on the specific site and proposal, may or may not be compatible with the farm and forest operations which are the primary focus of the protective zoning, and are thus conditional uses.

All of the conditional uses require a county to exercise discretion and find that the use as proposed will not force a significant change in farm and forest practices in the surrounding area and will not significantly increase the cost of farm and forest practices on the surrounding lands. This discretionary review requirement is found in ORS 215.296 and is often referred to as the "farm impacts test." Counties routinely apply this test to a wide variety of EFU conditional uses to determine compatibility with the farm and forest operations, which are the focus of resource zoning.

There is a body of caselaw that offers guidance from the courts about how to conduct a sufficient analysis to provide findings under this standard. These established case law standards have not been codified in statute or rule and are therefore applied inconsistently throughout the state. The RAC considered several cases on the topic: *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991); *Von Lubken v. Hood River County*, 118 Or App 246 (1993); most notably the Oregon Supreme Court decision in *Stop the Dump Coalition v. Yamhill County*, 364 Or 432 (2019)); and *Friends of Marion County v. Marion County* (Jones/Agritainment), __ Or LUBA __ (LUBA Nos. 2021-088 & 2021-089, April 21, 2022). The holdings in *Stop the Dump Coalition v. Yamhill County* in particular have been referenced in several later court cases which were remanded for insufficient analysis and findings under the farm impacts test. Staff relied heavily on the case, which provides step-by-step guidance on how to perform a sufficient analysis, in developing the proposed rule.

Staff have prepared a quick reference guide for the draft rules in Attachment E. The first page of this guide includes recommended rule language for farm impacts test case law. Subsections (A) to (C) of the proposed language describe the steps required to reach a conclusion that the proposal will not have a significant impact on farm or forest practices or the cost of those practices in the surrounding area. Those steps include:

- Identification and description of lands surrounding the proposal,
- Identification and description of farm and forest operations being conducted on the surrounding lands including the practices being employed on those operations,
- An assessment of the types of impacts the proposal may have on those farm and forest practices,
- A determination as to whether those impacts will likely have an important influence or effect on the farm and forest practices, and
- A determination as to whether those impacts, when considered all together, are likely to have an important influence or effect on the farm or forest operation.

At the suggestion of RAC members, subsection (D) describes some examples of the types of potential impacts an applicant and the jurisdiction might consider when conducting the review. The intent is to help applicants and jurisdictions understand some common concerns agricultural producers may have of which a non-farmer applicant may not be aware.

Subsection (E) reflects *Von Lubken v. Hood River County,* an Oregon Court of Appeals case that clarifies construction related impacts should be considered as well as operational impacts.

Subsection (F) reflects *Stop the Dump Coalition v. Yamhill County*, an Oregon Supreme Court decision that clarifies that a jurisdiction cannot force an impacted neighbor to accept financial compensation instead of adopting conditions that mitigate the impacts.

RAC members discussed how to best implement this case law with administrative rule language. With their guidance, staff modified the language in proposed OAR 660-033-0130(5)(c)(C) to clarify that a more general 'cumulative impacts analysis'[1] is *not* what is being requested here. What is required is consideration of whether the individual impact to a practice is significant as well as whether the identified impacts are collectively significant in their effect on a neighboring operation. This modification was made in response to concerns expressed by some RAC members.

Any remaining concerns expressed at the RAC table are about the need for a farm impacts test and the content of the common law itself, not the way it is implemented in the proposed rule language.

The department understands that there is interest in an agency guidance document to further describe the steps outlined in subsections (A) to (C) above. Staff have added this as an item to the draft 2025 Work Plan to further support appropriate implementation.

ii. Commercial Activities in Conjunction with Farm Use as Conditional Uses in Exclusive Farm Use Zones

Commercial Activities in Conjunction with Farm Use (CACFU) are a conditional use, which is broadly defined in statute at ORS 215.213(2)(c) and 215.283(2)(a). CACFUs are the second most commonly approved nonfarm use in EFU zones. Counties review a wide variety uses at various scales and intensities under this category. More commonly approved uses include alcohol production and tasting, processing and storage facilities, transportation businesses, equipment manufacturing, sales and repair, and events.

For these uses, a key component of the review is consideration of what it means for a business to be "in conjunction with farm use." Multiple court rulings have addressed this question over the past 40 years. While DLCD has referenced these established case law standards in its model code for exclusive farm use zones, they have not been codified in statute or rule and are therefore applied inconsistently throughout the state.

The RAC considered several cases on the topic: *Balin v. Klamath County*, 3 LCDC 8 (1979); *Craven v. Jackson County*, 308 Or 281 (1989); *Chauncey v. Multnomah County*, 23 Or LUBA (1992); *City of Sandy v. Clackamas County*, 28 Or LUBA (1994); and *Friends of Marion County v. Marion County* (Jones/Agritainment), __ Or LUBA __ (LUBA Nos. 2021-088 & 2021-089, April 21, 2022).

[1] The phrase "cumulative impacts" in the resource land use context generally refers to the effects associated with a proposed non-resource development *overlaid on effects associated with other past, present, and reasonably foreseeable future non-resource developments*. Put another way, this type of cumulative impact analysis seeks to determine if the proposal represents a "tipping point" at which, when combined with conflicts associated with past and future non-resource development, it is too difficult to farm or conduct woodlot or timber operations in an area that would otherwise have been suitable for those locationally-dependent resource uses. Cumulative impact analyses are often raised as part of project review under the federal National Environmental Policy Act, and result in frequent controversy and litigation.

The reference document in Attachment E, page 2, contains the recommended rule language for CACFU case law. The department is proposing language that codifies holdings from several of these decisions that describe what it means for a business to be "in conjunction with farm use."

Very early on, LCDC[2] established with the 1979 *Balin* decision that such commercial activities should be limited to those providing products and services essential to the practice of agriculture directly to the surrounding agricultural businesses in order to be sufficiently important to justify the resulting loss of agricultural land.[3] This holding is reflected in the language proposed for OAR 660-033-0130(a)(A) and (B).

In the 1989 *Craven* case, the Oregon Supreme Court wrote that to be "in conjunction with farm use" the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates.[4] The Supreme Court concluded that the proposed winery in this case would provide a local market outlet for grape growers in the local area thereby assisting them in their agricultural efforts.[5] This holding is reflected in the language proposed for OAR 660-033-0130(a)(C).

LUBA cited and interpreted both the *Balin* and *Craven* cases in the 1994 *Sandy* case.

The language staff are proposing for OAR 660-033-0130(b) is taken from the more recent *Friends of Marion County* LUBA case that rejected a speculative argument that the proposed commercial activity, which was targeted at school children, would encourage the production of future agricultural workers. This language is intended to clarify that the relationship between the commercial activity and farm use must be direct and not simply a potential future outcome of the activity.

The central point of discussion among RAC members on this topic was whether all three standards (A), (B), and (C) need to be met to be considered "in conjunction with farm use", or whether it is sufficient to demonstrate the proposal meets either (C), the standard articulated in *Craven*, or (A) and (B).

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[2] LUBA was created in 1981 and made permanent in 1983. Before that time, land use decisions were either appealed to LCDC, a county circuit court, or the Court of Appeals directly.

[3] "*Clearly the statute is not intended to allow the establishment of grocery stores and gas stations on agricultural lands solely because they are situated in a primarily agricultural area and serve primarily agricultural needs. However, it can and should be read to express a legislative judgment that commercial activities limited to providing products and services essential to the practice of agriculture directly to the surrounding agricultural businesses are sufficiently important to justify the resulting loss of agricultural land."* Balin v. Klamath County, 3 LCDC 8, 19 (1979).

[4] *"We believe that to be "in conjunction with farm use," the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The agricultural and commercial activities must occur together in the local community to satisfy the statute."* Craven v. Jackson County, 308 Or 281, 779 P2d 1011 (1989).

[5] *"Wine production will provide a local market outlet for grapes of other growers in the area, assisting their agricultural efforts. Hopefully, it will also make [the applicant's] efforts to transform a hayfield into a vineyard successful, thereby increasing both the intensity and value of agricultural products coming from the same acres. Both results fit into the policy of preserving farmland for farm use."* Craven, 308 Or at 298.

Several RAC members felt that it would significantly weaken the existing legal standard to find that a business need only demonstrate that they enhance farming enterprises in the local area without also demonstrating a direct customer-supplier relationship essential to agriculture. The proposed language was drafted to require consideration of all three standards: (A), (B) and (C).

However, as noted above, (C) is a 1989 standard from the Oregon Supreme Court *Craven* decision involving a winery. The Oregon Winegrowers Association (OWA) expressed a preference that only the supreme court standard from *Craven* expressed in (C) should apply. OWA expressed concern that wineries may not be able meet the standard set forth in (A) and (B) that require the activity to be exclusively or primarily a customer or supplier of products or services essential to the practice of agriculture in the local area.

The legislature, at ORS 215.456, has expressly allowed wineries to be reviewed as CACFUs in the alternative to meeting the standards for wineries in ORS 215.452 or 215.453. Therefore, the proposed language in (c) and (d) conform agency rules to the statutory provisions of ORS 215.456. This is intended to address OWA's concerns and to clarify that wineries may be reviewed as CACFUs subject to the standards established by the legislature in ORS 215.456.

Staff also received several recommendations to explicitly limit certain uses from review as CACFUs including lodging, restaurants and events facilities. Staff determined that these recommendations were outside of the scope of the rulemaking charge which is to codify caselaw.

iii. <u>"Incidental and Subordinate" and "Necessary to Support" standards as applied to ORS 215.213(11) and 215.283(4), the Agri-Tourism and Other Commercial Event Standards in Exclusive Farm Use Zones</u>

In 2011 the legislature added a new use to EFU zones that allows an opportunity for four different levels of agri-tourism events or other commercial events related to a farm use.

1. Expedited review for a single, smaller event.
2. One 72-hour event up to 500 people.
3. Up to six 72-hour events.
4. Up to eighteen 72-hour events.

The requirements for these events are listed in ORS 215.213(11) and ORS 215.283(4). Since 2013, counties have issued more than a hundred agri-tourism event permits, although it is unclear how many of these are associated with the different levels of intensity permitted.

All four levels of event authorized in ORS 215.213(11)/ORS 215.283(4) must demonstrate that they are "incidental and subordinate" to existing farm use of the property. This means that farm use must remain the predominant use of the property, and the event use should not become the proverbial "tail wagging the dog."

For an application under the most intensive category for up to 18 events per year, the proposal must also be found to be "necessary to support" the commercial farm uses or the commercial agricultural enterprises in the area. As courts have noted in interpreting this language, the legislature's inclusion of a different, higher standard for up to 18 events per year as opposed to the six events per year standard is both clear and logical. However, counties have interpreted these standards in a variety of ways, leading to unequal application across the state.

The RAC considered two recent court decisions on the topic (but involving the same case or controversy) that expands on the meaning of "incidental and subordinate" and "necessary to support": *Friends of Yamhill County v. Yamhill County (DeBenedetti)*, 80 Or LUBA 135 (2019) and *Friends of Yamhill County v. Yamhill County (DeBenedetti)*, 81 Or LUBA 276 (2020). The proposed language reflects the holdings in those cases.

Attachment E, page 2 contains the recommended rule language for this area of case law. The language in (a) is intended to clarify the types of relational aspects between the events and the farm use(s) to be considered in determining if the events are incidental and subordinate and that farm use remains the primary use of the property. This includes the relative nature of the uses, the intensity of the uses and the economic value of the uses. The language in (a) reflects a requirement to compare the events proposal to farm use as a whole as it is occurring on the property. This is consistent with the statutory language which reads that "The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract."

The language in (b) is reflective of the dictionary definitions that the court used to define what it means to be "necessary to support" the commercial farm or the commercial agricultural enterprises in the area. The language in (b) reflects a requirement to compare the events proposal to all of the commercial farm uses that are occurring on the property. This is reflective of the statutory language which reads "…*the agri-tourism or other commercial events or activities…are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area."*

Some members of the RAC expressed concern that the existing "necessary to support" standard as well as the court's interpretation is overly burdensome and difficult to meet. These concerns are better expressed to the legislature, which has the authority to change the law if it is convinced that the current statutory language leads to such difficulties.

iv. Transportation Facilities on Rural Lands

The language in the Transportation Planning Rule (OAR 660-012-0065) related to transportation improvements on rural lands generally, including exception lands, lands which do not meet the state's definition for resource lands, and agricultural and forest lands. This section of rule has been described as ambiguous as to whether the farm impacts test should be applied to rural transportation facilities proposed in farm and forest zones. Staff are proposing language clarifying LCDC's intent that uses listed in OAR 660-012-0065(3) are subject to the farm impacts test, which is consistent with our guidance on the topic and recent case law.

Attachment E, page 3 contains the recommended rule language for transportation facilities on rural lands. The RAC considered two documents on this topic: a published agency guidance document and *Van Dyke v. Yamhill County*, 81 Or LUBA 427 (2020). The proposed language clarifies that certain rural transportation improvements in farm and forest zones are subject to the farm impacts test or the forest impacts test. The language clarifies that transportation uses listed in ORS 215.213(1), 215.283(1) or OAR 660-006-0025(1)-(3) are not subject to these tests consistent with the statutory direction provided in EFU zones.

There was general support among the RAC members for this proposal. Staff received only comments expressing support for this item.

v. Private Parks

A variety and intensity of activities are proposed as "private parks" in resource zones. Specific approved private park uses reported to the department include airsoft courses, frisbee golf, shooting ranges, paintball parks, demonstration gardens, events venues, fish viewing areas, and motocross tracks. Members of the Technical Working Group convened in 2023 expressed concern that it may be unclear when proposals for private parks become inappropriate for a rural environment. Members suggested the department consider rulemaking to define uses allowable as "private parks" including scale and intensity.

The RAC considered the decisions in *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 61 (2015) and *Central Oregon Landwatch v. Deschutes County*, 276 Or App 282 (2016), which considered the recreational nature of a private park allowable in resource zones.

Attachment E, page 3 contains the recommended rule language for private parks. The proposed language clarifies that a private park is primarily recreational in nature, where the focus of the recreation is on the enjoyment of the outdoors. The language also clarifies that private parks are meant to be low intensity uses. The proposed language is taken from the referenced cases.

Some RAC members requested that language be included clarifying that a private park must be appropriate for an agricultural environment. There is language to this effect in the forest rules. Other RAC members suggested including a nonexclusive list of types of activities that are not parks. Some RAC members also suggested rule language that would expand on the meaning of the term "private." After careful consideration, department staff found these proposals to be outside of the scope of the charge.

b. Proposed Rule Amendments for Other Items

i. Preparation of Products on Farmland

State law in ORS 215.203 clarifies that the general definition of "farm use" includes the "preparation of products or by-products raised on land employed for farm use." Oregon administrative rule in OAR 660-033-0020(7) defines "products or by-products raised on such land" as "those products or by-products raised on the farm operation where the preparation

occurs or on other farmland provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land."

Because "farm use of the land" includes preparation, this definition contains a circular reference that is confusing. This circular definition has been used to approve stand-alone, commercial preparation facilities with no associated farm operation as a "farm use." On land zoned for exclusive farm use, farm use is allowed outright subject to minimal, if any, review by the county.

LCDC originally added the definition for preparation in OAR 660-033-0130 to expand on the statutory definition and provide some flexibility to farmers to process some farm products produced by other farms in addition to their own crops. The intention was to allow a farmer another source of revenue to offset the capital required to install preparation equipment and facilities. The definition was not intended to allow without any further review a stand-alone commercial preparation facility with no associated farm operation. Such a stand-alone facility would appropriately be reviewed as a commercial activity in conjunction with farm use subject to the conditional use standards such as the farm impacts test.

Attachment E, page 4 contains the recommended rule language for preparation uses on farms. The proposed language creates a two-part definition for "products or by-products raised on such land." The first part of the proposed rule, OAR 660-033-0020(7)(a)(B)(i), clarifies that preparation of farm products produced on the hosting farm is allowable as a farm use. The second, OAR 660-033-0020(7)(a)(B)(ii), clarifies that preparation of products from other farms may also be considered farm use as long as the hosting property also has a farm operation that produces farm products, and those products are being prepared in the same facility as the products from other farms.

The change would not impact farmers wanting to develop preparation facilities on their farm operation in order to prepare their own farm products along with products from other farm operations.

The change would prohibit a stand-alone preparation facility with no associated farm operation from being approved as a farm use.

Department staff had originally proposed language that raised concerns among RAC members, and also led to some confusion that the department's recommendation was attempting to somehow regulate farm structures, which are exempt from standard building code requirements or state law. After discussions with the RAC, the department provided this revised recommended language, which focuses only resolving the circularity of the definition and clarifying that a farm use other than preparation must also be occurring on a farm operation where a preparation facility is proposed to be located. This revised rule language received general support from the RAC membership.

ii. <u>Evidentiary Standard for the Verification of Income for Farm Dwellings and Farm Stands in Exclusive Farm Use Zones</u>

One of the tests to obtain a permit for primary and accessory farm dwellings involves verifying that a certain amount of income was earned over a certain period from the sale of farm products produced on the property. Several counties have communicated that it can be

difficult to verify income in a reliable manner in some cases. The concerns expressed include that accountant statements and Schedule F tax documents are not specific enough to be definitive, particularly about where the products were produced, and it is difficult to verify if such documents have been filed.

For dwellings in conjunction with farm use, this information verifying income is only required once — at the time of application. There is no ongoing requirement to verify that the farming operation is continuing.

For farm stands, there is an ongoing statutory requirement that the sales from incidental retail items and event fees not exceed 25 percent of the income earned at the farm stand.

Counties take a variety of approaches to verification of qualifying income for primary and accessory farm dwellings as well as the income thresholds for farm stands. RAC and Local Official Advisory Committee members were clear that it would be helpful for the state to clarify an appropriate evidentiary standard for verification of income.

Attachment E, page 5 contains the recommended rule language for income verification evidentiary standards. The department is recommending rule language that relies on the Internal Revenue Service (IRS) tax return receipt as the minimum standard for verification of income. The proposed language also clarifies that a county may ask for any additional information it believes is necessary to demonstrate compliance with the standard.

A tax filer may request an IRS tax return transcript at no cost online or by mail. A tax return transcript is produced by the IRS and shows most line items from the original tax return as filed, along with any forms and schedules. It does not show tax account information such as refund amounts, federal tax deposits, payments, penalties and interest, or balance due. This is the least-cost method of verifying actual reported income for both applicants and reviewing jurisdictions.

For dwellings in conjunction with farm use, this information is only required once — at the time of application. There is no on-going requirement to provide income documentation once the dwelling is constructed. The proposed language standardizes what has to be provided to prove meeting of the farm income standard.

For farm stands, there is an existing statutory requirement that the income threshold continue to be met over the life of the farmstand operation. The proposed language clarifies that the county may request information documenting compliance with this standard from the farm stand operator at any time.

Some RAC members expressed concerns with privacy. As noted above, an IRS tax return receipt does not show tax account information such as refund amounts, federal tax deposits, payments, penalties and interest, or balance due. Other sensitive information may be redacted if needed.

Some RAC members preferred language that would require a written statement prepared by a certified public accountant verifying that their client has met the standard. Other RAC members, including several county planners, felt that this approach is inadequate, citing examples of misuse. Additionally, an accountant's statement generally involves a fee, while the IRS tax return transcript is free of charge.

Several RAC members proposed more stringent requirements, including requiring site-inspections by planners and submission of delivery receipts of products sold. Several RAC members also proposed requiring counties and farm stand owners to prepare and review annual reports documenting compliance with the income threshold. This would be a significant regulatory burden on both applicants/farm businesses and counties that does not exist today. The language requiring a farm stand operator to provide documentation at the county's request would support a county in a code enforcement case. Some RAC members point out that this places the burden of initiating enforcement on the community.

Several RAC members also proposed introducing language into the farm dwelling standards that would require the income to be earned from the sale of farm products that *have been produced*. Staff understands that this issue is raised to address a recent case where an applicant pre-sold newly planted and unharvested Christmas trees to a close relative in order to earn the requisite amount of farm income to qualify for a dwelling. However, this additional issue with farm income standards is not part of this rulemaking charge.

iii. Home Occupations in Exclusive Farm Use Zones

Home occupations are the most common non-resource use approved in exclusive farm use zones. Home occupations are defined in statute as a use that occurs in dwellings or other buildings normally associated with exclusive farm use zones and are operated by a resident or employee of a resident of the property. Home occupations are limited to employing five full-time or part-time persons. Counties may choose to adopt more restrictive standards for this use.

Given the ambiguity and breadth of the definition of a home occupation, a very wide variety and intensity of activities are approved as home occupations in EFU zones: hair salons, firearms dealers, tasting rooms, medical offices, events venues, daycares, funeral homes, mechanic repair shops, veterinary clinics, restaurants, etc. Sometimes uses are approved as home occupations instead of being approved under the use standards established for a particular activity by the legislature. Proposals that cannot meet the standards established for a particular use by the legislature often seek approval under the more broadly defined "home occupation" option.

For uses listed in ORS chapter 215 subject to standards established by the legislature, such as processing facilities or agri-tourism events, whether or not these may alternatively be reviewed as home occupations has been a matter of debate. Attachment D contains a list of such uses. It can be confusing for planners and applicants alike to understand what is permissible. Instances where a use is permitted as a home occupation that is more intensive in scale and scope than would otherwise be allowed under the specific use category established for it by the legislature are a concern.

As an example, ORS 215.451 provides standards for a cider business that limits the size and scope of the business, and other standards like what kind and how many incidental events, such as cider tastings, may be allowed. Currently, a county could approve a cidery as a home occupation that exceeded these standards as long as it met the home occupation standards.

Attachment E, page 6 contains the recommended rule language for home occupations. The proposed rule language would clarify that uses no more intensive in scale and scope than

would otherwise be permitted under the standards established for the use by the legislature may alternatively be reviewed as home occupations. The proposed rule also clarifies that certain home occupation businesses must be accessory to a residential use.

Under the proposed concept, an applicant for a home occupation use that is otherwise listed separately in statute may choose to either 1) pursue an approval for a home occupation permit that no more intensive than what is allowable in statute, 2) pursue an approval for a use permit subject to the standards described for that use in statute, 3) pursue an approval for a permit under an alternative category for a more intensive or larger scale use such as a commercial activity in conjunction with farm use, or 4) request an exception to planning Goal 3 and any other applicable goals.

As an example, under the proposed language, a county could still approve a small cidery as a home occupation but could not approve aspects of the cidery that were in excess of what is allowed by ORS 215.451, and the cidery would have to be incidental to the residential use of the property. The cidery could still choose to seek a permit within the limits established by the legislature at ORS 215.451. Alternatively, a proposal for a cider business exceeding the scope and scale otherwise permissible under ORS 215.451 could seek approval as a commercial activity in conjunction with farm use.

The RAC began its review by discussing language that would prohibit approval of a use otherwise listed in statute from alternatively being reviewed as a home occupation. Some RAC members, including several county planners, pointed out that, in practice, when an individual comes to the county with a proposal, the staff will work with the individual and often, if the use is small in scope and scale, will suggest that they begin a home occupation application, and then “graduate” to a more complex permit if the use grows in size and scale. Some RAC members suggested explicitly prohibiting certain types of uses such as retail sales, food and beverage service, and events venues from consideration as a home occupation. However, department staff concluded that this was beyond the rulemaking scope. The proposed language addresses this desire for flexibility in a more general way that limits the scale and scope of a proposal and reflects the input from local government planners implementing the home occupation standard as to how it works best in practice.

Several RAC members shared the view that a home occupation is meant to be a small-scale business operated inside a home. Their concern is that a home occupation should be limited to an activity associated with a dwelling that is primarily used as a home rather than something that is primarily a commercial use with a caretaker dwelling unit. These RAC members requested that the rule language include a definition clarifying that home occupations must be accessory, incidental and subordinate to the residential use of a dwelling on the property. While this suggestion is reasonable and reflects the provisions of many local government zoning codes, it is outside of the scope of the charge and is not a feature of the statutory language regarding home occupations. Staff has proposed language that would include this concept, but only for uses that are also otherwise allowed under OAR 660-033-0120. Staff believes that this approach is within the scope of the “multi-path permitting” charge.

Some RAC members opposed any change that would limit the scope of home occupation uses or that require a home occupation to be accessory to residential use of a dwelling. These RAC members believe that the limitation of five employees that was established by

the legislature is sufficient to limit the scope of home occupations in all cases. In response, department staff asserts that it was not the intent of the legislature to use the home occupation statutory allowance to create a “loophole” for a use that is bigger or more intensive than what the legislature had otherwise authorized.

c. Items with no Proposed Rule Amendment

i. Processing of Farm Products

It can be difficult to ascertain when a proposed activity is appropriately considered "preparation" which is considered "farm use" under ORS 215.203, and when an activity becomes "processing" which is a permitted use subject to the standards in ORS 215.255. Although the RAC held five three-hour meetings between March and July of 2024, there was insufficient time to fully conduct the nuanced discussion required to address this important distinction.

Some RAC members suggested that the agency address the definition of processing in the near future to avoid inadvertent permitting of processing facilities under the more lenient preparation standard.

ii. Forest Template Dwelling Test Alignments

This item concerns the alternative forest dwelling review authorized at ORS 215.750, which is commonly referred to as the "template test." The complex standards for authorization of a forest dwelling under the template test are too many to discuss in this report. In summary, the concept behind a forest template dwelling is: if an area zoned for forestry has enough existing dwellings to already compromise industrial-scale timber management, there is not a good reason to prohibit additional dwellings in that area.

There is one version of the test that authorizes the use of a rectangle rather than a square for the "template" to determine whether a new dwelling is allowed, under certain conditions. Several counties have communicated over the past several years that it is unclear how a rectangle is to be aligned "to the maximum extent possible" with the qualifying road or stream and that it is unclear what is appropriately considered a "road" in order to qualify for this version of the test.

The department presented RAC members with copies of relevant statute and rule language and examples of different methodologies that have been employed to conduct this test.

Based on their feedback, the department is proposing to provide a guidance document outlining a GIS methodology and staff are looking into the possibility of providing GIS support or a tool for counties to use in addressing this question rather than adopting rule language that would further confuse and complicate the already difficult concepts underlying the forest template dwelling test.

iii. Commercial Activities in Conjunction with Farm Use in Exclusive Farm Use Zones

As noted above, a commercial activity in conjunction with farm use (CACFU) is a conditional use, broadly defined in statute at ORS 215.213(2)(c) and 215.283(2)(a), allowing a wide variety of uses at various scales and intensities that counties can consider for approval under this category. More commonly approved uses include alcohol production and tasting, processing and storage facilities, transportation businesses, equipment manufacturing, sales and repair, and events. As with home occupations, various uses that are authorized subject to specific standards in statute are often instead reviewed as CACFUs.

The RAC discussed prohibiting uses otherwise allowed in statute from review as CACFUs. As noted above, some RAC members identified positive aspects to the flexibility to permit various scales of a use. The proposed rule revisions to home occupations will serve to clarify that this pathway is appropriate for smaller and less intensive uses than those otherwise permitted in statute. The CACFU pathway may be appropriate for uses which are larger or more intensive or which do not otherwise meet the standards for the use so long as they do meet the criteria for a CACFU as clarified in the rules recommended above to codify the current caselaw.

At this time, the department is proposing to rely on the codification of common law standards for commercial activities in conjunction with farm use to assist jurisdictions and applicants in clarifying the appropriate permitting pathway for various scales and intensities of non-farm uses.

Several RAC members suggested language that would prohibit certain types of uses such as lodging, restaurants and events venues from being reviewed as CACFUs. Some RAC members also suggested language to clarify that certain intensities and scale of use may exceed what is appropriately considered “rural” under Goal 14. These topics may be suitable for an in-depth discussion in a future rulemaking process.

iv. Replacement Dwellings

A replacement dwelling is a new home that replaces an older dwelling or a dwelling which has been destroyed, demolished, or no longer possesses the feature of a dwelling. In order to be replaced, a dwelling must have or have had certain qualifying features, such as walls and a roof, within the past three years of applying for a replacement application.

Replacement dwellings are the most common dwelling approval in farm zones and the second most common dwelling type in forest zones. Replacement dwellings are a sub-1 use meaning that counties must offer them as an option and may not apply more restrictive standards than those in statute or rule. When a dwelling is replaced, the old dwelling must be demolished, removed, or “converted to an allowable nonresidential use.”

Commissioners directed department staff to discuss this issue with the RAC. RAC members held a variety of different and opposing opinions on this issue.

- Several RAC members are concerned that modest farm dwellings are being replaced with large and extravagant dwellings for use as country estates rather than as farm dwellings. The concern is that this practice may effectively remove the property from farm use and increase property values beyond what is attainable for farmers. Some RAC members proposed consideration of a standard, limiting the square footage of replacement dwelling to address this concern. One recommendation we have received is to limit replacement dwellings to 120 percent of the original square footage or 2,000 square feet, whichever is greater.

  Members suggested that the department research the historic difference in size between existing and replacement dwellings, changes in land value following replacement dwelling approvals, and the difference in farm use before and after a replacement dwelling is approved.

- Several RAC members also expressed concern that farm dwellings are being replaced with large dwellings for the purpose of renting them out as short-term lodging.

  Members suggested that the department research any trends in applications for short term rental home occupations following replacement dwelling approvals.

- Originally, dwellings being replaced were those established prior to the adoption of the land use planning system. A wide variety of dwelling uses are now permitted in farm and forest zones. Most of these dwelling types come with conditions that require the dwelling to be associated with a farm operation or are subject to conditions, like being located on a specific area of a property such as a nonfarm dwelling. A key date in the history of the program is the passage of HB 3661 in 1993, which established many of the dwelling tests and conditions that we have now such as the provisions for lot of record dwellings, non-farm dwellings, and template tests. Property owners are now replacing dwellings that were permitted in the 1990s for specific purposes and under very specific review standards. Some RAC members suggested that dwellings established before 1993 might be reviewed as nonconforming dwelling replacements and dwellings permitted after 1993 should be required to meet the standards for a dwelling in a farm zone.

- Some RAC members shared that they do not see any concerns or issues with replacement dwellings and suggested that the department focus on other issues.

Staff committed to researching the topic, which will be captured in a white paper that staff aim to produce next year.

d. Conforming Rule Changes

These rule updates are necessary to align agency rules with new provisions of law enacted by the legislature and currently in effect. These are instances where the rule language, as it is, no longer reflects the actual legal requirements set forth in state statutes. Even though the effective statutory provisions take precedence over administrative rules, the outdated rule language may lead to confusion and mistaken application of regulations that have changed.

Rule amendments are necessary to implement adoption of the following laws passed by the Oregon Legislature:

Law	Effect	OAR
Oregon Laws 2023, chapter 301, sections 1 to 3	Changed the requirements for replacement dwellings in forest zones at ORS 215.755 to mirror the new requirements in ORS 215.291 which were previously applicable only to farm zones.	660-006-0025(3)(o) and (p)
Oregon Laws 2023, chapter 81, section 2	Adds rabbits and rabbit products to the list of farm products which may be processed at a farm product processing facility under ORS 215.255.	660-033-0130(28)

Oregon Laws 2023, chapter 301, sections 1 to 3	Modified the requirements for replacement dwellings in farm zones.	660-033-0130(8)
Oregon Laws 2019, chapter 416, sections 1 to 2	Modified the requirements for expansion of certain nonconforming schools in farm zones.	660-033-0130(18)(b)
Oregon Laws 2021, chapter 369, sections 9 and 10	Added childcare facilities, preschool recorded programs or school-age recorded programs as a new use in exclusive farm use zones.	660-033-0120
Oregon Laws 2019, chapter 307, sections 2 and 3	Section 3 repealed Section 2 on January 2, 2022, removing special provisions for farm dwellings in conjunction with cranberry operations.	660-033-0135(11)
Oregon Laws 2019, chapter 433, sections 2, 3, and 4	Language in Section 3 clarifying effective dates for the new template test provisions has been removed to conform to statute. Section 4 repealed Section 2 on January 2, 2024, which had allowed a one-time opportunity which expired at the end of 2023.	660-006-0027(7)

These changes to rule are available for review in the Rulemaking Notice at: https://www.oregon.gov/lcd/LAR/Documents/FarmForest_NoticeFilingTrackedChanges.pdf

III. Process

The department appointed a Farm and Forest Conservation Program Improvements RAC as directed by LCDC in January 2024. The RAC consists of individuals and organizations likely to be impacted by changes to the Farm and Forest conservation programs and persons who also have a strong understanding and working knowledge of the history and structure of the state's farm and forest zoning-based land conservation programs.

The RAC included six county planners from various regions of the state. Since the objective of the rulemaking is to provide clarity and achieve greater consistency in implementation, it was important to the department to consider feedback from the people who interpret and implement LCDC-adopted administrative rules on a daily basis. County planners are responsible for explaining these rules to potential applicants and other members of the community, ensuring that applications contain sufficient information and evidence, and are the ones responsible for writing findings determining whether individual applications comply with the state's statutes and administrative rules.

The RAC also included several land use lawyers representing both development interests and conservation interests, several farmers, state agency staff, scholars, land trust organizations and interest groups.

The RAC roster is available online at https://www.oregon.gov/lcd/lar/pages/farmforestrule.aspx and included in this packet as Attachment C.

The RAC held five three-hour meetings between March 2024 and July 2024 to discuss the topics that are summarized above. Recordings of those meetings are available for viewing on the department's YouTube channel: https://www.youtube.com/@OregonDLCD/streams

In developing the recommendations described above, staff carefully considered viewpoints expressed by RAC members during these meetings as well as written comments received both from the RAC and from the public. The written comments are posted on the rulemaking website: https://www.oregon.gov/lcd/lar/pages/farmforestrule.aspx

IV. Conclusion

No action is required. Written public comment is accepted by emailing Casaria.Taylor@DLCD.Oregon.gov until 11:55 pm on October 16, 2024.

The commission may direct staff to further address specific issues prior to adoption at the December meeting.

V. Attachments

a. Attachment A: Notice of Proposed Rulemaking Including Statement of Need & Fiscal Impact

b. Attachment B: Rulemaking Charge

c. Attachment C: Rulemaking Advisory Committee Members

d. Attachment D: Uses That are Both Specifically Allowed by a State Statute and as Home Occupations

e. Attachment E: Quick Reference Proposed Rule Language

OFFICE OF THE SECRETARY OF STATE
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SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON

ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 660
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FILED
08/29/2024 10:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend rules to: comply with legislation, codify caselaw, define terms, and standardize evidentiary standards

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/16/2024 11:55 PM

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

CONTACT: Casaria Taylor
971-600-7699
casaria.taylor@dlcd.oregon.gov

635 Capitol St.
Ste. 150
Salem,OR 97301

Filed By:
Casaria Taylor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/27/2024
TIME: 8:00 AM
OFFICER: LCDC

IN-PERSON HEARING DETAILS
ADDRESS: Department of Land Conservation and Development - Basement Hearing Room, 635 Capitol St., Basement Hearing Room, Salem, OR 97301
SPECIAL INSTRUCTIONS:
If you intend to testify, please pre-register here so that we have your name in the queue:
https://www.oregon.gov/lcd/commission/pages/public-comment.aspx

If you intend to testify and do not have access to a computer, please call Denise Johnson at 971-375-1864 before Tuesday, September 24, 2024. Phone participants will be able to enter the testimony queue the day of the meeting by pressing *9.

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 253-215-8782
CONFERENCE ID: 89925249827
SPECIAL INSTRUCTIONS:
If you intend to testify, please pre-register here so that we have your name in the queue:
https://www.oregon.gov/lcd/commission/pages/public-comment.aspx

If you intend to testify and do not have access to a computer, please call Denise Johnson at 971-375-1864 before Tuesday, September 24, 2024. Phone participants will be able to enter the testimony queue the day of the meeting by

pressing *9.

NEED FOR THE RULE(S)

1) Conforming rulemaking:

The conforming rule amendments are necessary to implement adoption of the following Laws passed by the Oregon Legislature:

- OAR 660-006-0025(3)(o) and (p): Oregon Laws 2023, chapter 301, sections 1 to 3 replaced the requirements for replacement dwellings in forest zones at ORS 215.755 with the new requirements in ORS 215.291 which were previously applicable only to farm zones.
- OAR 660-033-0130(28): Oregon Laws 2023, chapter 81, section 2 adds rabbits and rabbit products to the list of farm products which may be processed at a farm product processing facility under ORS 215.255.
- OAR 660-033-0130(8): Oregon Laws 2023, chapter 301, sections 1 to 3 modified the requirements for replacement dwellings in farm zones.
- OAR 660-033-0130(18)(b): Oregon Laws 2019, chapter 416, sections 1 to 2 modified the requirements for expansion of certain nonconforming schools in farm zones.
- OAR 660-033-0120: Oregon Laws 2021, chapter 369, sections 9 and 10 adds childcare facilities, preschool recorded programs or school-age recorded programs as a new use in exclusive farm use zones.
- OAR 660-033-0135(11): Oregon Laws 2019, chapter 307, section 3 repealed Section 2 on January 2, 2022 which had authorized special provisions for farm dwellings in conjunction with a cranberry farm use.
- OAR 660-006-0027(7): Oregon Laws 2019, chapter 433, section 4 repealed section 2 on January 2, 2024. The language in Oregon Laws 2019, chapter 433, section 3 clarifying past effective dates has been removed to conform to statute.

2) Common Law Standards:

Common law (or 'case law') is the body of law derived from judicial decisions by the courts. In this context, these are interpretations of statutory provisions by the Land Use Board of Appeals, the Court of Appeals, and the Oregon Supreme Court. In the American common law system, even when a statute is at issue, determinations made in earlier court cases are extremely critical to the court's resolution of the matter before it. A large body of common law exists on aspects of the farm and forest program which has never been codified in statute or rule and is routinely applied to reviews on appeal of land use decisions to the courts. County planning departments have varying degrees of resources and ability to apply un-codified common law when reviewing applications. The result is unequal implementation of these caselaw standards across the state and unnecessary legal challenges when the standards are not applied appropriately. Codifying common law standards related to frequently applied and controversial criteria and uses will improve consistency of application of these standards and reduce unnecessary appeals. The Department is proposing to codify certain common law standards related to the farm impacts test, commercial activities in conjunction with farm use, the 'incidental and subordinate' and 'necessary to support' standards for agri-tourism and other commercial events, transportation facilities on rural lands and the recreational nature of private parks.

3) Circular definition of 'preparation':

ORS 215.203 clarifies that "farm use" includes the preparation of products or by-products raised on land employed for farm use. OAR 660-033-0020(7) defines "Products or by-products raised on such land" as "those products or by-products raised on the farm operation where the preparation occurs or on other farmland provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land." Because "farm use of the land" includes preparation, this definition contains a circular reference that essentially says preparation is a "farm use" provided preparation is only occurring on land being used for the primary purpose of obtaining a profit in money from preparation.

This circular definition has been used to approve as a "farm use" stand-alone, commercial preparation facilities with no associated farm operation. On land zoned for exclusive farm use, farm use is allowed outright subject to minimal review by the county. The Land Conservation and Development Commission added the definition to OAR 660-033-0020 in order to expand on the statutory definition and provide some flexibility to farmers to process some farm products produced by other operations in the local agricultural area in addition to their own crops thus providing a source of revenue to offset the capital required to install the preparation equipment and facilities. The Commission did not intend for that definition to allow outright a stand-alone commercial preparation facility with no associated farm operation. Such facilities are appropriately reviewed as Commercial Activities in Conjunction with Farm Use subject to the farm impacts test.

4) Evidentiary standard for the verification of income:
Several Counties have communicated that it is difficult to verify income in a reliable manner. The concerns expressed include that Schedule F tax documents are not specific enough to be definitive, particularly about where the products were produced, and it is difficult to verify if such documents have been filed. Counties take a variety of approaches to verification of qualifying income for primary and accessory farm dwellings as well as income thresholds for farm stands and other types of activities which are intended to be subordinate to farm use. It has been recommended that it would be helpful for the state to clarify an appropriate evidentiary standard for verification of income.

5) Home Occupation:
Home Occupations are the most common non-resource use approved in exclusive farm use zones and the second most commonly approved non-resource use in forest zones. At the state level, Home Occupations are vaguely defined as a use that occurs in dwellings or other buildings normally associated with exclusive farm use zones and operated by a resident or employee of a resident of the property. Home Occupations are limited to employing five full-time or part-time persons. Counties may choose to adopt more restrictive standards for this use.

Given the ambiguity and breadth of the definition of a Home Occupation, a very wide variety and intensity of activities are approved as Home Occupations in EFU zones: hair salons, firearms dealers, tasting rooms, medical offices, events venues, daycares, funeral homes, mechanic repair shops, veterinary clinics, etc. Some proposals that cannot meet the standards established for a particular use by the legislature often seek approval under the more broadly defined "Home Occupation" option.
For uses provided in ORS chapter 215 subject to standards, like processing facilities or agri-tourism events, whether or not these may alternatively be reviewed as Home Occupations has been a matter of debate. It can be confusing for planners and applicants alike to understand what is permissible. This rulemaking proposes to clarify that uses less intensive in scale and scope than would otherwise be permitted under the standards established for the use by the legislature may alternatively be reviewed as home occupations.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- ORS chapter 215, OAR chapter 660, divisions 6 and 33, and OAR 660-012-0065
https://www.oregon.gov/lcd/LAR/Pages/index.aspx
- The relevant county code documents and fee schedules discussed below are available from each local government within the State of Oregon, either at the local government offices, or online, or both.
- https://www.irs.gov/businesses/get-a-business-tax-transcript
- Information from the DLCD Farm and Forest Reporting Database is available on request from the agency.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

According to the 2017 census of agriculture, 94 percent of Oregon's farm producers identify as white and just under three percent of Oregon's farm producers identify as Hispanic or Latino. Less than one percent of Oregon's farm producers identified themselves as American Indian or Alaskan native, Asian, Hawaiian, or black or African American. 92 percent of farmland acreage in the state is owned by persons identifying as white, five percent is owned by persons identifying as American Indian or Alaskan native, three percent is owned by persons identify as more than one race and one percent is owned by persons identifying as Hispanic, Latino or of Spanish origin. Less than one percent of owners of farmland identified themselves as Asian, Hawaiian, or black or African American. These statistics provide insight into farming in Oregon as a whole, but information provided by the census of agriculture does not reflect what is happening only on land zoned for exclusive farm use or forest use which is the subject of this rulemaking.

It is important to note that the census of agriculture includes all land in farm use regardless of where that land is or how that land is zoned. Statewide Planning Goal 3 does not apply to land within urban growth boundaries and so does not protect land being farmed in urban areas or developing areas within UGBs. It may be useful to review racial statistics on the distribution of urban farm producers and rural farm producers, however we are not aware of any such data set. A number of articles have been published over the five years focused on the role of urban agriculture in social justice, access to food and community revitalization. The Department is aware of the growing importance of urban agriculture in Oregon. Last year, Portland received one of 17 new USDA/NRCS urban agriculture centers nationwide to receive support from USDA's Urban and Innovative Community-Based Organization Fund. However, the farm and forest conservation program and the proposed rule changes do not apply to urban or peri-urban farm operations within urban growth boundaries.

Statewide Planning Goal 3 also does not apply to lands for which a county has taken an exception to the goal. Even though land may have characteristics that meet the state's definition for protection as agricultural land or timber land, a county may zone resource land for other purposes under certain conditions. These "exception lands" include a variety of rural lands which are planned for rural residential, rural commercial and rural industrial development rather than for agricultural or timber production. Most rural zones that are zoned for non-resource purposes, like rural residential zones, do also permit farming and timber operations to occur on those exception lands. The USDA census of agriculture does not distinguish between farm operations conducted on exception land and farm operations conducted on resource lands. The census definition of a "farm" is any place from which $1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year. It is worth noting that this definition includes hobby or lifestyle operations which may be occurring on rural residential properties. It would be useful to be able to look at ownership of rural exception lands and resource lands by race and to identify the number of farm and farm acres located on exception lands and on resource lands, however, we are not aware of a dataset that would offer that insight. The proposed rule changes only apply to land zoned for farm and forest use.

DLCD does not have the ability to "clip" agricultural census data to lands protected under the farm and forest conservation program and is not aware of any other data source which would provide insight specifically into racial ownership of land protected under the farm and forest conservation program, or the race of recipients of non-resource development permits issued on land protected under the farm and forest conservation program. It may be reasonable to assume that, like Oregon farmland in general, a very high percentage of land protected under the conservation program which is the subject of this rulemaking is owned by people who would identify as white.

Much has been written in recent years about historical racial inequities in farmland ownerships which is reflected in the statistics on ownership of farmland generally in Oregon above, particularly around grant and loan practices. There has also been a surge in focus on facilitating access to capital for new and beginning and disadvantaged farmers who have historically faced barriers in securing land access. Oregon's agricultural land conservation program is focused on protecting rural land consisting of good agricultural soil. The program was intended to be agnostic to ownership or the

farm practices occurring on that land. There are statutory prohibitions against the regulation of customary farm or forest practices by the land use planning program. Practices are regulated by the Oregon Department of Agriculture, the Department of Environmental Quality, the Oregon Department of Forestry and other sister agencies. The focus of the program is protecting the limited amount of good agricultural soil in the state to support the agricultural economy while allowing for limited non-resource development within protected areas when it is found that such development is compatible with and will not negatively impact agricultural or forest operations.

The Department has heard concerns that the minimum parcel size standards for protected agricultural lands may be a barrier to new and beginning and disadvantaged farmers. In other words, the concern is that large farm parcels may be less affordable for aspiring farmers and smaller rural residential parcels that allow small-scale farming are not affordable at market rates. In response, the department conducted a review of tax lot acreage of land zoned Exclusive Farm Use in Multnomah County which revealed that 95 percent of EFU tax lots in Multnomah County are already smaller than the 80-acre minimum parcel size for farm zone, 75 percent of all EFU tax lots in Multnomah County are smaller than 20 acres in size and 59 percent of EFU tax lots in Multnomah County are smaller than 10 acres in size. Similar evaluations for other Oregon counties will be conducted as part of the 2022-2023 Biennial Farm and Forest Land Use Report to the Legislature. The current rulemaking, however, does not address parcel size standards or partitioning rules.

A primary goal of the current rulemaking is to improve the clarity and consistency of implementation of the farm and forest conservation program across the state. Oregon's land use planning program attempts to balance clarity and objectivity in the regulatory framework and allowing for a degree of local control and discretion. The farm and forest land conservation program contains some clear and objective elements, areas where discretion is given to county jurisdictions, and also areas which lack clarity. Over the past fifty years the program has evolved through action of the legislature, the Commission and the courts. As noted above, codifying case law and clarifying certain sections of rule are intended to improve consistency of implementation. Lack of clarity in program interpretation often results in uncertainty, not only for counties tasked with implementing the program, but also for potential applicants and the public with an interest in the land use review. Applicants who have access to legal or private land use planning support are often better able to navigate these more ambiguous areas such as understanding how uncodified common law might be applied in the event of an appeal or interpreting vague regulatory definitions. Applicants who do not have access to legal or private land use planning support - for financial or other reasons - may not have the same degree of ability to prepare a defensible permit application or see their application through an appeals process. Such disadvantaged applicants are likely to include disproportionately high percentages of racial and ethnic minority populations, because such populations generally have lower than median household incomes. Improvements in the clarity and consistency of program implementation are expected to make the permitting process easier to navigate, not only for planning staff, but for all applicants as well.

FISCAL AND ECONOMIC IMPACT:

1) Conforming rulemaking:

These rule updates are necessary to align agency rules with new provisions of law enacted by the legislature and currently in effect. The rule language, as it is, no longer reflects the actual legal requirements for replacement dwellings. Even though the effective statutory provisions take precedence over a rule, the outdated rule language may lead to confusion and mistaken application of regulation which is no longer effective. Because the rulemaking will align our agency rules with law that is currently in effect, there is no fiscal or economic impact to state agencies, local government or the public. Because the rulemaking will align our agency rules with law that is currently in effect, there is no fiscal or economic impact to small businesses.

2) Common Law Standards:

This rulemaking includes codifying certain common law standards related to the farm impacts test, commercial activities in conjunction with farm use, the "incidental and subordinate" and "necessary to support" standards for agri-tourism and other commercial events and the recreational nature of private parks. The intent in codifying the selected common law standards is to improve the clarity of rules adopted by the Commission, consistency of application of common law standards in local land use decisions, and reduce unnecessary legal appeals and remands when common law standards have not been applied.

The agency has received comments expressing concern that some of the common law standards the agency has selected to codify may make preparation of land use application materials more onerous for potential applicants by requiring more detailed description of potential impacts. However, if the agency's rules are codifying common law standards, they are not imposing additional regulatory burdens on land use applicants that were not already in place, presuming the common law standards were being properly applied by a local jurisdiction when reviewing land use applications.

The Department has received comments expressing concern that the common law standards associated with commercial activities in conjunction with farm use will prevent some types of activities from obtaining permits. A third of Oregon's counties currently have substantially similar language to the language proposed in their ordinances. Four counties have more restrictive standards than the proposed language. The Department reviewed permit approvals issued for commercial activities in conjunction with farm use across the state between 2008 and 2021 and found that 39 percent of permits issued for commercial activities in conjunction with farm use were issued in the 33 percent of counties who had already adopted the proposed common law language into their ordinances. And those counties that have not expressly incorporated these common law provisions into their local ordinances are still bound to apply the common law standards advanced in court cases.

3) Circular definition of "preparation":
Applicants proposing to develop stand-alone, commercial farm product preparation facilities in an exclusive farm use zone that are not associated with a farm operation would seek permit review under the Commercial Activity in Conjunction with Farm Use category rather than as a "farm use" allowed outright in the zone. This would likely require an applicant to prepare a more detailed land use permit application and potentially involve a higher permit review fee as established by the reviewing jurisdiction.

The change would not impact farmers proposing to develop preparation facilities on their farm operation in order to prepare their farm products in conjunction with farm products produced elsewhere. The change does not impact the definition of "farm use" applied to forest zones in OAR 660-006-0025 which refers to ORS 215.203 directly.

While the proposed administrative rule amendments are not technically required to be included as language in a local government development code, ORS 197.646(3) requires a local government to directly apply such a standard contained within the Commission's adopted administrative rules if the standard is not contained within the local government's development code. This could require some extra effort on the part of local jurisdiction staff to directly apply new rule standards.

4) Evidentiary standard for the verification of income:
The proposed rulemaking will establish an IRS Tax Return Receipt as the basic acceptable documentation of farm income earned for primary and accessory farm dwellings while clarifying that local jurisdictions may request additional information. A filer may request an IRS tax return transcript at no cost online or by mail. A tax return transcript is produced by the IRS and shows most line items from the original tax return as filed, along with any forms and schedules. It does not show tax account information such as refund amounts, federal tax deposits, payments, penalties and interest, or balance due. The IRS website indicates that the transcript is provided free of cost. The impact to the

applicant is the time required to request the document.

The rule revision would only apply to new primary and accessory farm dwelling applications and new farm stand operations approved under the standards set forth in ORS 215.283(1)(o) or 215.213(1)(r) following rule adoption.

The applicant for a dwelling affected by this provision would only be required to provide the information at the time of application for the permit, not on an ongoing basis.

The proposed rulemaking will establish an IRS Tax Return Receipt as the basic acceptable documentation of the annual sales requirement at a farm stand while clarifying that the documentation may be provided at the request of the local jurisdiction. As noted above, the IRS provides the document free of charge to the filer. The impact to the farm stand operator is the time required to request the document. Because the local jurisdiction may choose to request documentation of compliance or not, any financial impact to the local jurisdiction associated with review of the documentation would be at their discretion. The farm stand applicant and operator may be required to provide this information on a periodic basis after initial approval of a permit approved under the standards set forth in ORS 215.283(1)(o) or 215.213(1)(r) in order to verify continuing compliance with state law.

5) Home Occupation:
The proposed rulemaking clarifies that a home occupation business is accessory to a residential use and limits proposals for home occupations to a scale and scope that is no more intensive than would otherwise be allowed for the use were it to be permitted under another provision in ORS 215.213, 215.283 or 215.284. The intent of the rule is to prevent a situation where a use is permitted as a home occupation that is more intensive in scale and scope than otherwise allowable under the specific use category established for it by the legislature. For example, a cider business of a smaller scope and scale than permitted under ORS 215.451 might be considered as a home occupation, but a proposal for a cider business exceeding the scope and scale otherwise permissible under ORS 215.451 would be more appropriately reviewed as a commercial activity in conjunction with farm use.

Applicants for new home occupation permits may be impacted by the rule if the application is for a use that is otherwise allowed in statute subject to standards. Such applicants may choose to either 1) pursue an approval for a home occupation permit that is no more intensive than what is otherwise allowable in statute, 2) pursue an approval for a use permit subject to the standards described for that use in statute, 3) pursue an approval for a permit under an alternative category for a more intensive or larger scale use such as a commercial activity in conjunction with farm use, or 4) request an exception to Goal 3 and any other applicable goals. Depending on the scope and scale of the applicant's proposal, more or less detail may be required to support an application and permit review fees may be more or less expensive.

COST OF COMPLIANCE:
(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) Conforming rulemaking:
Because the rulemaking will align our agency rules with law that is currently in effect, there is no new fiscal or economic impact to state agencies, local government or the public.

Because the rulemaking will align our agency rules with law that is currently in effect, there is no fiscal or economic impact to small businesses.

2) Common Law Standards:
The main impact upon state agencies, units of local government, and members of the public would arise in areas subject to local government jurisdictions that have not incorporated common law caselaw standards regarding Oregon's system of regulating farm and forest lands. In such areas, when state agencies and members of the public are applicants for land use permits, they will need to address additional applicable standards not expressly contained within the local government's existing code. And those local governments will be required to spend additional effort and cost in reviewing applications under those standards. However, the current situation in those jurisdictions provides less certainty for applicants, since if an opponent or critic of the application were to bring forward the common law caselaw standards, the applicant and the local government would be compelled to address those standards, either as part of the initial application or after remand of the application to the local government by the Land Use Board of Appeals. Such an outcome would be demonstrably worse for both the applicant (a state agency or a member of the public) and the local government in terms of lost time, and lost financial resources needed to retroactively address the common law caselaw standards.

While the proposed administrative rule amendments including these common law caselaw standards are not technically required to be included as language in a local government development code, ORS 197.646(3) requires a local government to directly apply such a standard contained within the Commission's adopted administrative rules if the standard is not contained within the local government's development code. This could require some extra effort on the part of local jurisdiction staff to directly apply newly codified rule standards.

Small businesses subject to land use jurisdictions that have not incorporated caselaw standards into their development codes that are also applying for land use permits in farm and forest zoned areas may be impacted by these rules. The Department does not have an estimate of their number. Small businesses would be potentially impacted by these rules in the same manner as members of the public described above. The Department does not have an estimate of either the increased costs associated with compliance with existing caselaw standards or the decreased costs associated with the lessening of uncertainty and litigation potential for small businesses, which is the same as for members of the public.

3) Circular definition of 'preparation':
Applicants for permits for stand-alone, commercial preparation facilities in farm zoned areas not associated with a farm operation may be impacted by this rule. Potential applicants would seek permit review under the Commercial Activity in Conjunction with Farm Use category rather than as a 'farm use' allowed outright in the exclusive farm use zone. Local governments would potentially be processing new applications for a "stand-alone" commercial preparation facility within farm zoned areas as commercial activities in conjunction with farm use. State agencies would not be affected by the rule.

Small businesses applying for permits for stand-alone, commercial preparation facilities in farm zoned areas not associated with a farm operation may be impacted by these rules. Counties do not report to the Department on approvals or reviews associated with "farm use" in exclusive farm use zones. Therefore, the Department does not have an estimate of their number.

There are no expected reporting, recordkeeping and administrative activities required of small business to comply with the rule(s).

Small businesses proposing to develop stand-alone, commercial preparation facilities not associated with a farm operation would seek permit review under the Commercial Activity in Conjunction with Farm Use category rather than as a "farm use" allowed outright in the zone. This would likely require an applicant to prepare a more detailed land use

permit application and potentially involve a higher permit review fee as established by the reviewing jurisdiction. Standards and criteria for review of Commercial Activity in Conjunction with Farm Use applications vary from county to county as do permit fees.

4) Evidentiary standard for the verification of income:
Applicants for primary and accessory farm dwellings based on an income standard may be impacted by the rule. However, applicants for primary and accessory farm dwellings are already required to document farm income to justify approval of the permit, so this rule would at most change the method of proof.

Although the permitting jurisdiction may currently request documentation of ongoing compliance with permit conditions, including documentation of the annual sales requirements for farm stands, operators of new farm stands approved under the standards set forth in ORS 215.283(1)(o) or 215.213(1)(r) may be economically affected by the rule. The proposed rule clarifies that the local jurisdiction may request documentation of compliance with the annual income standard and that such documentation will include an IRS Tax Return Receipt and any other documentation the local jurisdiction may request to verify that the annual income standard has been met. Although providing evidence of compliance may be an administrative burden on small businesses, the proposed rule provides certainty and should help alert small businesses that they may be asked to provide such documentation in the future so that they may be prepared to produce the required documentation.

Small farm businesses applying for permits for primary farm dwellings and accessory farm dwellings under the income standard would be subject to the rule. Between 2011 and 2021 an average of 47 primary farm dwellings and 52 accessory farm dwellings have been approved annually. The Department does not collect data that would assist it in determining whether dwelling approvals are associated with small farm businesses or large farm operations. The rule revision would only apply to new primary and accessory farm dwelling applications. It is reasonable to assume that the impact would be on something below an average of 47 small businesses applying for primary farm dwellings and 52 small businesses applying for accessory farm dwellings a year. Also note that applicants for these permits are already required to document farm income to justify approval of the permit, so this rule would at most change the method of proof.

Since 2008 just over 100 farm stands permits were approved in Oregon as reported by counties for an average of 6.25 permits a year. The Department does not collect data that would assist it in determining whether the farm stand approvals are associated with small farm businesses or larger farm operations. The rule revision would only apply to new farm stand operations. It is reasonable to assume that the impact would be on something below an average of 6.25 new small farm stand businesses a year.

Permit applicants for new farm dwellings and accessory farm dwellings would not have increased reporting, recordkeeping, and administrative activities and cost because proof of farm income is already required as part of the approval process for these permits. It is not expected that standardizing the method of documenting compliance with this approval standard will increase administrative activities and cost for small businesses.

Although the permitting jurisdiction may currently request documentation of ongoing compliance with permit conditions, including documentation of the annual sales requirements for farm stands, operators of new farm stands approved under the standards set forth in ORS 215.283(1)(o) or 215.213(1)(r) may be economically affected by the rule. The proposed rule clarifies that the local jurisdiction may request documentation of compliance with the annual income standard and that such documentation will include an IRS Tax Return Receipt and any other documentation the local jurisdiction may request to verify that the annual income standard has been met. Although providing evidence of compliance may be an administrative burden on small businesses, the proposed rule provides certainty and should help

alert small businesses that they may be asked to provide such documentation in the future so that they may be prepared to produce the required documentation.

As noted above, the impact to potential small businesses applying for new primary or accessory farm dwelling permits is limited to the time required to request a copy of the Tax Return Receipt from the IRS.

At this time, a county may request that a farm stand operator provide evidence of compliance with conditions of permit approval for a farm stand. The new rule language does not impose any additional burden on farm stand operators. It only clarifies one type of document which may be requested as evidence.

Although the permitting jurisdiction may currently request documentation of ongoing compliance with permit conditions, including documentation of the annual sales requirements for farm stands, operators of new farm stands approved under the standards set forth in ORS 215.283(1)(o) or 215.213(1)(r) may be economically affected by the rule. The proposed rule clarifies that the local jurisdiction may request documentation of compliance with the annual income standard and that such documentation will include an IRS Tax Return Receipt and any other documentation the local jurisdiction may request to verify that the annual income standard has been met. Although providing evidence of compliance may be an administrative burden on small businesses, the proposed rule provides certainty and should help alert small businesses that they may be asked to provide such documentation in the future so that they may be prepared to produce the required documentation.

5) Home Occupation:
Applicants for new home occupation permits may be impacted by the rule if the application is for a use that is otherwise allowed in statute subject to standards. State agencies will not be impacted by the rule(s). Units of local government that currently have no restrictions on home occupations reflected in the rule(s) would need to either amend their development codes to reflect the new provision, or directly apply the administrative rule provision as required by ORS 197.646(3).

Applicants for new home occupation permits may be impacted by the rule if the application is for a use that is otherwise allowed in statute subject to standards. Since 2008 just over 740 home occupation permits were approved in Oregon as reported by counties for an average of 46 permits a year. Since a small business is an independently owned enterprise with 50 or fewer employees, a home occupation proposal is necessarily a proposal to create a small business. The Department does not collect data that would help it determine how many home occupation approvals do not comply with standards for a use that is otherwise allowed in statute. The rule revision would only apply to new home occupation applications. It is reasonable to assume that the impact would be on something below an average of 46 small businesses applying for home occupation permit approvals a year.

The Department has not identified additional reporting, recordkeeping, and administrative activities and cost required for small businesses to comply with the rule(s).

Small business applicants for new home occupation permits may be impacted by the rule if the application is for a use that is otherwise allowed in statute subject to standards. An applicant may be required to adjust the scope and scale of their proposal to either 1) pursue an approval for a home occupation permit that is no more intensive than what is otherwise allowable in statute, or 2) pursue an approval for a use permit subject to the standards described for that use in statute. Depending on the scope and scale of the applicant's proposal, more or less detail may be required to support an application and permit review fees may be more or less expensive.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department's rulemaking advisory committee included several members who expressed the interests of small businesses, including the Oregon Farm Bureau, Oregon Property Owners Association, and several individual farmers.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

HOUSING IMPACT STATEMENT:

The proposed change has no impact on any housing materials and labor costs, administrative construction or other costs, land costs, or other costs, because it does not impact urban areas zoned for residential uses, unincorporated community areas zoned for residential use, or rural residential areas zoned for residential use.

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

1) A conforming rulemaking is needed to implement adoption of the following laws passed by the Oregon Legislature: Oregon Laws 2023, chapter 301, sections 1 to 3 and Oregon Laws 2023, chapter 416, sections 1 to 2.

2) Rulemaking is proposed to codify certain common law standards. Common law (or "case law") is the body of law derived from judicial decisions by the courts. In this context, these are interpretations of statutory provisions by the Land Use Board of Appeals, the Court of Appeals, and the Oregon Supreme Court. In the American common law system, even when a statute is at issue, determinations made in earlier court cases are extremely critical to the court's resolution of the matter before it. A large body of common law exists on aspects of the farm and forest program which has never been codified in statute or rule and is routinely applied to reviews on appeal of land use decisions to the courts. County planning departments have varying degrees of resources and ability to apply un-codified common law when reviewing applications. The result is unequal implementation of these caselaw standards across the state and unnecessary legal challenges when the standards are not applied appropriately. Codifying common law standards related to frequently applied and controversial criteria and uses will improve consistency of application of these standards and reduce unnecessary appeals. The Department is proposing to codify certain common law standards related to the farm impacts test, commercial activities in conjunction with farm use, the "incidental and subordinate" and "necessary to support" standards for agri-tourism and other commercial events, transportation facilities on rural lands and the recreational nature of private parks.

3) Rulemaking is proposed to repair a circular definition in OAR 660-033-0020. ORS 215.203 clarifies that "farm use" includes the preparation of products or by-products raised on land employed for farm use. OAR 660-033-0020(7) defines "Products or by-products raised on such land" as "those products or by-products raised on the farm operation where the preparation occurs or on other farmland provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land." Because "farm use of the land" includes preparation, this definition contains a circular reference that essentially says preparation is a "farm use" provided preparation is only occurring on land being used for the primary purpose of obtaining a profit in money from preparation.

This circular definition has been used to approve as a "farm use" stand-alone, commercial preparation facilities with no associated farm operation. On land zoned for exclusive farm use, farm use is allowed outright subject to minimal review by the county. The Commission added the definition to OAR 660-033-0020 in order to expand on the statutory definition and provide some flexibility to farmers to process some farm products produced by other operations in the local agricultural area in addition to their own crops thus providing a source of revenue to offset the capital required to install the preparation equipment and facilities. The definition was not intended to allow outright a stand-alone commercial preparation facility with no associated farm operation. Such facilities are appropriately reviewed as

Commercial Activities in Conjunction with Farm Use subject to the farm impacts test.

4) Rulemaking is needed to clarify an evidentiary standard for verification of income for certain dwellings and uses in exclusive farm use zones. Several Counties have communicated that it is difficult to verify income in a reliable manner. The concerns expressed include that Schedule F tax documents are not specific enough to be definitive, particularly about where the products were produced, and it is difficult to verify if such documents have been filed. Counties take a variety of approaches to verification of qualifying income for primary and accessory farm dwellings as well as income thresholds for farm stands. It has been recommended that it would be helpful for the state to clarify an appropriate evidentiary standard for verification of income.

5) Rulemaking is needed to clarify whether uses otherwise allowed in ORS chapter 215 of statute may or may not alternatively be reviewed as home occupations. Home Occupations are the most common non-resource use approved in exclusive farm use zones and the second most commonly approved non-resource use in forest zones. At the state level, Home Occupations are vaguely defined as a use that occurs in dwellings or other buildings normally associated with exclusive farm use zones and operated by a resident or employee of a resident of the property. Home Occupations are limited to employing five full-time or part-time persons. Counties may choose to adopt more restrictive standards for this use.

Given the ambiguity and breadth of the definition of a Home Occupation, a very wide variety and intensity of activities are approved as Home Occupations in EFU zones: hair salons, firearms dealers, tasting rooms, medical offices, events venues, daycares, funeral homes, mechanic repair shops, veterinary clinics, etc. Some proposals that cannot meet the standards established for a particular use by the legislature often seek approval under the more broadly defined “Home Occupation” option.

For uses provided in ORS chapter 215 subject to standards, like daycares, processing facilities or agri-tourism events, whether or not these may alternatively be reviewed as Home Occupations has been a matter of debate. It can be confusing for planners and applicants alike to understand what is permissible. This rulemaking proposes to clarify that uses less intensive in scale and scope than would otherwise be permitted under the standards established for the use by the legislature may alternatively be reviewed as home occupations.

List of rules adopted or amended: OAR 660-006-0025, OAR 660-006-0027, OAR 660-012-0065, OAR 660-033-0020, OAR 660-033-0120, OAR 660-033-0130, OAR 660-033-0135

Materials and labor costs increase or savings: None

Estimated administrative construction or other costs increase or savings: None

Land costs increase or savings: None

Other costs increase or savings: None

RULES PROPOSED:
660-006-0025, 660-006-0027, 660-012-0065, 660-033-0020, 660-033-0120, 660-033-0130, 660-033-0135

AMEND: 660-006-0025

RULE SUMMARY: 660-006-0025(3)(o) and (p): Oregon Laws 2023, chapter 301, sections 1 to 3 replaced the requirements for replacement dwellings in forest zones at ORS 215.755 with the new requirements in ORS 215.291

which were previously applicable only to farm zones.

CHANGES TO RULE:

660-006-0025
Uses Authorized in Forest Zones ¶

(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are:¶
(a) Uses related to and in support of forest operations;¶
(b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;¶
(c) Locationally-dependent uses, such as communication towers, mineral and aggregate resources, etc;¶
(d) Dwellings authorized by ORS 215.705 to 215.757 ~~(ORS 215.757)~~; and¶
(e) Other dwellings under prescribed conditions.¶
(2) The following uses pursuant to the Forest Practices Act (ORS chapter 527) and Goal 4 shall be allowed in forest zones:¶
(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;¶
(b) Temporary on-site structures that are auxiliary to and used during the term of a particular forest operation;¶
(c) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities; and¶
(d) For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.¶
(3) The following uses may be allowed outright on forest lands:¶
(a) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources;¶
(b) Farm use as defined in ORS 215.203;¶
(c) Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups;¶
(d) Temporary portable facility for the primary processing of forest products;¶
(e) Exploration for mineral and aggregate resources as defined in ORS chapter 517;¶
(f) Private hunting and fishing operations without any lodging accommodations;¶
(g) Towers and fire stations for forest fire protection;¶
(h) Widening of roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans and public road and highway projects as described in ORS 215.213(1) and 215.283(1);¶
(i) Water intake facilities, canals and distribution lines for farm irrigation and ponds;¶
(j) Caretaker residences for public parks and public fish hatcheries;¶
(k) Uninhabitable structures accessory to fish and wildlife enhancement;¶
(l) Temporary forest labor camps;¶
(m) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head;¶
(n) Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.467 and Goal 8;¶
(o) ~~Alteration~~(A) A lawfully established dwelling may be altered, restor~~ation~~ed or replace~~ment of a lawfully establis~~d if, when an application for a permit is submitted, the county finds to its satisfaction, based on substantial evidence that th~~e~~d dwelling t~~hat~~o be altered, restored or replaced has, or formerly had:¶
(~~A~~i) ~~Has i~~Intact exterior walls and roof structures;¶
(~~B) Has i~~ii) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;¶
(~~C) Has interior wiring for~~ iii) Interior wiring for interior lights; and¶
(iv) A heating system.¶

(B) An application under this section must be filed within three years following the date that the dwelling last possessed all the features listed under paragraph (o)(A). ¶
(C) Construction of a replacement dwelling approved under this section must commence no later than four years after the approval of the application under this section becomes final.¶
(D) In addition to the provisions of paragraph (o)(A), the dwelling to be replaced meets one of the following conditions:¶
(i) If the value of the dwelling to be replaced was elimina~~terior lights;¶~~
~~(D) Has a heating system; and¶~~
~~(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling;~~d as a result of destruction or demolition, the dwelling was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction or demolition and since the later of:¶
(I) Five years before the date of the destruction or demolition; or¶
(II) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment; or¶
(ii) The value of dwelling to be replaced has not been eliminated due to destruction or demolition, and the dwelling was assessed as a dwelling for purposes of ad valorem taxation since the later of:¶
(I) Five years before the date of the application; or ¶
(II) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment.¶
(E) For replacement of a lawfully established dwelling under this subsection:¶
(i) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055. ¶
(ii) The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.¶
(iii) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of ORS 215.291 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.¶
(iv) The county planning director, or the director's designee, shall maintain a record of:¶
(I) The lots and parcels for which dwellings to be replaced have been removed, demolished or converted; and¶
(II) The lots and parcels that do not qualify for the siting of a new dwelling under paragraphs (E) and (F), including a copy of the deed restrictions filed under subparagraph (iii) of this paragraph.¶
(F)(i) A replacement dwelling under this subsection must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. ¶
(ii) The replacement dwelling may be sited on any part of the same lot or parcel.¶
(iii) The replacement dwelling must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling. ¶
(iv) The replacement dwelling must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:¶
(I) The dwelling is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or¶
(II) No statewide map of wildfire risk has been adopted.¶
(G) If an applicant is granted a deferred replacement permit under this subsection, the deferred replacement permit:¶
(i) Does not expire but the permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred replacement permit is issued; and¶
(ii) May not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.¶
(p) A lawfully established dwelling that is destroyed by wildfire may be replaced within 60 months when the county finds, based on substantial evidence, that the dwelling to be replaced contained those items listed at subsection (o)(A) through (E). For purposes of this subsection, substantial evidence includes, but is not limited to, county assessor data. The property owner of record at the time of the wildfire may reside on the subject property in an existing building, tent, travel trailer, yurt, recreational vehicle, or similar accommodation until replacement has been completed or the time for replacement has expired.¶
(q) An outdoor mass gathering as defined in ORS 433.735, subject to the provisions of ORS 433.735 to 433.770;¶

(r) Dump truck parking as provided in ORS 215.311; ~~and~~¶
(s) An agricultural building, as defined in ORS 455.315, customarily provided in conjunction with farm use or forest use. A person may not convert an agricultural building authorized by this section to another use.~~.~~; and¶
(t) Temporary storage site for nonhazardous debris resulting from recovery efforts associated with damage caused by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 subject to Department of Environmental Quality requirements and all other applicable provisions of law.¶
(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:¶
(a) Permanent facility for the primary processing of forest products that is:¶
(A) Located in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or a proportionate combination of indoor and outdoor areas; and¶
(B) Adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the governing body;¶
(b) Permanent logging equipment repair and storage;¶
(c) Log scaling and weigh stations;¶
(d) Disposal site for solid waste approved by the governing body of a city or county or both and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;¶
(e) Private parks and campgrounds. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.¶
(A) Vacation or recreational purposes. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds devoted to vacation or recreational purposes shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Campgrounds approved under this subsection must be found to be established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground and designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.¶
(i) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by paragraph (4)(e)(C) of this rule.¶
(ii) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.¶
(B) Emergency purposes. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because permanent housing units replacing those lost to the natural hazard event are not available in sufficient quantities. A county must process applications filed pursuant to this section in the manner identified at ORS 215.416(11).¶
(i) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.¶
(ii) Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.¶
(iii) A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (4)(e)(B) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this subparagraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.¶

(C) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.¶
(D) For applications submitted under paragraph (B) of this rule, the county may find the criteria of section (5) to be satisfied when:¶
(i) The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.-¶
(ii) The number of proposed campsites does not exceed 12; or¶
(iii) The number of proposed campsites does not exceed 36; and¶
(iv) Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.¶
(f) Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable;¶
(g) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS chapter 517;¶
(h) Television, microwave and radio communication facilities and transmission towers;¶
(i) Fire stations for rural fire protection;¶
(j) Commercial utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR chapter 660, division 4;¶
(k) Aids to navigation and aviation;¶
(l) Water intake facilities, related treatment facilities, pumping stations, and distribution lines;¶
(m) Reservoirs and water impoundments;¶
(n) Firearms training facility as provided in ORS 197.770(2);¶
(o) Cemeteries;¶
(p) Private seasonal accommodations for fee hunting operations may be allowed subject to section (5) of this rule, OAR 660-006-0029, and 660-006-0035 and the following requirements:¶
(A) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;¶
(B) Only minor incidental and accessory retail sales are permitted;¶
(C) Accommodations are occupied temporarily for the purpose of hunting during either or both game bird or big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and¶
(D) A governing body may impose other appropriate conditions.¶
(q) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width;¶
(r) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;¶
(s) Home occupations as defined in ORS 215.448;¶
(t) Temporary hardship residence in conjunction with an existing dwelling. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons experienced by the existing resident or relative as defined in ORS chapter 215. "Hardship" also includes situations where a natural hazard event has destroyed homes, caused residential evacuations, or both, and resulted in an Executive Order issued by the Governor declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p).¶
(A) For a medical hardship or hardship for the care of an aged or infirm person or persons experienced by the existing resident or relative as defined in ORS chapter 215 the temporary residence may include a manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building. A manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. Department of Environmental Quality review

and removal requirements also apply.¶
(B) For hardships based on a natural hazard event described in this subsection, the temporary residence may include a recreational vehicle or the temporary residential use of an existing building. Governing bodies shall review the permit authorizing such temporary residences every two years. Within three months of the temporary residence no longer being necessary, the recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. Department of Environmental Quality review and removal requirements also apply.¶
(C) For applications submitted under paragraph (B), the county may find that the criteria of section (5) are satisfied when:¶
(i) The temporary residence is established within an existing building or, if a recreational vehicle, is located within 100 feet of the primary residence; or¶
(ii) The temporary residence is located further than 250 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.¶
(u) Expansion of existing airports;¶
(v) Public road and highway projects as described in ORS 215.213(2)(p) through (r) and (10) and 215.283(2)(q) through (s) and (3);¶
(w) Private accommodations for fishing occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 6~~0~~60-0~~6~~06-0029 and 660-006-0035 and the following requirements:¶
(A) Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;¶
(B) Only minor incidental and accessory retail sales are permitted;¶
(C) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;¶
(D) Accommodations must be located within 1/4 mile of fish-bearing Class I waters; and¶
(E) A governing body may impose other appropriate conditions.¶
(x) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations; and¶
(y) An outdoor mass gathering:¶
(A) Of more than 3,000 persons, any part of which is held outdoors and which continues or can reasonably be expected to continue for a period exceeding that allowable for an outdoor mass gathering as defined in ORS 433.735. In addition to the review standards in section (5) of this rule, the county must make findings required by ORS 433.763(l)(c).¶
(B) As defined by ORS 433.735, for which a county decides that a land use permit is required. In addition to findings required by ORS 433.763(1), a county may, when determining review standards, include all, some, or none of the review standards in section (5) of this rule.¶
(z) Storage structures for emergency supplies to serve communities and households that are located in tsunami inundation zones, if:¶
(A) Areas within an urban growth boundary cannot reasonably accommodate the structures;¶
(B) The structures are located outside tsunami inundation zones and consistent with evacuation maps prepared by Department of Geology and Mineral Industries (DOGAMI) or the local jurisdiction;¶
(C) Sites where the structures could be co-located with an existing use approved under this section are given preference for consideration;¶
(D) The structures are of a number and size no greater than necessary to accommodate the anticipated emergency needs of the population to be served;¶
(E) The structures are managed by a local government entity for the single purpose of providing for the temporary emergency support needs of the public; and¶
(F) Written notification has been provided to the County Office of Emergency Management of the application for the storage structures.¶
(5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:¶
(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;¶
(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and¶
(c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.¶

(6) Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.
Statutory/Other Authority: ORS 197.040, ORS 197.230, ORS 197.245
Statutes/Other Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780, 1993 Oregon Laws Ch. 792

AMEND: 660-006-0027

RULE SUMMARY: 660-006-0027(7): Oregon Laws 2019, chapter 433, sections 4 repealed section 2 on January 2, 2024. The language in Oregon Laws 2019, chapter 433, section 3 clarifying past effective dates has been removed to conform to statute.

CHANGES TO RULE:

660-006-0027
Dwellings in Forest Zones ¶

The following standards apply to dwellings described at OAR 660-006-0025(1)(d):¶
(1) A lot of record dwelling authorized under ORS 215.705 may be allowed if:¶
(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (d) of this section:¶
(A) Since prior to January 1, 1985; or¶
(B) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.¶
(b) The tract on which the dwelling will be sited does not include a dwelling;¶
(c) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.¶
(d) For purposes of this section, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.¶
(e) The dwelling must be located:¶
(A) On a tract in western Oregon that is composed of soil is not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be:¶
(i) A United States Bureau of Land Management road; or¶
(ii) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.¶
(B) On a tract in eastern Oregon that is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be:¶
(i) A United States Bureau of Land Management road; or¶
(ii) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.¶
(f) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based; and¶
(g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.¶
(2) If a dwelling is not allowed pursuant to section (1) of this rule, a large tract forest dwelling authorized under ORS 215.740 may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract that does not include a dwelling:¶
(a) In eastern Oregon of at least 240 contiguous acres or 320 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed restriction shall be filed pursuant to section (8) of this rule for all tracts that are used to meet the acreage requirements of this subsection.¶
(b) In western Oregon of at least 160 contiguous acres or 200 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed restriction shall be filed pursuant to section (8) of this rule for all tracts that are used to meet the acreage requirements of this subsection.¶
(c) A tract shall not be considered to consist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway.¶

(3) In western Oregon, a governing body of a county or its designate may allow the establishment of a single family "template" dwelling authorized under ORS 215.750 on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:¶
(a) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:¶
(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and¶
(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.¶
(b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:¶
(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and¶
(B) At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.¶
(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:¶
(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and¶
(B) At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.¶
(d) As used in this section, "center of the subject tract" means the mathematical centroid of the tract.¶
(4) In eastern Oregon, a governing body of a county or its designate may allow the establishment of a single family "template" dwelling authorized under ORS 215.750 on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:¶
(a) Capable of producing zero to 20 cubic feet per acre per year of wood fiber if:¶
(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and¶
(B) At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.¶
(b) Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:¶
(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and¶
(B) At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.¶
(c) Capable of producing more than 50 cubic feet per acre per year of wood fiber if:¶
(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and¶
(B) At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.¶
(d) As used in this section, "center of the subject tract" means the mathematical centroid of the tract.¶
(5) The following review standards apply to "template" dwellings approved under sections (3) or (4) of this rule:¶
(a) Lots or parcels within urban growth boundaries may not be used to satisfy the eligibility requirements under sections (3) or (4) of this rule.¶
(b) Except as provided by subsection (c) of this section, if the tract under section (3) or (4) of this rule abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.¶
(c)(A) If a tract 60 acres or larger described under section (3) or (4) of this rule abuts a road or perennial stream, the measurement shall be made in accordance with subsection (b) of this section. However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:¶
(i) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or¶
(ii) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.¶
(B) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.¶
(d) Notwithstanding subsection (6)(a) of this rule, if the acknowledged comprehensive plan and land use regulations of a county require that a dwelling be located in a 160-acre square or rectangle described in sections (3) and (4) of this rule or subsections (b) or (c) of this section, a dwelling is in the 160-acre square or rectangle if any part of the dwelling is in the 160-acre square or rectangle.¶
(6) A proposed "template" dwelling under this rule is allowed only if:¶
(a) It will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law;¶
(b) It complies with the requirements of OAR 660-006-0029 and 660-006-0035;¶
(c) No dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (~~8~~7) of this rule for the other lots or parcels that make up the tract are met;¶
(d) The tract on which the dwelling will be sited does not include a dwelling.¶

(e) The lot or parcel on which the dwelling will be sited was lawfully established.¶
(f) Any property line adjustment to the lot or parcel complied with the applicable property line adjustment provisions in ORS 92.192.¶
(g) Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and¶
(h) If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.¶
(7)(a) ~~Subsection (3)(d), subsection (4)(d), and subsections (6)(e) through (h) of this rule apply:¶~~
~~(A) On and after January 1, 2020 in Clackamas, Jackson, Lane, and Polk Counties.¶~~
~~(B) On and after November 1, 2021 in Columbia, Coos, Curry, Deschutes, Douglas, Josephine, Linn, Marion, Washington, and Yamhill Counties.¶~~
~~(C) On and after November 1, 2023 in Baker, Benton, Clatsop, Crook, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Multnomah, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties.¶~~
~~(b) Prior to November 1, 2023, a county may allow the establishment of a single-family dwelling on a lot or parcel that was part of a tract on January 1, 2021, if;¶~~
~~(A) No more than one other dwelling exists or has been approved on another lot or parcel that was part of the tract; and¶~~
~~(B) The lot or parcel qualifies, notwithstanding subsection (6)(h), for a dwelling under sections (3) and (4) of this rule.¶~~
~~(c) Subsection (b) of this section applies;¶~~
~~(A) On and after January 1, 2020, in Clackamas, Jackson, Lane, and Polk Counties; and¶~~
~~(B) On and after November 1, 2021, in Columbia, Coos, Curry, Deschutes, Douglas, Josephine, Linn, Marion, Washington, and Yamhill Counties.¶~~
~~(8)(a)~~ The applicant for a dwelling authorized by paragraph (A) or (B) below shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located.¶
(A) Subsections (2)(a) or (b) of this rule requiring one or more lot or parcel to meet minimum acreage requirements.¶
(B) Sections (3) or (4) of this rule applying to other lots or parcels that make up a tract in section (6).¶
(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.¶
(c) Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located.¶
(d) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section.¶
(e) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.¶
(~~9~~8) A county may approve a new single-family dwelling unit on a lot or parcel zoned for forest use provided:¶
(a) The new single-family dwelling unit will be on a lot or parcel no smaller than the minimum size allowed under OAR 660-006-0026(1);¶
(b) The new single-family dwelling unit will be on a lot or parcel that contains exactly one existing single-family dwelling unit that was lawfully;¶
(A) In existence before November 4, 1993; or¶
(B) Approved under this rule, ORS 215.130(6), ORS 215.705, or OAR 660-006-0025(3)(o).¶
(c) The shortest distance between any portion of the new single-family dwelling unit and any portion of the existing single-family dwelling unit is no greater than 200 feet;¶
(d) The lot or parcel is within a rural fire protection district organized under ORS chapter 478;¶
(e) The new single-family dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation;¶
(f) As a condition of approval of the new single-family dwelling unit, in addition to the requirements of OAR 660-006-0029(5)(e), the property owner agrees to acknowledge and record in the deed records for the county in which the lot or parcel is located, one or more instruments containing irrevocable deed restrictions that;¶

(A) Prohibit the owner and the owner's successors from partitioning the property to separate the new single-family dwelling unit from the lot or parcel containing the existing single-family dwelling unit; and¶
(B) Require that the owner and the owner's successors manage the lot or parcel as a working forest under a written forest management plan, as defined in ORS 526.455 that is attached to the instrument.¶
(g) The existing single-family dwelling is occupied by the owner or a relative;¶
(h) The new single-family dwelling unit will be occupied by the owner or a relative;¶
(i) The owner or a relative occupies the new single-family dwelling unit to allow the relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition, or supervision of forest lots or parcels of the owner; and¶
(j) If a new single-family dwelling unit is constructed under this section, a county may not allow the new or existing dwelling unit to be used for vacation occupancy as defined in ORS 90.100.¶
(k) As used in this section, "owner or a relative" means the owner of the lot or parcel, or a relative of the owner or the owner's spouse, including a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin of either.¶
[ED. NOTE: Exhibits referenced are available from the agency.]
Statutory/Other Authority: ORS 197.040, ORS 197.230, ORS 197.245
Statutes/Other Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780, Ch. 792 1993 OL

AMEND: 660-012-0065

RULE SUMMARY: 660-012-0065(5): Describes review criteria for a subset of rural transportation uses or improvements proposed within an exclusive farm use or forest zone.

CHANGES TO RULE:

660-012-0065
Transportation Improvements on Rural Lands ¶

(1) This rule identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with Goals 3, 4, 11, and 14 without a goal exception.¶
(2) For the purposes of this rule, the following definitions apply:¶
(a) "Access Roads" means low volume public roads that principally provide access to property or as specified in an acknowledged comprehensive plan;¶
(b) "Collectors" means public roads that provide access to property and that collect and distribute traffic between access roads and arterials or as specified in an acknowledged comprehensive plan;¶
(c) "Arterials" means state highways and other public roads that principally provide service to through traffic between cities and towns, state highways and major destinations or as specified in an acknowledged comprehensive plan;¶
(d) "Accessory Transportation Improvements" means transportation improvements that are incidental to a land use to provide safe and efficient access to the use;¶
(e) "Channelization" means the separation or regulation of conflicting traffic movements into definite paths of travel by traffic islands or pavement markings to facilitate the safe and orderly movement of both vehicles and pedestrians. Examples include, but are not limited to, left turn refuges, right turn refuges including the construction of islands at intersections to separate traffic, and raised medians at driveways or intersections to permit only right turns. "Channelization" does not include continuous median turn lanes;¶
(f) "Realignment" means rebuilding an existing roadway on a new alignment where the new centerline shifts outside the existing right of way, and where the existing road surface is either removed, maintained as an access road or maintained as a connection between the realigned roadway and a road that intersects the original alignment. The realignment shall maintain the function of the existing road segment being realigned as specified in the acknowledged comprehensive plan;¶
(g) "New Road" means a public road or road segment that is not a realignment of an existing road or road segment.¶
(3) The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:¶
(a) Accessory transportation improvements for a use that is allowed or conditionally allowed by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands);¶
(b) Transportation improvements that are allowed or conditionally allowed by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands);¶
(c) Channelization not otherwise allowed under subsections (a) or (b) of this section;¶
(d) Realignment of roads not otherwise allowed under subsection (a) or (b) of this section;¶
(e) Replacement of an intersection with an interchange;¶
(f) Continuous median turn lane;¶
(g) New access roads and collectors within a built or committed exception area, or in other areas where the function of the road is to reduce local access to or local traffic on a state highway. These roads shall be limited to two travel lanes. Private access and intersections shall be limited to rural needs or to provide adequate emergency access.¶
(h) Bikeways, footpaths and recreation trails not otherwise allowed as a modification or part of an existing road;¶
(i) Park and ride lots;¶
(j) Railroad mainlines and branchlines;¶
(k) Pipelines;¶
(l) Navigation channels;¶
(m) Replacement of docks and other facilities without significantly increasing the capacity of those facilities;¶
(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplanes; and¶
(o) Transportation facilities, services and improvements other than those listed in this rule that serve local travel needs. The travel capacity and performance standards of facilities and improvements serving local travel needs shall be limited to that necessary to support rural land uses identified in the acknowledged comprehensive plan or to provide adequate emergency access.¶
(4) Accessory transportation improvements required as a condition of development listed in subsection (3)(a) of

this rule shall be subject to the same procedures, standards and requirements applicable to the use to which they are accessory.¶
(5)(a) For transportation uses or improvements listed in subsections (3)~~(d) to (g) and (o) of this rule~~ within an exclusive farm use (EFU) or forest zone, except for transportation uses or improvements permitted under ORS 215.213(1), 215.283(1) or OAR 660-006-0025(1)-(3), a jurisdiction shall find that the proposal will comply with the standards described in ORS 215.296. In addition, transportation uses or improvements in a forest zone, except for transportation uses or improvements authorized under OAR 660-006-0025(1)-(3), must also comply with the standards described in OAR 660-006-0025(5).¶
(b) For transportation uses or improvements listed in subsections (3)(d) to (g) and (o) within an EFU~~)~~ or forest zone, a jurisdiction shall, in addition to demonstrating compliance with the requirements of ORS 215.296:¶
(~~a~~i) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;¶
(~~b~~ii) Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands; and¶
(~~c~~iii) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.¶
(6) Notwithstanding any other provision of this division, if a jurisdiction has not met the deadline for TSP adoption set forth in OAR 660-012-0055, or any extension thereof, a transportation improvement that is listed in section (5) of this rule and that will significantly reduce peak hour travel time as provided in OAR 660-012-0035(10) may be allowed in the urban fringe only if the jurisdiction applies either:¶
(a) The criteria applicable to a "reasons" exception provided in Goal 2 and OAR chapter 660, division 4; or¶
(b) The evaluation and selection criteria set forth in OAR 660-012-0035.
Statutory/Other Authority: ORS~~ 183,~~ 197.040, ORS 197.245, ORS 215.213, ORS 215.283, ORS 215.296
Statutes/Other Implemented: ORS 195.025, ORS 197.040, ORS 197.230, ORS 197.245, ORS 197.712, ORS 197.717, ORS 197.232, ORS 215.213, ORS 215.283

AMEND: 660-033-0020

RULE SUMMARY: OAR 660-033-0020(7) clarifies the definition of “farm use” at ORS 215.203. This section of rule contains a definition for “preparation” which is an aspect of “farm use”. The definition for “preparation” contains a circular reference which is being corrected.

CHANGES TO RULE:

660-033-0020
Definitions ¶

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR chapter 660 shall apply. In addition, the following definitions shall apply:¶
(1)(a) "Agricultural Land" as defined in Goal 3 includes:¶
(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;¶
(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and¶
(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.¶
(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;¶
(c) "Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.¶
(2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:¶
(A) Contribute in a substantial way to the area's existing agricultural economy; and¶
(B) Help maintain agricultural processors and established farm markets.¶
(b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.¶
(3) "Contiguous" means connected in such a manner as to form a single block of land.¶
(4) "Date of Creation and Existence". When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.¶
(5) "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.¶
(6) "Exception Area" means an area no longer subject to the requirements of Goal 3 or 4 because the area is the subject of a site specific exception acknowledged pursuant to ORS 197.732 and OAR chapter 660, division 4.¶
(7)(a) "Farm Use" as that term is used in ORS chapter 215 and this division means "farm use" as defined in ORS 215.203.¶
(b) As used in the definition of "farm use" in ORS 215.203 and in this division:¶
(A) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products; and¶
(B) "Products or by-products raised on such land" ~~means that those p~~includes;¶
(i) Products or by-products ~~are~~ raised on the farm operation where the preparation occurs ~~or~~;¶
(ii) Products or by-products raised on other farm land provided ~~t~~;¶
(I) The preparation is occurring only on ~~land being used for the primary purpose of obtaining a profit in money from the farm use of the land~~a tract currently employed for a farm use or farm uses other than preparation; and¶
(II) Such products or by-products are prepared in the same facilities as and in conjunction with products or by-products raised on the farm operation where the preparation occurs.¶
(8)(a) "High-Value Farmland" means land in a tract composed predominantly of soils that are:¶
(A) Irrigated and classified prime, unique, Class I or II; or¶
(B) Not irrigated and classified prime, unique, Class I or II.¶
(b) In addition to that land described in subsection (a) of this section, high-value farmland, if outside the

Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa;¶
(c) In addition to that land described in subsection (a) of this section, high-value farmland, if in the Willamette Valley, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:¶
(A) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hult, Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill;¶
(B) Subclassification IIIw, specifically, Concord, Conser, Cornelius Variant, Dayton (thick surface) and Sifton (occasionally flooded);¶
(C) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and¶
(D) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti and Whiteson.¶
(d) In addition to that land described in subsection (a) of this section, high-value farmland, if west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:¶
(A) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;¶
(B) Subclassification IIIw, specifically, Brenner and Chitwood;¶
(C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and¶
(D) Subclassification IVw, specifically, Coquille.¶
(e) In addition to that land described in subsection (a) of this section, high-value farmland includes tracts located west of U.S. Highway 101 composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:¶
(A) Subclassification IIIw, specifically, Ettersburg Silt Loam and Crofland Silty Clay Loam;¶
(B) Subclassification IIIe, specifically, Klooqueh Silty Clay Loam and Winchuck Silt Loam; and¶
(C) Subclassification IVw, specifically, Huffling Silty Clay Loam.¶
(f) Lands designated as "marginal lands" according to the marginal lands provisions adopted before January 1, 1993, and according to the criteria in former ORS 215.247 (1991), are excepted from this definition of "high-value farmlands";¶
(9) "Irrigated" means watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For the purposes of this division, an area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.¶
(10) "Lot" shall have the meaning set forth in ORS 92.010.¶
(11) "Manufactured dwelling" and "manufactured home" shall have the meaning set forth in ORS 446.003(26).¶
(12) "NRCS Web Soil Survey" means the official source of certified soils data available online that identifies agricultural land capability classes, developed and maintained by the Natural Resources Conservation Service as of January 1, 2016, for agricultural soils that are not high-value, and as of December 6, 2007, for high-value agricultural soils.¶
(13) "Parcel" shall have the meaning set forth in ORS 215.010.¶
(14) "Tract" means one or more contiguous lots or parcels under the same ownership.¶
(15) "Western Oregon" means that portion of the state lying west of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.¶
(16) "Willamette Valley" is Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Benton and Lane Counties lying east of the summit of the Coast Range.¶
[Publications: Publications referenced are available from the agency.]
Statutory/Other Authority: ORS 197.040, ORS 197.245
Statutes/Other Implemented: ORS 197.015, ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.203, ORS 215.243, ORS 215.283, ORS 215.700 - ORS 215.710, ORS 215.780

AMEND: 660-033-0120

RULE SUMMARY: 660-033-0120: Chapter 369, Sections 9 and 10 Oregon Laws 2021 adds childcare facilities, preschool recorded programs or school-age recorded programs as a new use in exclusive farm use zones.

CHANGES TO RULE:

660-033-0120
Uses Authorized on Agricultural Lands ¶

The specific development and uses listed in the following table are allowed 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 table shall have the following meanings:¶
(1) "A" Use is 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 660-033-0130 and 660-033-0135. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.¶
(2) "R" Use may be allowed, 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 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.¶
(3) "*" - The use is not allowed.¶
(4) "#" - Numerical references for specific uses shown in the table refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use in the table, this rule does not establish criteria for the use.
Statutory/Other Authority: ORS 197.040, ORS 197.245
Statutes/Other Implemented: ORS 197.245, ORS 215.203, ORS 215.243, ORS 215.283, ORS 215.700 - 215.710, ORS 215.780, ORS 197.230, ORS 197.015, ORS 197.040

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

HV Farmland	All Other	Uses
		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.
R5,6	R5,6	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 or an establishment for the slaughter or processing of poultry pursuant to ORS 603.038.
		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 as provided in OAR 660-033-0135.
R9,30	R9,30	A relative farm help dwelling.
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.
R5,10,30	R5,10,30	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 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.
		Commercial Uses
R5, 42	R5, 42	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)(u) and 215.283(1)(r), but excluding activities in conjunction with a marijuana crop.
R5,14	R5,14	Home occupations as provided in ORS 215.448.
A39	A39	Dog training classes or testing trials.
R5	R5	Commercial dog boarding kennels or dog training classes or testing trials that cannot be established under ORS 215.213(1)(z) or 215.283(1)(x).
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 or 215.453, and 215.237.
R5	R5	A restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.
A	A	A cider business as provided in ORS 215.451
R or R5, 43	R or R5, 43	Agri-tourism and other commercial events or activities that are related to and supportive of agriculture, as described in ORS 215.213(11) or 215.283(4).
A23	A23	Farm stands.
R5	R5	A landscape contracting 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.
R	R	Guest ranch in eastern Oregon as provided in chapter 84 Oregon Laws 2010.
A	A	Log truck parking as provided in ORS 215.311.
A	A	A farm brewery as provided in ORS 215.449.
		Mineral, Aggregate, Oil, and Gas Uses
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.
A	A	Operations for the exploration for minerals as defined by ORS 517.750.
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.
R5	R5	Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
R5,15	R5,15	Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
R5	R5	Processing of other mineral resources and other subsurface resources.
R5, 41	R5, 41	Equine and equine-affiliated therapeutic and counseling activities.
		Transportation
R5,7	R5,7	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.
A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.
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.
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 resulting in the creation of new land parcels.
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.
A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public- owned property utilized to support the operation and maintenance of public roads and highways.
R5	R5	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
R13	R13	Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
R or R5	R or R5	Transportation improvements on rural lands as allowed by OAR 660-012- 0065
		Utility/Solid Waste Disposal Facilities
R16(a) or (b)	R16(a) or (b)	Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300 and 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 high.
R5	R5	Transmission towers over 200 feet in height.

A	A	Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.
A32	A32	Utility facility service lines.
R5,17	R5,22	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities or photovoltaic solar power generation facilities.
R5,37	R5,37	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
R5,38	R5,38	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale.
*18(a)	R5	A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
*18(a), 29(a)	A or 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 and 340-096-0060.
		Parks/Public/Quasi-Public
18	R5,40	Youth camps in Eastern Oregon on land that is composed predominantly of class VI, VII or VIII soils.
R5	R5	Child care facilities, preschool recorded programs or school-age recorded programs consistent with ORS 215.213(2)(aa) or 215.283(2)(dd).
*18(a) or R18(b)	R5, 18(b)	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.
2,*18(a)	R2	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.

2,*18(a)	R2,5,19, 44	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.
R2,5,31	R2,5,31	Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
A	A	Fire service facilities providing rural fire protection services.
R2,5,36	R2,5,36	Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
R2,*18(a) or R2, 18(c)	R2,5,20	Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.
R2,5,21	R2,5,21	Living history museum
R2	R2	Firearms training facility as provided in ORS 197.770.
R2,25	R2,25	Armed forces reserve center as provided for in ORS 215.213(1)(s).
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 of bottling water.
A11	A11	Land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of 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(1).
A33	A33	An outdoor mass gathering as described in ORS 433.735.
R34	R34	An outdoor mass gathering of more than 3,000 persons any part of which is held outdoors and which continues or can reasonably be expected to continue for a period exceeding that allowable for an outdoor mass gathering as defined in ORS 433.735.

AMEND: 660-033-0130

RULE SUMMARY: • OAR 660-033-0130(28): Oregon Laws 2023, chapter 81, section 2 adds rabbits and rabbit products to the list of farm products which may be processed at a farm product processing facility under ORS 215.255.
• OAR 660-033-0130(8): Oregon Laws 2023, chapter 301, sections 1 to 3 modified the requirements for replacement dwellings in farm zones.
• OAR 660-033-0130(18)(b): Oregon Laws 2019, chapter 416, sections 1 to 2 modified the requirements for expansion of certain nonconforming schools in farm zones.
• OAR 660-033-0130(5): Describes the Farm Impacts Test required at ORS 215.296.
• OAR 660-033-0130: Agency rules do not currently provide any guidance on what a "commercial activity in conjunction with farm use" is for the purpose of nonfarm uses authorized on land under exclusive farm use zoning.
• OAR 660-033-0130: Agency rules do not currently provide any guidance on what factors to be considered in determining if an event of activity is 'incidental and subordinate' to and existing farm use or in determining if an event or activity is "necessary to support" commercial farm uses or commercial agricultural enterprises.
• OAR 660-033-0130: Agency rules do not currently provide any guidance on what is appropriate considered a "private park" in an exclusive farm use zone.
• OAR 660-033-0130 does not offer any guidance on the type of documentation to be used as evidence to support the primary farm dwelling income tests (OAR 660-033-0135(3) and (4)), accessory farm dwelling income tests (OAR 660-033-0130(24)), or to verifying ongoing compliances with the standards for a farm stand (OAR 660-033-0130(23). The rulemaking proposes to clarify the evidentiary standard for the verification of income.
• OAR 660-033-0130(4) describes limitation on the authorization of home occupations in exclusive farm use zones. The rulemaking proposes to clarify that a home occupation proposal for a use that is otherwise authorized in statute subject to specific standards must be incidental and subordinate to the primary residential use of a dwelling and may not be more intensive than otherwise authorized in statute.

CHANGES TO RULE:

660-033-0130
Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses ¶

The following requirements apply to uses specified, and as listed in the table adopted by OAR 660-033-0120. For each section of this rule, the corresponding section number is shown in the table. Where no numerical reference is indicated on the table, this rule does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the table, as authorized by law.¶
(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.¶
(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.¶
(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.¶
(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.¶
(3)(a) A dwelling may be approved on a pre-existing lot or parcel if:¶
(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:¶
(i) Since prior to January 1, 1985; or¶
(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.¶
(B) The tract on which the dwelling will be sited does not include a dwelling;¶

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;¶
(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;¶
(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule; and¶
(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.¶
(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;¶
(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:¶
(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;¶
(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);¶
(C) A hearings officer of a county determines that:¶
(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrates that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;¶
(ii) The dwelling will comply with the provisions of ORS 215.296(1); and¶
(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and¶
(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the Oregon Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.¶
(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:¶
(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;¶
(B) The tract on which the dwelling will be sited is:¶
(i) Identified in OAR 660-033-0020(8)(c) or (d);¶
(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and¶
(iii) Twenty-one acres or less in size; and¶
(C) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or¶
(D) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or¶
(E) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:¶
(i) "Flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.¶
(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line

crosses the midpoint of the longest adjacent side of the flaglot.¶
(e) If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;¶
(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:¶
(A) Exceed the facilities and service capabilities of the area;¶
(B) Materially alter the stability of the overall land use pattern of the area; or¶
(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.¶
(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;¶
(h) The county assessor shall be notified that the governing body intends to allow the dwelling.¶
(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.¶
(4) A single-family residential dwelling not provided in conjunction with farm use requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:¶
(a) In the Willamette Valley, the use may be approved if:¶
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;¶
(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;¶
(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;¶
(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:¶
(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;¶
(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsection (3)(a) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4), ORS 215.263(5), and ORS 215.284(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph; and¶
(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and¶
(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.¶
(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(7), the use may be approved if:¶
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;¶
(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall

consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and¶
(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.¶
(c) In counties located outside the Willamette Valley require findings that:¶
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;¶
(B)(i) The dwelling, including essential or accessory improvements or structures, is situated upon a lot or parcel, or, in the case of an existing lot or parcel, upon a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and¶
(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable"." A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or¶
(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable"." If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;¶
(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and¶
(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.¶
(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;¶
(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) through 215.213(8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.¶
(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:¶
(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and¶
(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.¶
(c) For purposes of subsection (a) and (b), a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:¶
(A) Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;¶
(B) An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices; and¶

(C) An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.¶
(D) For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.¶
(E) For purposes of subsection (a) and (b), potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under subsections (a) and (b).¶
(F) In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in subsection (a) and (b).¶
(6) A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.¶
(7) A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities allowed under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be allowed subject to any applicable rules of the Oregon Department of Aviation.¶
(8)(a) A lawfully established dwelling may be altered, restored or replaced under ORS 215.213(1)(q) or 215.283(1)(p) if, when an application for a permit is submitted, the county finds to its satisfaction, based on substantial evidence that the dwelling to be altered, restored or replaced has, or formerly had:¶
(A) Intact exterior walls and roof structure;¶
(B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;¶
(C) Interior wiring for interior lights; and¶
(D) A heating system;¶
(b) An application under this section must be filed within three years following the date that the dwelling last possessed all the features listed under subsection (a).¶
(c) Construction of a replacement dwelling approved under this section must commence no later than four years after the approval of the application under this section becomes final.¶
(d) In addition to the provisions of subsection (a), the dwelling to be replaced meets one of the following conditions;¶
(A) If the ~~dwelling was removed, destroyed or demolished;¶~~
~~(i) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and¶~~
~~(ii) Any removal,~~value of the dwelling to be replaced was eliminated as a result of destruction or demolition, the dwelling was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction~~,~~ or demolition ~~occurred on or after January 1, 1973.~~and since the later of:¶
(~~B~~i) ~~If the dwelling is currently in such a state~~Five years before the date of the destruction o~~f~~r d~~isrepair~~emolition; or¶
(ii) The date that the dwelling ~~is unsafe for occupancy or constitutes~~ was erected upon or fixed to the land ~~attractive nuisance, the dwelling's tax lot does not have a lien for~~nd became subject to property tax assessment; or¶
(B) The value of dwellin~~quent ad valorem taxes; or¶~~
~~(C) A dwelling not described paragraph (A) or (B) of this subsection~~g to be replaced has not been eliminated due to destruction or demolition, and the dwelling was assessed as a dwelling for ~~the~~ purposes of ad valorem taxation~~:¶~~
~~(i) For the previous five property tax years~~ since the later of:¶
(i) Five years before the date of the application; or¶
(ii) ~~From the time when~~The date that the dwelling was erected upon or ~~af~~fixed to the land and became subject to ~~assessment as described in ORS 307.010~~property tax assessment.¶
(~~c~~e) For replacement of a lawfully established dwelling under ORS 215.213(1)(q) or 215.283(1)(p):¶
(A) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use~~:¶~~

~~(i) Within one year~~ within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055~~; or~~¶
~~(ii) If the dwelling to be replaced is, in the discretion of the county, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the county that is not less than 90 days after the replacement permit is issued; and~~¶
~~(iii) If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.~~¶
(B) The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.¶
(C) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of ~~2019 Oregon Laws, chapter 440, section~~ ORS 215.291 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.¶
(D) The county planning director, or the director's designee, shall maintain a record of:¶
(i) The lots and parcels for which dwellings to be replaced have been removed, demolished or converted; and¶
(ii) The lots and parcels that do not qualify for the siting of a new dwelling under subsection (~~c) of this section~~e), including a copy of the deed restrictions filed under paragraph (C) of this subsection.¶
(~~d~~f)(A) A replacement dwelling under ORS 215.213(1)(q) or 215.283(1)(p) must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. ~~However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.~~¶
(B) The replacement dwelling m~~ust~~ay be sited on any part of the same lot or parcel:¶
(~~i~~C) ~~Using all or part of the footprint of t~~The replaced~~d~~ment dwelling ~~or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and~~¶
~~(ii) If possible, fo~~must comply with applicable siting standards. However, the standards may not be applied in a manner th~~e purpose of minimiz~~at prohibits the siting of the ~~adverse impacts on resource use of land in the area,~~replacement dwelling.¶
(D) The replacement dwelling must comply with~~in a concentration or cluster of structures or within 500 yards~~ the construction provisions of section R327 of ~~another structure.~~¶
~~(c) A replacement dwelling permit that is issued under ORS 215.213(1)(q) or 215.283(1)(p)~~the Oregon Residential Specialty Code, if:¶
(~~A~~i) ~~Is a land use decision as de~~The dwelling is in an area identifi~~n~~ed ~~in ORS 197.015 where the dwelling to be replaced:~~¶
~~(i) Formerly had the features described in paragraph (a)(A) of this section; or~~¶
~~(ii) Is eligible for replacement under paragraph (b)(B) of this section; and~~¶
~~(B) Is not subject to the time to act limits of ORS 215.417~~as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or¶
(ii) No statewide map of wildfire risk has been adopted.¶
(9)(a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. However, farming of a marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.¶
(b) A relative farm help dwelling must be located on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use.¶
(c) For the purpose of subsection (a), "relative" means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse.¶
(d) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.¶
(e) For the purpose of subsection (d), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).¶

(10) Temporary residence for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons. "Hardship" also includes a natural hazard event that has destroyed homes, caused residential evacuations, or both, and resulted in an Executive Order issued by the Governor declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p).¶
(a) For a medical hardship or hardship for the care of an aged or infirm person or persons the temporary residence may include a manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building. A manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished, or, in the case of an existing building, the building shall be removed, demolished, or returned to an allowed nonresidential use. Department of Environmental Quality review and removal requirements also apply.¶
(b) For hardships based on a natural hazard event described in this section, the temporary residence may include a recreational vehicle or the temporary residential use of an existing building. Governing bodies shall review the permit authorizing such temporary residences every two years. Within three months of the end of the hardship, the recreational vehicle shall be removed or demolished, or, in the case of an existing building, the building shall be removed, demolished, or returned to an allowed nonresidential use. Department of Environmental Quality review and removal requirements also apply.¶
(c) For applications submitted under subsection (b) of this section, the county may find that the criteria of section (5) are satisfied when:¶
(A) The temporary residence is established within an existing building or, if a recreational vehicle, is located within 100 feet of the primary residence; or¶
(B) The temporary residence is located further than 250 feet from adjacent lands planned and zoned for resource use under Goal 3, Goal 4, or both.¶
(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division is allowed. For the purposes of this section, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.¶
(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.¶
(13) Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.¶
(14) Home occupations and the parking of vehicles may be authorized.¶
(a) Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located.¶
(b) A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.¶
(c) A governing body may only approve a use provided in OAR 660-033-0120 as a home occupation if:¶
(A) The scale and intensity of the use is no more intensive than the limitations and conditions otherwise specified for the use in OAR 660-033-0120, and¶
(B) The use is accessory, incidental and subordinate to the primary residential use of a dwelling on the property.¶
(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.¶
(16)(a) A utility facility established under ORS 215.213(1)(c) or 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:¶

(A) Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:¶
(i) Technical and engineering feasibility;¶
(ii) The proposed facility is locationally-dependent. A utility facility is locationally-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;¶
(iii) Lack of available urban and nonresource lands;¶
(iv) Availability of existing rights of way;¶
(v) Public health and safety; and¶
(vi) Other requirements of state and federal agencies.¶
(B) Costs associated with any of the factors listed in paragraph (A) of this subsection may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.¶
(C) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this paragraph shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.¶
(D) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.¶
(E) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.¶
(F) In addition to the provisions of paragraphs (A) to (D) of this subsection, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.¶
(G) The provisions of paragraphs (A) to (D) of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.¶
(b) An associated transmission line is necessary for public service and shall be approved by the governing body of a county or its designee if an applicant for approval under ORS 215.213(1)(c) or 215.283(1)(c) demonstrates to the governing body of a county or its designee that the associated transmission line meets either the requirements of paragraph (A) of this subsection or the requirements of paragraph (B) of this subsection.¶
(A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:¶
(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;¶
(ii) The associated transmission line is co-located with an existing transmission line;¶
(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or¶
(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.¶
(B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:¶
(i) Technical and engineering feasibility;¶
(ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;¶
(iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;¶
(iv) Public health and safety; or¶
(v) Other requirements of state or federal agencies.¶
(C) As pertains to paragraph (B), the applicant shall present findings to the governing body of the county or its

designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.¶
(D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.¶
(17) Permanent features of a power generation facility shall not use, occupy, or cover more than 12 acres unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.¶
(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.¶
(b) Notwithstanding ORS 215.130, 215.213, 215.283, or any local zoning ordinance or regulation, a public or private school, including all buildings essential to the operation of a school, formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, may be expanded provided:¶
(A) The expansion complies with ORS 215.296;¶
(B) The school was established on or before January 1, 2009;¶
(C) The expansion occurs on a tax lot:¶
(i) On which the school was established; or¶
(ii) Contiguous to and, on January 1, 2015, under the same ownership as the tax lot on which the school was established; and¶
(D) The school is a public or private school for kindergarten through grade 12.¶
(c) Subject to the requirements of sections (5) and (20) of this rule, a golf course may be established on land determined to be high-value farmland as defined in ORS 195.300(10)(c) if the land:¶
(A) Is not otherwise high-value farmland as defined in ORS 195.300(10);¶
(B) Is surrounded on all sides by an approved golf course; and¶
(C) Is west of U.S. Highway 101.¶
(19)(a) A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.¶
(b) Vacation or recreational purposes. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds devoted to vacation or recreational purposes shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Campgrounds approved under this provision must be found to be established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground and designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(d) of this rule.¶
(c) Emergency purposes. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because adequate amounts of permanent housing is not reasonably available. A county must process applications filed pursuant to this section in the manner identified at ORS 215.416(11).¶
(A) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.¶
(B) Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted

comprehensive plans and land use regulations to the extent possible.¶
(C) A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (19)(c) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this paragraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.¶
(d) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.¶
(e) For applications submitted under subsection (c) of this section, the criteria of section (5) can be found to be satisfied when:¶
(A) The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.¶
(B) The subject property is not irrigated.¶
(C) The subject property is not high-value farmland.¶
(D) The number of proposed campsites does not exceed 12; or¶
(E) The number of proposed campsites does not exceed 36: and¶
(F) Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goal 3, Goal 4, or both.¶
~~(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.¶~~
~~(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.¶~~
~~(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.¶~~
(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:¶
(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;¶
(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;¶
(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;¶

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:¶
(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;¶
(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and¶
(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.¶
(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.¶
(22) Permanent features of a power generation facility shall not use, occupy or cover more than 20 acres unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval.¶
(23) A farm stand may be approved if:¶
(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and¶
(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.¶
(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.¶
(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.¶
(e) A farm stand may not be used for the sale, or to promote the sale, of marijuana products or extracts.¶
(f) At the request of a local government with land use jurisdiction over the farm stand, the farm stand operator shall submit to the local government evidence of compliance with the annual sales requirement of subsection (a). Such evidence shall consist of an IRS tax return transcript and any other information the local jurisdiction may require to document ongoing compliance with this section or any other condition of approval required by the county.¶
(24) Accessory farm dwellings as defined by subsection (e) of this section may be considered customarily provided in conjunction with farm use if:¶
(a) Each accessory farm dwelling meets all the following requirements:¶

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;¶
(B) The accessory farm dwelling will be located:¶
(i) On the same lot or parcel as the primary farm dwelling;¶
(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract;¶
(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules;¶
(iv) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. "Farmworker housing" shall have the meaning set forth in ORS 215.278 and not the meaning in ORS 315.163; or¶
(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable; and¶
(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.¶
(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:¶
(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years or in an average of three of the last five years, the farm operator earned the lower of the following:¶
(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or¶
(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;¶
(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;¶
(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or paragraph (A) of this subsection; or¶
(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and¶
(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm;¶
(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and¶
(iii) A Producer License for the sale of dairy products under ORS 621.072.¶
(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in 660-033-0100.¶
(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.¶
(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential

structures allowed by the applicable state building code.¶
(f) Farming of a marijuana crop shall not be used to demonstrate compliance with the approval criteria for an accessory farm dwelling.¶
(g) Accessory farm dwellings destroyed by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 may be replaced. The temporary use of modular structures, manufactured housing, fabric structures, tents and similar accommodations is allowed until replacement under this subsection occurs.¶
(h) The applicant shall submit to the local government an IRS tax return transcript and any other information the county may require that demonstrates compliance with the gross farm income requirements in paragraph (b)(A) or (B), whichever is applicable.¶
(25) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center is allowed, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.¶
(26) Buildings and facilities associated with a site for the takeoff and landing of model aircraft shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.¶
(27) Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the Oregon Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.¶
(28)(a) A facility for the processing of farm products is a permitted use under ORS 215.213(1)(u) and ORS 215.283(1)(r) on land zoned for exclusive farm use, only if the facility:¶
(A) Uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. A county may not apply siting standards in a manner that prohibits the siting of a facility for the processing of farm products; or¶
(B) Notwithstanding any applicable siting standard, uses less than 2,500 square feet for its processing area. However, a local government shall apply applicable standards and criteria pertaining to floodplains, geologic hazards, beach and dune hazards, airport safety, tsunami hazards and fire siting standards.¶
(b) A county may not approve any division of a lot or parcel that separates a facility for the processing of farm products from the farm operation on which it is located.¶
(c) As used in this section, the following definitions apply:¶
(A) "Facility for the processing of farm products" means a facility for:¶
(i) Processing farm crops, including the production of biofuel as defined in ORS 315.141, if at least one-quarter of the farm crops come from the farm operation containing the facility; or¶
(ii) Slaughtering, processing or selling poultry or poultry products, rabbits or rabbit products from the farm operation containing the facility and consistent with the licensing exemption for a person under ORS 603.038(2).¶
(B) "Processing area" means the floor area of a building dedicated to farm product processing. "Processing area" does not include the floor area designated for preparation, storage or other farm use.¶
(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.¶
(b) Composting operations and facilities allowed on land not defined as high-value farmland shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Composting operations that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract are allowed uses, while other composting operations are subject to the review standards of ORS 215.296. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.¶
(30) The county governing body or its designate shall require as a condition of approval of a single-family dwelling

under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.¶
(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.¶
(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:¶
(a) A public right of way;¶
(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or¶
(c) The property to be served by the utility.¶
(33) An outdoor mass gathering as defined in ORS 433.735, subject to the provisions of ORS 433.735 to 433.770. A county may not require an outdoor mass gathering permit under ORS 433.750 for agri-tourism and other commercial events or activities permitted under ORS 215.213(11), 215.283(4), 215.451, 215.452, and ORS 215.449.¶
(34) An outdoor mass gathering of more than 3,000 persons any part of which is held outdoors and which continues or can reasonably be expected to continue for a period exceeding that allowable for an outdoor mass gathering as defined in ORS 433.735 is subject to review under the provisions of ORS 433.763.¶
(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and¶
(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to 215.130(5), (6) and (9).¶
(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.¶
(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a wind power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power generation facility shall be subject to the following provisions:¶
(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:¶
(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:¶
(i) Technical and engineering feasibility;¶
(ii) Availability of existing rights of way; and¶
(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under paragraph (B);¶
(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils;¶
(C) Costs associated with any of the factors listed in paragraph (A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value

farmland soils is necessary;¶
(D) The owner of a wind power generation facility approved under subsection (a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and¶
(E) The criteria of subsection (b) are satisfied.¶
(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:¶
(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;¶
(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;¶
(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and¶
(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.¶
(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.¶
(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of 660-033-0130(37)(b) shall apply to the entire project.¶
(38) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:¶
(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.¶
(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.¶
(c) "Dual-use development" means developing the same area of land for both a photovoltaic solar power generation facility and for farm use.¶
(d) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.¶
(e)-"Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V-VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.¶
(f)-"Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in

common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.¶
(g) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless:¶
(A) The provisions of paragraph (h)(H) are satisfied; or¶
(B) A county adopts, and an applicant satisfies, land use provisions authorizing projects subject to a dual-use development plan. Land use provisions adopted by a county pursuant to this paragraph may not allow a project in excess of 20 acres. Land use provisions adopted by the county must require sufficient assurances that the farm use element of the dual-use development plan is established and maintained so long as the photovoltaic solar power generation facility is operational or components of the facility remain on site. The provisions of this subsection are repealed on January 1, 2022.¶
(h)-The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10).¶
(A) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;¶
(B) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied. The approved plan shall be attached to the decision as a condition of approval;¶
(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;¶
(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;¶
(E) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(F) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Non high-value farmland soils are not available on the subject tract;¶
(ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils; and¶
(G)-A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:¶
(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.¶
(ii) When at least 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.¶
(H) A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:¶

(i) Is not located within the boundaries of an irrigation district;¶
(ii) Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;¶
(iii) Is located within the service area of an electric utility described in ORS 469A.052(2);¶
(iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and¶
(v) Does not qualify as high-value farmland under any other provision of law; or¶
(i) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 20 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Nonarable soils are not available on the subject tract;¶
(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;¶
(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);¶
(D) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:¶
(i) If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.¶
(ii) When at least 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and¶
(E) The requirements of OAR 660-033-0130(38)(h)(A), (B), (C) and (D) are satisfied.¶
(j) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:¶
(A) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);¶
(B) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:¶
(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or¶
(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;¶
(C) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);¶
(D) No more than 20 acres of the project will be sited on arable soils;¶
(E) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;¶
(F) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and¶
(G) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific

consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.¶
(k) An exception to the acreage and soil thresholds in subsections (g), (h), (i), and (j) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.¶
(l) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).¶
(m) Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.¶
(n) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (g), (i) and (j) of this section.¶
(39) Dog training classes or testing trials conducted outdoors or in farm buildings that existed on January 1, 2019, when:¶
(a) The number of dogs participating in training does not exceed 10 per training class and the number of training classes to be held on-site does not exceed six per day; and¶
(b) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site does not exceed four per calendar year.¶
(40) A youth camp may be established on agricultural land under the requirements of this section. The purpose of this section is to allow for the establishment of youth camps that are generally self-contained and located on a lawfully established unit of land of suitable size and location to limit potential impacts on nearby land and to ensure compatibility with surrounding farm uses.¶
(a) Definitions: In addition to the definitions provided for this division in OAR 660-033-0020 and ORS 92.010, for purposes of this section the following definitions apply:¶
(A)"Low impact recreational facilities" means facilities that have a limited amount of permanent disturbance on the landscape and are likely to create no, or only minimal impacts on adjacent private lands. Low impact recreational facilities include, but are not limited to, open areas, ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding areas, swimming pools and zip lines. Low impact recreational facilities are designed and developed in a manner consistent with the lawfully established unit of land's natural environment.¶
(B) "Youth camp" means a facility that is either owned or leased, and is operated by a state or local government or a nonprofit corporation as defined under ORS 65.001 and is established for the purpose of providing an outdoor recreational and educational experience primarily for the benefit of persons 21 years of age and younger. Youth camps do not include a juvenile detention center or juvenile detention facility or similar use.¶
(C) "Youth camp participants" means persons directly involved with providing or receiving youth camp services, including but not limited to, campers, group leaders, volunteers or youth camp staff.¶
(b) Location: A youth camp may be located only on a lawfully established unit of land suitable to ensure an outdoor experience in a private setting without dependence on the characteristics of adjacent and nearby public and private land. In determining the suitability of a lawfully established unit of land for a youth camp the county shall consider its size, topography, geographic features and other characteristics, the proposed number of overnight participants and the type and number of proposed facilities. A youth camp may be located only on a lawfully established unit of land that is:¶
(A) At least 1,000 acres;¶
(B) In eastern Oregon;¶
(C) Composed predominantly of class VI, VII or VIII soils;¶
(D) Not within an irrigation district;¶
(E) Not within three miles of an urban growth boundary;¶

(F) Not in conjunction with an existing golf course;¶
(G) Suitable for the provision of protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands and uses. Such buffers shall consist of natural vegetation, topographic or other natural features and shall be implemented through the requirement of setbacks from adjacent public and private lands, public roads, roads serving other ownerships and riparian areas. Setbacks from riparian areas shall be consistent with OAR 660-023-0090. Setbacks from adjacent public and private lands, public roads and roads serving other ownerships shall be 250 feet unless the county establishes on a case-by-case basis a different setback distance sufficient to:¶
(i) Prevent significant conflicts with commercial resource management practices;¶
(ii) Prevent a significant increase in safety hazards associated with vehicular traffic on public roads and roads serving other ownerships; and¶
(iii) Minimize conflicts with resource uses on nearby resource lands;¶
(H) At least 1320 feet from any other lawfully established unit of land containing a youth camp approved pursuant to this section; and¶
(I) Suitable to allow for youth camp development that will not interfere with the exercise of legally established water rights on nearby properties.¶
(c) Overnight Youth Camp Participants: The maximum number of overnight youth camp participants is 350 participants unless the county finds that a lower number of youth camp participants is necessary to avoid conflicts with surrounding uses based on consideration of the size, topography, geographic features and other characteristics of the lawfully established unit of land proposed for the youth camp. Notwithstanding the preceding sentence, a county may approve a youth camp for more than 350 overnight youth camp participants consistent with this subsection if resource lands not otherwise needed for the youth camp that are located in the same county or adjacent counties that are in addition to, or part of, the lawfully established unit of land approved for the youth camp are permanently protected by restrictive covenant as provided in subsection (d) and subject to the following provisions:¶
(A) For each 160 acres of agricultural lands predominantly composed of class I-V soils that are permanently protected from development, an additional 50 overnight youth camp participants may be allowed;¶
(B) For each 160 acres of wildlife habitat that is either included on an acknowledged inventory in the local comprehensive plan or identified with the assistance and support of Oregon Department of Fish and Wildlife, regardless of soil types and resource land designation that are permanently protected from development, an additional 50 overnight youth camp participants may be allowed;¶
(C) For each 160 acres of agricultural lands predominantly composed of class VI-VIII soils that are permanently protected from development, an additional 25 overnight youth camp participants may be allowed; or¶
(D) A youth camp may have 351 to 600 overnight youth camp participants when:¶
(i) The tract on which the youth camp will be located includes at least 1,920 acres; and¶
(ii) At least 920 acres is permanently protected from development. The county may require a larger area to be protected from development when it finds a larger area necessary to avoid conflicts with surrounding uses.¶
(E) Under no circumstances shall more than 600 overnight youth camp participants be allowed.¶
(d) The county shall require, as a condition of approval of an increased number of overnight youth camp participants authorized by paragraphs (c)(A), (B), (C) or (D) of this section requiring other lands to be permanently protected from development, that the land owner of the other lands to be protected sign and record in the deed records for the county or counties where such other lands are located a document that protects the lands as provided herein, which for purposes of this section shall be referred to as a restrictive covenant.¶
(A) A restrictive covenant shall be sufficient if it is in a form substantially the same as the form attached hereto as Exhibit B.¶
(B) The county condition of approval shall require that the land owner record a restrictive covenant under this subsection:¶
(i) Within 90 days of the final land use decision if there is no appeal, or¶
(ii) Within 90 days after an appellate judgment affirming the final land use decision on appeal.¶
(C) The restrictive covenant is irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the land subject to the restrictive covenant is located.¶
(D) Enforcement of the restrictive covenant may be undertaken by the department or by the county or counties where the land subject to the restrictive covenant is located.¶
(E) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the restrictive covenant required by this subsection.¶
(F) The county planning director shall maintain a copy of the restrictive covenant filed in the county deed records pursuant to this section and a map or other record depicting the tracts, or portions of tracts, subject to the restrictive covenant filed in the county deed records pursuant to this section. The map or other record required by

this subsection shall be readily available to the public in the county planning office.¶
(e) In addition, the county may allow:¶
(A) Up to eight nights during the calendar year during which the number of overnight youth camp participants may exceed the total number of overnight youth camp participants allowed under subsection (c) of this section.¶
(B) Overnight stays at a youth camp for participants of adult programs that are intended primarily for individuals over 21 years of age, not including staff, for up to 30 days in any one calendar year.¶
(f) Facilities: A youth camp may provide only the facilities described in paragraphs (A) through (I) of this subsection:¶
(A) Low impact recreational facilities. Intensive developed facilities such as water parks and golf courses are not allowed;¶
(B) Cooking and eating facilities, provided they are within a building that accommodates youth camp activities but not in a building that includes sleeping quarters. Food services shall be limited to those provided in conjunction with the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants;¶
(C) Bathing and laundry facilities;¶
(D) Up to three camp activity buildings, not including a building for primary cooking and eating facilities.¶
(E) Sleeping quarters, including cabins, tents or other structures, for youth camp participants only, consistent with subsection (c) of this section. Sleeping quarters intended as overnight accommodations for persons not participating in activities allowed under this section or as individual rentals are not allowed. Sleeping quarters may include restroom facilities and, except for the caretaker's dwelling, may provide only one shower for every five beds. Sleeping quarters may not include kitchen facilities.¶
(F) Covered areas that are not fully enclosed for uses allowed in this section;¶
(G) Administrative, maintenance and storage buildings including permanent structures for administrative services, first aid, equipment and supply storage, and a gift shop available to youth camp participants but not open to the general public;¶
(H) An infirmary, which may provide sleeping quarters for medical care providers (e.g., a doctor, registered nurse, or emergency medical technician);¶
(I) A caretaker's residence, provided no other dwelling is on the lawfully established unit of land on which the youth camp is located.¶
(g) A campground as described in ORS 215.283(2)(c), OAR 660-033-0120, and section (19) of this rule may not be established in conjunction with a youth camp.¶
(h) Conditions of Approval: In approving a youth camp application, a county must include conditions of approval as necessary to achieve the requirements of this section.¶
(A) With the exception of trails, paths and ordinary farm and ranch practices not requiring land use approval, youth camp facilities shall be clustered on a single development envelope of no greater than 40 acres.¶
(B) A youth camp shall adhere to standards for the protection of archaeological objects, archaeological sites, burials, funerary objects, human remains, objects of cultural patrimony and sacred objects, as provided in ORS 97.740 to 97.750 and 358.905 to 358.961, as follows:¶
(i) If a particular area of the lawfully established unit of land proposed for the youth camp is proposed to be excavated, and if that area contains or is reasonably believed to contain resources protected by ORS 97.740 to 97.750 and 358.905 to 358.961, the application shall include evidence that there has been coordination among the appropriate Native American Tribe, the State Historic Preservation Office (SHPO) and a qualified archaeologist, as described in ORS 390.235(6)(b).¶
(ii) The applicant shall obtain a permit required by ORS 390.235 before any excavation of an identified archeological site begins.¶
(iii) The applicant shall monitor construction during the ground disturbance phase(s) of development if such monitoring is recommended by SHPO or the appropriate Native American Tribe.¶
(C) A fire safety protection plan shall be adopted for each youth camp that includes the following:¶
(i) Fire prevention measures;¶
(ii) On site pre-suppression and suppression measures; and¶
(iii) The establishment and maintenance of fire-safe area(s) in which camp participants can gather in the event of a fire.¶
(D) A youth camp's on-site fire suppression capability shall at least include:¶
(i) A 1000 gallon mobile water supply that can reasonably serve all areas of the camp;¶
(ii) A 60 gallon-per-minute water pump and an adequate amount of hose and nozzles;¶
(iii) A sufficient number of firefighting hand tools; and¶
(iv) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.¶
(v) An equivalent level of fire suppression facilities may be determined by the governing body or its designate. The

equivalent capability shall be based on the response time of the effective wildfire suppression agencies.¶
(E) The county shall require, as a condition of approval of a youth camp, that the land-owner of the youth camp sign and record in the deed records for the county a document binding the land-owner, the operator of the youth camp if different from the owner, and the land owner's or operator's successors in interest, prohibiting:¶
(i) a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937;¶
(ii) future land divisions resulting in a lawfully established unit of land containing the youth camp that is smaller in size than required by the county for the original youth camp approval; and¶
(iii) development on the lawfully established unit of land that is not related to the youth camp and would require a land use decision as defined at ORS 197.015(10) unless the county's original approval of the camp is rescinded and the youth camp development is either removed or can remain, consistent with a county land use decision that is part of such rescission.¶
(F) Nothing in this rule relieves a county from complying with other requirements contained in the comprehensive plan or implementing land use regulations, such as the requirements addressing other resource values (e.g. resources identified in compliance with statewide planning Goal 5) that exist on agricultural lands.¶
(i) If a youth camp is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between youth camp development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts consistent with OAR chapter 660, divisions 16 and 23. If there is no program to protect the listed Goal 5 resource(s) included in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures in compliance with OAR chapter 660, division 23; and¶
(ii) If a proposed youth camp is located on lands where, after site specific consultation with a district state biologist, the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat, or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites, or pigeon springs), the applicant shall conduct a site-specific assessment of the land in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the youth camp facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the youth camp facility.¶
(iii) The commission shall consider the repeal of the provisions of subparagraph (ii) on or before January 1, 2022.¶
(i) Extension of Sewer to a Youth Camp. A Goal 11 exception to authorize the extension of a sewer system to serve a youth camp shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this section. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 11 shall not apply. Exceptions adopted pursuant to this section shall be deemed to fulfill the requirements for goal exceptions under ORS 197.732(1)(c) and Goal 2.¶
(A) A Goal 11 exception shall determine the general location for the proposed sewer extension and shall require that necessary infrastructure be no larger than necessary to accommodate the proposed youth camp.¶
(B) To address Goal 2, Part II(c)(1), the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Goal 2, Part II(c)(1) shall be found to be satisfied if the proposed sewer extension will serve a youth camp proposed for up to 600 youth camp participants.¶
(C) To address Goal 2, Part II(c)(2), the exception shall demonstrate that areas which do not require a new exception cannot reasonably accommodate the proposed sewer extension. Goal 2, Part II(c)(2) shall be found to be satisfied if the sewer system to be extended was in existence as of January 1, 1990, and is located outside of an urban growth boundary on lands for which an exception to Goal 3 has been taken.¶
(D) To address Goal 2, Part II(c)(3), the exception shall demonstrate that the long term environmental, economic, social, and energy consequences resulting from the proposed extension of sewer with measures to reduce the effect of adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the lawfully established unit of land proposed for the youth camp. Goal 2, Part II(c)(3) shall be found to be satisfied if the proposed sewer extension will serve a youth camp located on a tract of at least 1,000 acres.¶
(E) To address Goal 2, Part II(c)(4), the exception shall demonstrate that the proposed sewer extension is

compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. Goal 2, Part II(c)(4) shall be found to be satisfied if the proposed sewer extension for a youth camp is conditioned to comply with section (5) of this rule.¶
(F) An exception taken pursuant to this section does not authorize extension of sewer beyond what is justified in the exception.¶
(j) Applicability: The provisions of this section shall apply directly to any land use decision pursuant to ORS 197.646 and 215.427(3). A county may adopt provisions in its comprehensive plan or land use regulations that establish standards and criteria in addition to those set forth in this section, or that are necessary to ensure compliance with any standards or criteria in this section.¶
(41) Equine and equine-affiliated therapeutic counseling activities shall be conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental, and subordinate to the farm use on the tract. All individuals conducting therapeutic or counseling activities must act within the proper scope of any licenses required by the state.¶
(42)(a) A commercial activity in conjunction with farm use must:¶
(A) Be either exclusively or primarily a customer or supplier of farm products,¶
(B) Provide products or services essential to the practice of agriculture, and¶
(C) Enhance the farming enterprises of the local agricultural community.¶
(b) There must be a direct connection between the proposed nonfarm commercial activity and area agriculture that is neither speculative nor remote and is not attenuated by time, left up to chance, or untargeted.¶
(c) Notwithstanding the requirements of paragraphs (a)(A) and (B), a local government may authorize the siting of a winery, on land zoned for exclusive farm use, as a commercial activity in conjunction with farm use if the winery:¶
(A) Does not qualify for siting under ORS 215.452 or 215.453; or¶
(B) Seeks to carry out uses or activities that are not authorized by ORS 215.452 or 215.453.¶
(d) If a county authorizes a winery as a commercial activity in conjunction with farm use after June 28, 2013, the gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery.¶
(43)(a) As used in ORS 215.213(11) or 215.283(4) a determination that an event or activity is "incidental and subordinate" requires consideration of any relevant circumstances, including the nature, intensity, and economic value of the respective farm and event uses, that bear on whether the existing farm use remains the predominant use of the tract.¶
(b) As used in ORS 215.213(11)(d)(A) or ORS 215.283(4)(d)(A), a determination that an event or activity is necessary to support either the commercial farm uses or commercial agricultural enterprises in the area means that the events are essential in order to maintain the existence of either the commercial farm or the commercial agricultural enterprises in the area.¶
(44) As used in ORS 215.213(2)(e) or 215.283(2)(c), a "private park" means an area devoted to low-intensity, outdoor, recreational uses for which enjoyment of the outdoors in an open space, or on land in its natural state, is a necessary component and the primary focus.
Statutory/Other Authority: ORS 197.040
Statutes/Other Implemented: ORS 197.040, ORS 215.213, ORS 215.275, ORS 215.282, ORS 215.283, ORS 215.301, ORS 215.448, ORS 215.459, ORS 215.705, ORS 215.449

AMEND: 660-033-0135

RULE SUMMARY: 660-033-0135(11): Oregon Laws 2019, chapter 307, section 3 repealed section 2 on January 2, 2022 which had authorized special provisions for farm dwellings in conjunction with a cranberry farm use.

CHANGES TO RULE:

660-033-0135
Dwellings in Conjunction with Farm Use ¶

(1) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:¶
(a) The parcel on which the dwelling will be located is at least:¶
(A) 160 acres and not designated rangeland; or¶
(B) 320 acres and designated rangeland; or¶
(C) As large as the minimum parcel size if located in a zoning district with an acknowledged minimum parcel size larger than indicated in paragraph (A) or (B) of this subsection.¶
(b) The subject tract is currently employed for farm use, as defined in ORS 215.203.¶
(c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.¶
(d) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract.¶
(2)(a) If a county prepares the potential gross sales figures pursuant to subsection (c) of this section, the county may determine that on land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:¶
(A) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least $10,000 in annual gross sales that are located within a study area that includes all tracts wholly or partially within one mile from the perimeter of the subject tract;¶
(B) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in paragraph (A) of this subsection;¶
(C) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in paragraph (B) of this subsection;¶
(D) The subject lot or parcel on which the dwelling is proposed is not less than 10 acres in western Oregon or 20 acres in eastern Oregon;¶
(E) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;¶
(F) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and¶
(G) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by paragraph (C) of this subsection.¶
(H) In determining the gross sales capability required by paragraph (C):¶
(i) The actual or potential cost of purchased livestock shall be deducted from the total gross sales attributed to the farm or ranch tract;¶
(ii) Only actual or potential gross sales from land owned, not leased or rented, shall be counted; and¶
(iii) Actual or potential gross farm sales earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.¶
(b) In order to identify the commercial farm or ranch tracts to be used in paragraph (2)(a)(A) of this rule, the gross sales capability of each tract in the study area, including the subject tract, must be determined, using the gross sales figures prepared by the county pursuant to subsection (2)(c) of this section as follows:¶
(A) Identify the study area. This includes all the land in the tracts wholly or partially within one mile of the perimeter of the subject tract;¶
(B) Determine for each tract in the study area the number of acres in every land classification from the county assessor's data;¶
(C) Determine the potential earning capability for each tract by multiplying the number of acres in each land class by the gross sales per acre for each land class provided by the commission pursuant to subsection (2)(c) of this section. Add these to obtain the potential earning capability for each tract;¶
(D) Identify those tracts capable of grossing at least $10,000 based on the data generated in paragraph (C) of this subsection; and¶

(E) Determine the median size and median gross sales capability for those tracts capable of generating at least $10,000 in annual gross sales to use in paragraphs (2)(a)(A) and (B) of this subsection.¶
(c) In order to review a farm dwelling pursuant to subsection (2)(a) of this section, a county may prepare, subject to review by the director of the Department of Land Conservation and Development, a table of the estimated potential gross sales per acre for each assessor land class (irrigated and nonirrigated) required in subsection (2)(b) of this section. The director shall provide assistance and guidance to a county in the preparation of this table. The table shall be prepared as follows:¶
(A) Determine up to three indicator crop types with the highest harvested acreage for irrigated and for nonirrigated lands in the county using the most recent OSU Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and State Agricultural Estimates," or other USDA/Extension Service documentation;¶
(B) Determine the combined weighted average of the gross sales per acre for the three indicator crop types for irrigated and for nonirrigated lands, as follows:¶
(i) Determine the gross sales per acre for each indicator crop type for the previous five years (i.e., divide each crop type's gross annual sales by the harvested acres for each crop type);¶
(ii) Determine the average gross sales per acre for each crop type for three years, discarding the highest and lowest sales per acre amounts during the five-year period;¶
(iii) Determine the percentage each indicator crop's harvested acreage is of the total combined harvested acres for the three indicator crop types for the five year period;¶
(iv) Multiply the combined sales per acre for each crop type identified under subparagraph (ii) of this paragraph by its percentage of harvested acres to determine a weighted sales per acre amount for each indicator crop; and¶
(v) Add the weighted sales per acre amounts for each indicator crop type identified in subparagraph (iv) of this paragraph. The result provides the combined weighted gross sales per acre.¶
(C) Determine the average land rent value for irrigated and nonirrigated land classes in the county's exclusive farm use zones according to the annual "income approach" report prepared by the county assessor pursuant to ORS 308A.092; and¶
(D) Determine the percentage of the average land rent value for each specific land rent for each land classification determined in paragraph (C) of this subsection. Adjust the combined weighted sales per acre amount identified in subparagraph (B)(v) of this subsection using the percentage of average land rent (i.e., multiply the weighted average determined in subparagraph (B)(v) of this subsection by the percent of average land rent value from paragraph (C) of this subsection). The result provides the estimated potential gross sales per acre for each assessor land class that will be provided to each county to be used as explained under paragraph (2)(b)(C) of this section.¶
(3) On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:¶
(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years, or in an average of three of the last five years, the farm operator earned the lower of the following:¶
(A) At least $40,000 in gross annual income from the sale of farm products; or¶
(B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon; and¶
(b) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands designated for exclusive farm use pursuant to ORS chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation;¶
(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and¶
(d) In determining the gross income required by subsection (a) of this section:¶
(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;¶
(B) Only gross income earned from land owned, not leased or rented, shall be counted; and¶
(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.¶
(e) The applicant shall submit to the local government an IRS tax return transcript and any other information the local jurisdiction may require that demonstrates compliance with the gross farm income requirement¶
(4) On land identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:¶
(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years; and¶
(b) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands

designated for exclusive farm use pursuant to ORS chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation; and¶
(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section;¶
(d) In determining the gross income required by subsection (a) of this section;¶
(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;¶
(B) Only gross income earned from land owned, not leased or rented, shall be counted; and¶
(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.¶
(e) The applicant shall submit to the local government an IRS tax return transcript and any other information the local jurisdiction may require that demonstrates compliance with the gross farm income requirement.¶
(5)(a) For the purpose of sections (3), (4), or (11) of this rule, noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross income requirements. Except for Hood River and Wasco counties and Jackson and Klamath counties, when a farm or ranch operation has lots or parcels in both "western" and "eastern" Oregon as defined by this division, lots or parcels in eastern or western Oregon may not be used to qualify a dwelling in the other part of the state.¶
(b) Prior to the final approval for a dwelling authorized by sections (3), (4), and (11) of this rule that requires one or more contiguous or non-contiguous lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:¶
(A) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS chapter 215; and¶
(B) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.¶
(c) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;¶
(d) Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located;¶
(e) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section;¶
(f) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.¶
(6) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, a dwelling may be considered customarily provided in conjunction with farm use if it is not on a lot or parcel identified as high-value farmland and it meets the standards and requirements of ORS 215.213(2)(a) or (b).¶
(7) A dwelling may be considered customarily provided in conjunction with a commercial dairy farm as defined by OAR 660-033-0135(8) if:¶
(a) The subject tract will be employed as a commercial dairy as defined by OAR 660-033-0135(8);¶
(b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy;¶
(c) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;¶
(d) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm;¶
(e) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and¶
(f) The Oregon Department of Agriculture has approved the following:¶
(A) A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and¶
(B) A Producer License for the sale of dairy products under ORS 621.072.¶
(8) As used in this division, the following definitions apply:¶
(a) "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing dairy animals capable

of earning the gross annual income required by OAR 660-033-0135(3)(a) or (4)(a), whichever is applicable, from the sale of fluid milk; and¶
(b) "Farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203.¶
(9) A dwelling may be considered customarily provided in conjunction with farm use if:¶
(a) Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable;¶
(b) The subject lot or parcel on which the dwelling will be located is:¶
(A) Currently employed for the farm use, as defined in ORS 215.203, that produced in each of the last two years or three of the last five years, or in an average of three of the last five years the gross farm income required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable; and¶
(B) At least the size of the applicable minimum lot size under OAR 215.780;¶
(c) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;¶
(d) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and¶
(e) In determining the gross income required by subsections (a) and (b)(A) of this section:¶
(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and¶
(B) Only gross income from land owned, not leased or rented, shall be counted.¶
(10) Farming of a marijuana crop, and the gross sales derived from selling a marijuana crop, may not be used to demonstrate compliance with the approval criteria for a primary farm dwelling.¶
~~(11)(a) Notwithstanding section (4), a dwelling on high-value farmland may be considered customarily provided in conjunction with farm use if:¶~~
~~(A) The tract on which the dwelling will be established is currently employed for farm use involving the raising and harvesting of cranberries;¶~~
~~(B) The tract on which the dwelling will be established is considered to be high-value farmland on the basis that the tract is growing a specified perennial under OAR 660-033-0020(8)(b) but the tract is not considered to be high-value farmland on the basis of soil composition under OAR 660-033-0020(8)(a);¶~~
~~(C) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands zoned for exclusive farm use or for farm and forest use owned by the farm operator or on the farm operation;¶~~
~~(D) The operator of the farm on the tract earned at least $40,000 in gross annual income from the sale of cranberries or cranberry products in each of the last two years, or three of the last five years, or in an average of three of the last five years;¶~~
~~(E) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in paragraph (D) of this subsection; and¶~~
~~(F) As a condition of approval for the new dwelling, the property owner agrees to sign and record in the deed records for the county in which the parcel is located, one or more instruments containing irrevocable deed restrictions, enforceable by the county, that prohibit the owner and the owner's successors from using the dwelling as a rental dwelling unit as defined in ORS 90.100.¶~~
~~(b) In determining the gross income required by subsection (a) of this section;¶~~
~~(A) Only gross income from land owned, not leased or rented, shall be counted; and¶~~
~~(B) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.¶~~
[ED. NOTE: Exhibits referenced are available from the agency.]
Statutory/Other Authority: ORS 197.040, ORS 197.230, ORS 197.245
Statutes/Other Implemented: ORS 197.015, ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.203, ORS 215.243, ORS 215.283, ORS 215.700 - 215.710, ORS 215.780

Department of Land Conservation and Development

Farm and Forest Conservation Program: Rulemaking Charge Additions

April 26, 2024

Farm and Forest Conservation Program Improvements Project Rulemaking.

Department of Land Conservation and Development (DLCD) Staff intend that the charge will support the Rulemaking Advisory Committee's (RAC) efforts by implementing commission expectations. Should there be confusion or disagreement among the RAC, the charge will prevail. The following draft language has been or will be reviewed by DLCD's Rural Team, Policy Team and the Local Officials Advisory Committee (LOAC). This work focuses on codification of case law and clarifications to rules implementing statewide land use planning Goals 3: Agricultural Lands and 4: Forest Lands.

Current charge:

Members of the Rules Advisory Committee (RAC) will provide assistance to agency staff to analyze, draft, and recommend Oregon Administrative Rules (OARs) that codify certain case law standards related to the implementation of Goal 3: Agricultural Lands and 4: Forest Lands. OARs staff recommend for consideration by the Land Conservation and Development Commission will:

- *Codify the identified established case law standards.*
- *Result in more consistent implementation of those identified case law standards across Oregon counties.*
- *Provide additional clarity to counties, rural residents and potential land use permit applicants with the intent of reducing unnecessary appeals.*

Topics of consideration: ORS 215.296 (the 'Farm Impacts Test'), Commercial Activities in Conjunction with Farm Use, the Agri-Tourism and Other Commercial Events 'incidental and subordinate' and 'necessary to support' standards, Transportation Facilities on Rural Lands.

Additions to charge:

Members of the Rules Advisory Committee (RAC) will also provide assistance to agency staff to analyze, draft, and recommend Oregon Administrative Rules (OARs) related to the implementation of Goal 3: Agricultural Lands and Goal 4: Forest Lands and recommend OARs to reduce regulatory confusion, improve clarity and facilitate implementation of standards by counties. OARs staff recommend for consideration by the Land Conservation and Development Commission will:

- *Repair the circular definition in OAR 660-033-0020(7)(b). Add a definition for 'processing' to OAR 660-033-0020 with the intent of clarifying what is appropriately considered a preparation farm use and what is processing.*

- *Establish an evidentiary standard for verification of income to demonstrate compliance with the standards for farm stands, agri-tourism events, and primary and accessory farm dwellings.*

- *Rulemaking to define in OAR 660-006-0027 a replicable methodology to align a template rectangle with stream or road. Clarify what constitutes a 'road' for purposes of the review and the term 'maximum extent possible'.*

- *Rulemaking to clarify that focal events are not "recreational uses". This is proposed as a codification of the opinion in Central Oregon Landwatch v. Deschutes County, 72 Or LUBA 61 (2015).*

- *Clarify whether uses otherwise listed in chapter 215 of statute or in OAR 660-006-0025 may or may not alternatively be reviewed as Home Occupations under ORS 215.213(2), 215.283(2) or OAR 660-006-0025(4)(s).*

- *Clarify whether uses otherwise allowed in chapter 215 of statute may or may not alternatively be reviewed as Commercial Activities in Conjunction with Farm Use (CACFU) under ORS 215.213(2)(n) or 215.283(2)(i) unless otherwise allowed in statute.*

- *Discuss an approach to recommending any updates to replacement dwelling rule.*

Attachment C

Rulemaking Advisory Committee Members

The Farm and Forest Rulemaking Advisory Committee were appointed considering geographic and demographic diversity reflective of the state of Oregon, and in an effort to represent a wide variety of interests including: owners and lessees of land zoned for farm and forest use, owners and renters of neighboring properties, farm, woodlot and forest business owners and suppliers of farm, woodlot and forest industries and industry groups, county commissioners and planning staff, county public works departments, farmland and forestland protection advocates, natural resource and climate advocates, farm and forest and land use scholars, land trust organizations, land use lawyers, property rights advocates, developers, tourism support entities, natural resource agency staff with interest in land use, and a LCDC liaison.

Member	Organization
Alyssa Boles	Linn County Planning Department
Austin Barnes	Marion County Planning Department
Blair Batson	1,000 Friends of Oregon
Charles Bennett	Jackson County Planning Department
J. Kenneth Katzaroff	Attorney
James Johnson	Oregon Department of Agriculture
Jan Lee	Oregon Association of Conservation Districts
Joy Lovett	Oregon Department of Fish and Wildlife
Justin Green	Justin B. Green Consulting
Katherine H Daniels	Agricultural Land Use Scholar

Member	Organization
Maitreyee Sinha	Washington County Planning Department
Megan Davchevski	Umatilla County Planning Department
Michael S. McCarthy	McCarthy Family Farm
Mickey Killingsworth	M.D. Acres
Nellie McAdams	Oregon Agricultural Trust
Rory Isbell	Central Oregon LandWatch
Tyler Ernst	Oregon Forest Industries Council
Amber Bell	Lane County Planning Department
Jeffrey L. Kleinman	Attorney
Lauren Poor	Oregon Farm Bureau
Rob Hallyburton	Friends of Yamhill County
Samantha Bayer	Oregon Property Owners Association
Elaine Albrich	Oregon Winegrowers Association

ATTACHMENT D: Uses That are Both Specifically Allowed by a State Statute and as Home Occupations

Non-farm uses listed in OAR 660-033-0120 which might be approved alternatively as Home Occupations	**Statutory Authorization**	**Previously approved as a Home Occupation as reported by counties?**
A facility for the primary processing of forest products	215.213(2)(i)/215.283(2)(j)	no
A facility for the processing of farm products	215.213(1)(u)/215.283(1)(r)	yes
Room and board arrangements for a maximum of five unrelated persons in existing residences.	215.213(2)(t)/215.283(2)(u)	yes
Dog training classes or testing trials	215.213(1)(z)/215.283(1)(x)	yes
Commercial dog boarding kennels	215.213(2)(k)/215.283(2)(n)	yes
A winery	215.213 (1)(p)/215.283 (1)(n)	yes
A cider business	215.213(1)(aa)/215.283(1)(y)	yes
A farm brewery	215.213(1)(bb)/215.283(1)(z)	yes
Agri-tourism and other commercial events or activities	215.213(11)/215.283(4)	yes
Farm stands	215.213(1)(r)/215.283(1)(o)	yes
A landscape contracting business, as defined in ORS 671.520	215.213(2)(x)/215.283(2)(z)	yes
Log truck parking	215.311	no
Guest ranch in eastern Oregon	215.283(2)(cc)	no
Equine and equine-affiliated therapeutic and counseling activities.	215.213(2)(z)/215.283(2)(bb)	yes
Youth camps	215.457(2)	no
Public or private schools	215.213(2)(y)/215.283(2)(aa)	yes
Private parks, playgrounds, hunting and fishing preserves, and campgrounds	215.213(2)(e)/215.283(2)(c)	yes
Childcare facilities, preschool recorded programs or school-age recorded programs	215.213(2)(aa)/215.283(2)(dd)	yes

Attachment E

Proposed Rule Language (Quick Reference)

Recommended rule language for farm impacts test caselaw:

OAR 660-033-0130

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

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

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

(c) For purposes of subsection (a) and (b), a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:

(A) Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;

(B) An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices; and

(C) An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.

(D) For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.

(E) For purposes of subsection (a) and (b), potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under subsection (a) and (b).

(F) In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in subsection (a) and (b).

Recommended rule language for CACFUs:

OAR 660-033-0130

(42)(a) A commercial activity in conjunction with farm use must:

(A) Be either exclusively or primarily a customer or supplier of farm products,
(B) Provide products or services essential to the practice of agriculture, and
(C) Enhance the farming enterprises of the local agricultural community.
(b) There must be a direct connection between the proposed nonfarm commercial activity and area agriculture that is neither speculative nor remote and is not attenuated by time, left up to chance, or untargeted.
(c) Notwithstanding the requirements of paragraphs (42)(a)(A) and (B), a local government may authorize the siting of a winery, on land zoned for exclusive farm use, as a commercial activity in conjunction with farm use if the winery:
(A) Does not qualify for siting under ORS 215.452 or 215.453; or
(B) Seeks to carry out uses or activities that are not authorized by ORS 215.452 or 215.453.
(d) If a county authorizes a winery as a commercial activity in conjunction with farm use after June 28, 2013, the gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery.

Recommended rule language for Agri-tourism Standards:

OAR 660-033-0130

(43)(a) As used in ORS 215.213(11) or 215.283(4) a determination that an event or activity is 'incidental and subordinate' requires consideration of any relevant circumstances, including the nature, intensity, and economic value of the respective farm and event uses, that bear on whether the existing farm use remains the predominant use of the tract.

(b) As used in ORS 215.213(11)(d)(A) or ORS 215.283(4)(d)(A), a determination that an event or activity is 'necessary to support' either the commercial farm uses or commercial agricultural enterprises in the area means that the events are essential in order to maintain the existence of either the commercial farm or the commercial agricultural enterprises in the area.

Recommended rule language for Transportation Facilities:

OAR 660-012-0065

(5)(a) For transportation uses or improvements listed in subsection (3) within an exclusive farm use (EFU) or forest zone, except for transportation uses or improvements permitted under ORS 215.213(1), 215.283(1) or OAR 660-006-0025(1)-(3), a jurisdiction shall find that the proposal will comply with the standards described in ORS 215.296. In addition, transportation uses or improvements in a forest zone, except for transportation uses or improvements authorized under OAR 660-006-0025(1)-(3), must also comply with the standards described in OAR 660-006-0025(5).

(b) For transportation uses or improvements listed in subsections (3)(d) to (g) and (o) ~~of this rule~~ within an ~~exclusive farm use (~~EFU~~)~~ or forest zone, a jurisdiction shall, in addition to demonstrating compliance with the requirements of ORS 215.296:

(i) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;

(ii) Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands; and

(iii) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.

Recommended rule language Private Parks:

OAR 660-033-0130(44) As used in ORS 215.213(2)(e) or 215.283(2)(c), a 'private park' means an area devoted to low-intensity, outdoor, recreational uses for which enjoyment of the outdoors in an open space, or on land in its natural state, is a necessary component and the primary focus.

Recommended rule language for Preparation:

OAR 660-033-0020(7)(a) "Farm Use" as that term is used in ORS chapter 215 and this division means "farm use" as defined in ORS 215.203.

(b) As used in the definition of "farm use" in ORS 215.203 and in this division:

(A) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products; and

(B) "Products or by-products raised on such land" ~~means~~ includes;

(i)~~that those p~~Products or by-products ~~are~~ raised on the farm operation where the preparation occurs;

(ii) Products or by-products raised on other farmland provided;

(A) ~~or on other farm land provided the~~ The preparation is occurring only on ~~land~~ a tract ~~being used for the primary purpose of obtaining a profit in money from the farm use of the~~ currently employed for a farm use or farm uses other than preparation; and

(B) Such products or by-products are prepared in the same facilities as and in conjunction with products or by-products raised on the farm operation where the preparation occurs.

Recommended Rule Language for Verification of Income:

Farmworker Dwellings:

OAR 660-033-0130(24) Accessory farm dwellings as defined by subsection (e) of this section may be considered customarily provided in conjunction with farm use if:

...

(h) The applicant shall submit to the local government an IRS tax return transcript and any other information the county may require that demonstrates compliance with the gross farm income requirements in paragraph (b)(A) or (B), whichever is applicable.

Primary Farm Dwellings:

OAR 660-033-0135(3) On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

...

(e) The applicant shall submit to the local government an IRS tax return transcript and any other information the local jurisdiction may require that demonstrates compliance with the gross farm income requirement

OAR 660-033-0135(4) On land identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

...

(e) The applicant shall submit to the local government an IRS tax return transcript and any other information the local jurisdiction may require that demonstrates compliance with the gross farm income requirement

Farm Stands:

OAR 660-033-0130(23) A farm stand may be approved if:

...

(f) At the request of a local government with land use jurisdiction over the farm stand, the farm stand operator of a farm stand approved under this section shall submit to the local government evidence of compliance with the annual sales requirement of subsection (a). Such evidence shall consist of an IRS tax return transcript and any other information the local jurisdiction may require to document ongoing compliance with this section or any other condition of approval.

Recommended Rule Language for Home Occupations:

OAR 660-033-0130(14) Home occupations and the parking of vehicles may be authorized.

(a) Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located.

(b) A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(c) A governing body may only approve a use provided in OAR 660-033-0120 as a home occupation if:

(A) The scale and intensity of the use is no more intensive than the limitations and conditions otherwise specified for the use in OAR 660-033-0120, and

(B) The use is accessory, incidental and subordinate to the primary residential use of a dwelling on the property.