

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.*