



# Oregon

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TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Sadie Carney, Rural Policy Analyst  
Katherine Daniels, Farm and Forest Lands Specialist  
Rob Hallyburton, Community Services Division Manager

SUBJECT: **Agenda Item 6, January 14, 2015, LCDC Meeting**



**PUBLIC HEARING AND PROPOSED ADOPTION OF MINOR, TECHNICAL  
AND CONFORMING AMENDMENTS TO OREGON ADMINISTRATIVE RULES  
CHAPTER 660, DIVISIONS 4, 6, 25, AND 33**

## **I. AGENDA ITEM SUMMARY**

The Department of Land Conservation and Development (DLCD or department) staff requests the Land Conservation and Development Commission (LCDC or commission) consider the proposed adoption of amendments to OAR chapter 660, divisions 4, 6, 25, and 33 to make minor and technical changes to conform to recent legislation, amend minor substantive provisions, or to provide additional clarification for certain rules.

For additional information about this report, please contact Rob Hallyburton, Community Services Division Manager, at 503-934-0018 or [rob.hallyburton@state.or.us](mailto:rob.hallyburton@state.or.us).

## **II. RECOMMENDED ACTION**

The department recommends that the commission review the proposed rule amendments as described in section IV of this staff report, conduct a hearing on the proposals, and adopt the proposed revisions as presented in Attachments A–D.

## **III. BACKGROUND**

### **A. Zoning of Exceptions Areas**

The 2015 legislative session resulted in the passage of a bill ([House Bill 3214](#)) requiring the commission to adopt a rule amendment related to zoning of exception areas.<sup>1</sup> An “exception” is a

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<sup>1</sup> House Bill 3214 states, in relevant part: (1) The Land Conservation and Development Commission shall adopt or amend rules regarding the statewide planning goal criteria described in ORS 197.732 (2)(a) and (b). The rules adopted or amended pursuant to this subsection must allow a local government to rezone land in an area physically developed or committed to residential use, as described in ORS 197.732, without requiring the local government to take a new exception to statewide planning goals related to agricultural and forest lands. The rules must allow for a rezoning that authorizes the change, continuation or expansion of an

comprehensive plan provision that is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability; does not comply with some or all goal requirements applicable to the subject properties or situations; and complies with applicable statutes and administrative rules. [OAR 660-004-0005\(1\)](#). An “exception area” therefore, is a parcel or a group of parcels subject to an acknowledged exception. A common example is a rural area planned and zoned for residential use rather than for farm or forest use.

Relevant statute ([ORS 197.732](#)) and rules ([OAR chapter 660, division 4](#)) provide for three separate justifications for an exception. That is, the law recognizes three different circumstances under which it is appropriate for a local government to plan and zone an area differently than would otherwise be required by the statewide planning goals. The three justifications for an exception are:

1. The land is physically developed to the extent that it is no longer available for uses allowed by the applicable goal (a “physically developed” exception);
2. The land is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable (an “irrevocably committed” exception); and
3. Reasons justify why the state policy embodied in the applicable goals should not apply (a “reasons” exception)

The rules go on to provide requirements for how an exception area may be designated on the plan and zone maps and what uses may be allowed. HB 3214 affects planning and zoning for “physically developed” and “irrevocably committed” exception areas under ORS 197.732(2)(a) and (b).

Section (2) of OAR 660-004-0018, “Planning and Zoning for Exception Areas” must be amended in order to comply with the requirements in HB 3214. The department proposes that the commission approve amendments that are not limited to bare compliance with the bill.

When the commission originally adopted OAR 660-004-0018(2) in 1986, it stated:

- (2) Plan and zone designations shall limit uses to:
  - (a) Uses which are the same as the existing types of land uses on the exception site; *or*
  - (b) Rural uses which meet the following requirements:

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industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use.

(2) The rules adopted pursuant to subsection (1) of this section must provide that:

- (a) The rezoned use will maintain the land:
  - (A) As rural land as described by commission rule; and
  - (B) In a manner consistent with other statewide planning goal requirements;
- (b) The rural uses, density and public facilities and services permitted by the rezoning will not commit adjacent or other nearby resource land to uses that are not permitted by statewide planning goals related to agricultural and forest lands;
- (c) The rural uses, density and public facilities and services permitted by the rezoning are compatible with the uses of adjacent and other nearby resource land uses; and
- (d) The land to be rezoned is not in an area designated as a rural or urban reserve under ORS 195.141.

- (A) The rural uses are consistent with all other applicable Goal requirements; and
- (B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
- (C) The rural uses are compatible with adjacent or nearby resource uses.  
(italics added)

The rule at that time provided for a local government to allow uses in a “physically built” or “irrevocably committed” exception area under two separate justification scenarios: (1) if those that are the same as existing types of uses (e.g., permitting rural residential uses in an area physically developed to residential use) or (2) other uses so long as they are rural, do not commit other land to nonresource use, and the permitted uses are compatible with resource uses.

The commission amended this rule from time to time for a variety of reasons, but the *or* between subsections (a) and (b) remained in the rule until it was amended in 2011, when one of the changes was to replace the “or” with an “and.”<sup>2</sup> This change meant that zoning of an exception area needs to limit allowed uses to those that are *both* the same as existing uses on the site and which comply with the rural use, commitment, and compatibility criteria. This change means that a proposal to allow uses that are not “the same as existing types of uses on the exception site” is subject to a requirement to justify a new “reasons” exception because the “physically developed” and “irrevocably committed” options are no longer available.

HB 3214 requires the commission to essentially change the “and” back to an “or” for a narrowly defined situation: “the change, continuation or expansion of an industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use.” The department proposes that the change be made for all “physically developed” and “irrevocably committed” exception areas.

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<sup>2</sup> OAR 660-004-0018(2) currently provides:

(2) For “physically developed” and “irrevocably committed” exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

- (a) That are the same as the existing land uses on the exception site;
- (b) That meet the following requirements:
  - (A) The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals, and are consistent with all other applicable goal requirements;
  - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and
  - (C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;
- (c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, “Planning and Zoning of Unincorporated Communities”, if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22; *and*
- (d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714. (italics added.)

An acknowledged exception area is land for which the local government (usually a county) has adequately demonstrated that the applicable goal (usually Goal 3, Agricultural Land, or Goal 4, Forest Lands) should not apply. For a “physically developed” exception, a county must show that the land is “no longer available for uses allowed by the applicable goal.” For an “irrevocably committed” exception, the standard is that “existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.” To require the local government to again demonstrate compliance with these criteria is unnecessarily burdensome for the applicant and local government and introduces approval criteria that may not be suitable for the proposal. The “reasons” exception criteria<sup>3</sup> are proper for weighing whether a non-resource use is justifiable on farm or forest land, but less appropriate for weighing one non-resource use alternative with another. The department suggests that the existing criteria in OAR 660-004-0018, with the proposed amendment contain the appropriate set of considerations.

Department staff has been unable to determine why the “or” was changed to “and” in 2011, but a review of the staff report explaining that amendment to the commission for its January 12–13, 2011, meeting revealed that the outcome described above – that a new exception would be required to change the zone in an existing exception area – was not discussed. The change of the conjunction was, in fact, not addressed at all. The department concludes that, whatever the reason for the change, the negative consequences warrant a restoration of the previous criteria for all “physically developed” and “irrevocably committed” exceptions, not just the narrow circumstances addressed in the bill.

Earlier amendments to OAR 660-004-0018(2) brought the rule into conformity with a different, at-the-time new division regarding planning and zoning of unincorporated communities (see subsection (c) of the current rule, footnote 2). During staff’s preparation for the proposed rule amendment described above, it was discovered that the “and” at the end of subsection (c) also has the possible effect of requiring the provisions for planning and zoning normal “built” and “committed” exception areas to apply to unincorporated communities. This has not been argued before the Land Use Board of Appeals or a court, but it is a plausible, unintended outcome further justifying an amendment to the rule.

## **B. Periodic Review, Division 25**

The 2015 legislative session resulted in passage of [HB 3282](#) pertaining to when the commission may approve a city’s request to enter the periodic review process. The bill clarifies that the commission may permit a city to enter periodic review for the limited purpose of responding to a remand of amendments reviewed “in the manner of periodic review.”

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<sup>3</sup> The statutory criteria at ORS 197.732(2)(c) provide:

- (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
- (B) Areas that do not require a new exception cannot reasonably accommodate the use;
- (C) The long term environmental, economic, social and energy consequences resulting from the use 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 in areas requiring a goal exception other than the proposed site; and
- (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

ORS 197.626 specifies that certain adopted post-acknowledgement plan amendments must be submitted by the local government to the department for review (most such adoptions are not submitted to the department for review, but are rather under the jurisdiction of the Land Use Board of Appeals). Possible results of the review include an approval or a remand. HB 3282 provides that, in the case of a commission remand of an urban growth boundary amendment containing over 50 acres for an urban area with a population greater than 2,500, the city may request, and the commission may approve, that the city address the remand in the periodic review process. This, generally, means that the city (coordinating with the county) would adopt a work program, which the director would approve. The work program would include tasks with deadlines that are enforceable by the commission.

Department staff proposes an amendment to conform the rule to this bill and other minor and technical changes to the rule.

### **C. Forest and Farm Lands, Divisions 6 and 33**

The 2015 legislative session resulted in the passage of two bills ([HB 2457](#) and [HB 3400](#)) pertaining to agricultural and forest land that require amendments to rules to achieve conformance with these bills. In addition, staff continually reviews administrative rules in conjunction with court rulings and local government input to make periodic recommendations to the commission on minor and technical amendments that enhance consistency or provide further clarification of rule requirements. These recommended changes are explained in section IV and do not represent new policy or new interpretations of rule requirements.

## **IV. PROPOSED RULE AMENDMENTS**

This section provides a brief summary of proposed rule amendments included in the attachments, and the department's reasons for the amendments.

### **A. Division 4 – Goal 2 Exceptions Process**

The amendments to OAR 660-004-0018(2) proposed in Attachment A will change the requirements for planning and zoning “physically developed” and “irrevocably committed” exceptions areas such that a rezone to allow a use that is different from existing uses on the site will not require a new exception. The amendment is proposed in order to react to the problem described in subsection III.A of this report.

### **B. Division 25: Periodic Review**

The department proposes several amendments to this division in Attachment C, either to conform the rule with recent legislation or to make minor and technical changes for the purpose of clarity or improved process.

*Conform to 2015 legislation.* [HB 3282](#) (2015) includes a provision that needs to be reflected in the administrative rule, as described in subsection IV.C. (OAR 660-025-0035)

**Name change.** The Economic Revitalization Team, which has a role in certain periodic review actions, has been changed and renamed Regional Solutions Team. (OAR 660-025-0020, -0035(4), and -0060(6))

**Conformity with new urban growth boundary process.** Certain urban growth boundary amendments that were formerly under the jurisdiction of the commission are now under the jurisdiction of the Land Use Board of Appeals. [ORS 197A.325](#). The rule regarding jurisdiction over amendments reviewed “in the manner of periodic review” needs to reflect this change. (OAR 660-025-0040(2) and -0175(1))

**Distinction between a periodic review task and other submittals.** Certain local government land use decisions are required by statute to be submitted to the department for review “in the manner provided for review of a work task.” The existing rules that apply to local government submittal and notice procedures and to department and commission review procedures do not make a distinction between an actual periodic review task submittal and a submittal made in the manner of periodic review. This has caused some confusion because the rules include requirements that are not applicable to “in the manner of periodic review” submittals such as conformity with a work program. The proposed rule amendments include several amendments to OAR 660-025-0130, -0140, and -0150 clarifying the procedural requirements for the two review settings.

One proposed amendment is substantive (not just for aiding clarity). The department proposes to change OAR 660-025-0150(1)(b) and -0160(7)(b) to remove a requirement that the director and commission, respectively, include a deadline for resubmittal of a remanded plan amendment that is not on a periodic review work program. The proposed amendment to OAR 660-0150(1) states:

- (1) In response to a completed work task **or other plan amendment** submitted to the department for review in accordance with OAR 660-025-0140, the director may:
  - (a) Issue an order approving the completed work task **or plan amendment**;
  - (b) Issue an order remanding the work task **or plan amendment** to the local government including, **for a work task only**, a date for resubmittal;
  - (c) Refer the work task **or plan amendment** to the commission for review and action; or
  - (d) The director may issue an order approving portions of the completed work task **or plan amendment** provided these portions are not affected by an order remanding or referring the completed work task.

A plan amendment submitted in the manner of periodic review (usually an urban growth boundary amendment) was initiated and completed at the local government’s discretion, as opposed to periodic review where the local government is required to update its plan on an enforceable schedule. The rule as currently written leads to an inappropriate requirement for the commission to include a date for resubmittal for a project the local government otherwise would not be required to complete.

**Record submittal requirements.** The proposed amendments include a new requirement for organization and page numbering of the record submitted by a local government with a periodic review task or plan amendment reviewed in the manner of periodic review. The proposal, at OAR 660-025-0130(3)(c), provides:

A submittal of over 500 pages must include an index of all submitted materials.  
**Each document must be separately indexed, in chronological order, with the last document on the top. Pages must be consecutively numbered at the bottom of the page.**

Some records have been submitted in a state that makes it difficult for the department to find material relevant to its review. The proposed new requirement could create additional work for the local government submitting the amendment or task, but the department is allowed 120 days to complete its review and the submittals are often complex with voluminous records. Poorly organized submittals complicate the department's review.

**Review deadline.** Statute and rule require the department to complete its review of submittals within 120 days. The administrative rule currently repeats a statutory provision regarding the consequence of the department failing to complete its review of a submittal in this required period. The statute, ORS 197.633(5)(a) provides:

(5) The director:

(a) Shall take action on a work task not later than 120 days after the local government submits the work task for review unless the local government waives the 120-day deadline or the commission grants the director an extension. If the director does not take action within the time period required by this subsection, the work task is deemed approved. The department shall provide a letter to the local government certifying that the work task is approved unless an interested party has filed a timely objection to the work task consistent with administrative rules for conducting periodic review.

OAR 660-025-0150(3)–(5) implement this statute. In both the statute and rule, the director is required take action on a submittal within 120 days. Consequences are spelled out for the circumstance when no valid objections were made (i.e., the task is deemed approved). Neither the statute nor the rule currently establishes consequences for failure to meet the 120-day requirement when there *is* a valid objection. Prior to a statutory change in 2011, ORS 197.633 provided that “if a timely objection is filed, the director shall refer the work task to the commission” if action had not been taken within 120 days. This provision was deleted but not replaced except to say that the director is not required to “provide a letter to the local government certifying that the work task is approved.”

The law currently has a void regarding what happens if the director fails to make a decision on a submittal subject to an objection within 120 days. The proposal includes a reinstatement of the referral requirement in OAR 660-025-0150:

(5) If the department received one or more valid objections to the work task **or plan amendment**, the director must either issue an order **within the time limits set by section (3) of this rule** [120 days] or refer the work task **or plan amendment** to the commission for review.

***Modern communications.*** Several rules require that the department mail materials to local government or participants in plan amendment. The department proposes to change references to “mail” to allow the department to “send” required reports and notifications to allow for other forms of communication, such as e-mail.

### **C. Division 6 – Forest Lands**

The department proposes several amendments to this division in Attachment B, either to conform the rule with recent legislation or to make minor and technical changes for the purpose of clarity, improved process, or better outcomes.

***Clarify forest land definitions/Inventory:*** Staff proposes to add the definition of forest land that is in Goal 4 to the rule definitions in OAR 660-006-0005, and to clarify that when a plan amendment to forest land is proposed, that other forest values as identified in Goal 4 be inventoried as well as commercial forest land. (OAR 660-006-0010)

***Clarify primary processing definition:*** This proposal would pull the review criteria from the definition and apply them to permanent facilities at OAR 660-006-0025(4)(a).

***Delete DEQ-mandated solid waste disposal site authorization:*** This proposal, which is acceptable to DEQ, is make the rule consistent with a 2009 legislative change that deleted the use from exclusive farm use (EFU) zones in statute. (OAR 660-006-0025(3)(o))

***Cross-reference firearms training facility.*** This use, authorized in both EFU and forest zones, is defined for EFU zones, but not forest zones, at ORS 197.770(2). The proposal, for consistency, is to cross-reference this definition for forest zones. (OAR 660-006-0025(4))

***Clarify use of property line adjustments.*** Land divisions that separate home occupations or temporary hardship dwellings from the parcel on which the primary dwelling exists are prohibited. This proposal would prohibit property line adjustments from achieving the same result. (OAR 660-006-0027)

***Clarify applicability of deed requirements.*** This proposal clarifies that deed restrictions are required for undeveloped parcels in template dwelling tracts, just as they are for such parcels in tracts approved for large tract dwellings. (OAR 660-006-0027(7))

***Conform to 2015 legislation.*** HB 2457 (2015) allows a split-zoned parcel straddling an urban growth boundary to be partitioned along the boundary notwithstanding the minimum parcel size of a forest zone. Staff proposes amendments to conform to this legislation. (OAR 660-006-0026)

#### **D. Division 33: Agricultural Land**

The department proposes several amendments to this division in Attachment D, either to conform the rule with recent legislation or to make minor and technical changes for the purpose of clarity, improved process, or better outcomes.

***Provide consistency in identifying agricultural land.*** OAR 660-033-0030(2) requires the identification of agricultural land to be done on a parcel-by-parcel or lot-by-lot basis. This proposal would similarly require soils assessments under OAR 660-033-0030(5) that challenge published NRCS soils to be undertaken for a “lot or parcel” rather than generalized “land.”

***Adjust the soils assessment review timeline.*** This proposal to allow the 30-day clock to begin after, rather than before, the staff’s completeness check, will allow the applicant adequate time to make any needed revisions to the soils assessment. (OAR 660-033-0045(6)(b)(B))

***Provide consistency with LUBA holding.*** This proposal would require that nonfarm dwellings on portions of existing parcels include “essential or accessory improvements or structures” *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006). (OAR 660-033-0130(4)(c)(B)(i))

***Provide consistency for relative farm help dwellings.*** This is to move two statutory criteria for relative farm help dwellings from Table 1 to rule at OAR 660-033-0130(9) and to add a missing statutory criterion.

***Reorder review standards for power generating facilities.*** This is to list the facility first, followed by the workforce housing, an accessory use. (OAR 660-033-0130(17) and (22)).

***Clarify school expansion standards.*** The current rule reference to the expansion of “a use” formerly allowed in EFU zones is proposed to clarify that the use is a school.(OAR 660—033-0130(18)(b)).

***Clarify seasonal farmworker housing reference.*** The provisions for primary farm dwellings at OAR 660-033-0135 allow the use if there was no other dwelling allowed in ORS 215.213(1)(r) or 215.283(1)(p) (1999 Edition). The proposal is to clarify that the referenced use is seasonal farmworker housing, a use that is no longer authorized as such.

***Clarify farm dwelling capability criteria.*** In computing gross income needed to meet either income test for a primary farm dwelling, purchased livestock must be excluded. Staff proposes to extend this and other exclusions that apply to farm dwellings generally to the farm dwelling capability test. Staff further proposes to clarify that the reference to “the director” who reviews the capability analysis is to DLCD’s director. Finally, staff proposes to clarify a five-year timeline that is part of the capability analysis. (OAR 660-033-0135(2))

***Clarify Table 1 to reference the review criteria for primary farm dwellings.*** While Table 1 references the appropriate review criteria for all other uses, which are in OAR 660-033-0130, it does not reference the primary farm dwelling review criteria in OAR 660-033-0135. This proposal would do that. (OAR 660-033-0120 Table 1).

***Provide consistency with LUBA holding.*** Staff proposes to amend Table 1 to delete the authorization for a “residential facility,” as statute only authorizes a “residential home” *Kanadu Ranch v. Jackson Co.* LUBA No. 2015-058. (OAR 660-033-0120 Table 1)

***Delete obsolete rule.*** Staff proposes to delete OAR 660-033-0150 regarding notice to DLCD of proposed land use decisions, as the rule expired in 1995.

***Conform to 2015 legislation.*** HB 3400 prohibits certain uses in conjunction with a marijuana crop, including: dwellings, farm stands and commercial activities in conjunction with farm use. Staff interprets HB 3400 to prohibit a marijuana crop from being the basis for a decision to approve primary farm dwellings, accessory farm dwellings, relative farm dwellings and commercial activities in conjunction with farm use. Staff interprets HB 3400 to prohibit the sale of marijuana or marijuana products or promotional activities in conjunction with marijuana at farm stands. (OAR 660-033-0130 (9), (23) and (24), 0135 and 0120 Table 1)

## **V. COMMISSION OPTIONS**

Possible alternatives for the commission include:

1. Adopt the proposed rule amendments as drafted.
2. Adopt the proposed rule amendments with revisions by the commission, by motion, this meeting.
3. Direct staff to prepare revisions to the proposed amendments for the commission to consider at a later meeting.
4. Not adopt the proposed rule amendments, as presented or with revisions.

## **VI. RECOMMENDATION**

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

***Recommended motion:*** I move that the commission approve the amendments to Oregon Administrative Rules chapter 660, divisions 4, 6, 25, and 33 as recommended by the department and explained in the staff report.

***Alternative motion:*** I move that the commission approved the amendments to Oregon Administrative Rules chapter 660, divisions [division numbers for those being approved without modification] as recommended by the department and explained in the staff report and Oregon Administrative Rules chapter 660, division[s] [division numbers for those being approved with modification] with the following modifications: [proposed changes tot eh department recommendation].

## **VII. ATTACHMENTS**

- A. Proposed amendments to OAR 660, division 4

- B. Proposed amendments to OAR 660, division 6
- C. Proposed amendments to OAR 660, division 25
- D. Proposed amendments to OAR 660, division 33

**DIVISION 4**

**INTERPRETATION OF GOAL 2 EXCEPTION PROCESS**

1 **660-004-0018**

2 **Planning and Zoning for Exception Areas**

3 \* \* \*

4 (2) For "physically developed" and "irrevocably committed" exceptions to goals,  
5 residential plan and zone designations shall authorize a single numeric minimum lot size  
6 and all plan and zone designations shall limit uses, density, and public facilities and  
7 services to those **that satisfy (a) or (b) or (c) and, if applicable, (d):**

8 (a) That are the same as the existing land uses on the exception site;

9 (b) That meet the following requirements:

10 (A) The rural uses, density, and public facilities and services will maintain  
11 the land as "Rural Land" as defined by the goals, and are consistent with  
12 all other applicable goal requirements;

13 (B) The rural uses, density, and public facilities and services will not  
14 commit adjacent or nearby resource land to uses not allowed by the  
15 applicable goal as described in OAR 660-004-0028; and

16 (C) The rural uses, density, and public facilities and services are  
17 compatible with adjacent or nearby resource uses;

18 (c) For uses in unincorporated communities, the uses are consistent with OAR  
19 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the  
20 county chooses to designate the community under the applicable provisions of  
21 OAR chapter 660, division 22; [~~and~~]

22 (d) For industrial development uses and accessory uses subordinate to the  
23 industrial development, the industrial uses may occur in buildings of any size and  
24 type provided the exception area was planned and zoned for industrial use on  
25 January 1, 2004, subject to the territorial limits and other requirements of ORS  
26 197.713 and 197.714.

27 \* \* \*  
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**DIVISION 6**

**GOAL 4 FOREST LANDS**

1 **660-006-0005**

2 **Definitions**

3 For the purpose of this division, the following definitions apply:

4 (1) Definitions contained in ORS 197.015 and the Statewide Planning Goals.

5 (2) "Commercial Tree Species" means trees recognized for commercial production under rules  
6 adopted by the State Board of Forestry pursuant to ORS 527.715.

7 (3) "Cubic Foot Per Acre" means the average annual increase in cubic foot volume of wood fiber  
8 per acre for fully stocked stands at the culmination of mean annual increment as reported by the  
9 USDA Natural Resource Conservation Service (NRCS) soil survey.

10 (4) "Cubic Foot Per Tract Per Year" means the average annual increase in cubic foot volume of  
11 wood fiber per tract for fully stocked stands at the culmination of mean annual increment as  
12 reported by the USDA Natural Resource Conservation Service (NRCS) soil survey.

13 (5) "Date of Creation and Existence." When a lot, parcel or tract is reconfigured pursuant to  
14 applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for  
15 the siting of a dwelling, the date of the reconfiguration is the date of creation or existence.  
16 Reconfigured means any change in the boundary of the lot, parcel, or tract.

17 (6) "Eastern Oregon" means that portion of the state lying east of a line beginning at the  
18 intersection of the northern boundary of the State of Oregon and the western boundary of Wasco  
19 County, then south along the western boundaries of the counties of Wasco, Jefferson, Deschutes  
20 and Klamath to the southern boundary of the State of Oregon.

21 (7) **Forest land as defined in Goal 4 are those lands acknowledged as forest lands, or, in the**  
22 **case of a plan amendment, include:**

23 **(a) Lands that are suitable for commercial forest uses, including adjacent or nearby**  
24 **lands which are necessary to permit forest operations or practices; and**

25 **(b) Other forested lands that maintain soil, air, water and fish and wildlife**  
26 **resources.**

27 (8) "Forest Operation" means any commercial activity relating to the growing or harvesting or  
28 any forest tree species as defined in ORS 527.620(6).

1 [(8)](9) "Governing Body" means a city council, county board of commissioners, or county court  
2 or its designate, including planning director, hearings officer, planning commission or as  
3 provided by Oregon law.

4 [(9)](10) "Lot" means a single unit of land that is created by a subdivision of land as provided in  
5 ORS 92.010.

6 [(10)] (11) "Parcel" means a single unit of land that is created by a partition of land and as  
7 further defined in ORS 215.010(1).

8 [(11)] (12) "Primary processing of forest products" means the initial treatments of logs or other  
9 forest plant or fungi materials to prepare them for shipment for further processing or to market,  
10 ~~[in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor~~  
11 ~~area that does not exceed one acre excluding laydown and storage yards, or both, that are~~  
12 ~~adequately separated from surrounding properties to reasonably mitigate noise, odor and other~~  
13 ~~impacts generated by the facility that adversely affect forest management and other existing uses,~~  
14 ~~as determined by the governing body. Treatments may include] including, but [are] not limited~~  
15 to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching,  
16 biofuels conversion, or other similar methods of initial treatments.

17 [(12)] (13) "Storage structures for emergency supplies" means structures to accommodate those  
18 goods, materials and equipment required to meet the essential and immediate needs of an  
19 affected population in a disaster. Such supplies include food, clothing, temporary shelter  
20 materials, durable medical goods and pharmaceuticals, electric generators, water purification  
21 gear, communication equipment, tools and other similar emergency supplies.

22 [(13)] (14) "Tract" means one or more contiguous lots or parcels in the same ownership as  
23 provided in ORS 215.010(2).

24 [(14)] (15) "Western Oregon" means that portion of the state lying west of a line beginning at the  
25 intersection of the northern boundary of the State of Oregon and the western boundary of Wasco  
26 County, then south along the western boundaries of the counties of Wasco, Jefferson, Deschutes  
27 and Klamath to the southern boundary of the State of Oregon.

28 **660-006-0010**  
29 **Identifying Forest Land**

30 (1) Governing bodies shall identify "forest lands" as defined by Goal 4 in the comprehensive  
31 plan. Lands inventoried as Goal 3 agricultural lands, lands for which an exception to Goal 4 is  
32 justified pursuant to ORS 197.732 and taken, and lands inside urban growth boundaries are not  
33 required to planned and zoned as forest lands. ~~[Lands suitable for commercial forest uses shall be~~  
34 ~~identified using a mapping of average annual wood production capability by cubic foot per acre~~  
35 ~~(cf/ac) as reported by the USDA Natural Resources Conservation Service.]~~

1 **(2) Where a plan amendment is proposed, lands suitable for commercial forest uses shall be**  
2 **identified using a mapping of average annual wood production capability by cubic foot per**  
3 **acre (cf/ac) as reported by the USDA Natural Resources Conservation Service.** Where  
4 NRCS data are not available or are shown to be inaccurate, other site productivity data may be  
5 used to identify forest land, in the following order of priority:

6 (a) Oregon Department of Revenue western Oregon site class maps;

7 (b) USDA Forest Service plant association guides; or

8 (c) Other information determined by the State Forester to be of comparable  
9 quality.

10 (3) Where data of comparable quality under subsections (2)(a)-(c) are not available or are shown  
11 to be inaccurate, an alternative method for determining productivity may be used as described in  
12 the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes,  
13 Number 3 April 1998, Updated for Clarity April 2010."

14 **660-006-0025**

15 **Uses Authorized in Forest Zones**

16 (1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and  
17 applying comprehensive plan provisions and zoning regulations consistent with the goals and  
18 this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as  
19 set forth in ORS 527.722, the Commission has determined that five general types of uses, as set  
20 forth in the goal, may be allowed in the forest environment, subject to the standards in the goal  
21 and in this rule. These general types of uses are:

22 (a) Uses related to and in support of forest operations;

23 (b) Uses to conserve soil, air and water quality and to provide for fish and wildlife  
24 resources, agriculture and recreational opportunities appropriate in a forest environment;

25 (c) Locationally-dependent uses, such as communication towers, mineral and aggregate  
26 resources, etc.

27 (d) Dwellings authorized by ORS 215.705 to 215.755; and

28 (e) Other dwellings under prescribed conditions.

29 (2) The following uses pursuant to the Forest Practices Act (ORS chapter 527) and Goal 4 shall  
30 be allowed in forest zones:

1 (a) Forest operations or forest practices including, but not limited to, reforestation of  
2 forest land, road construction and maintenance, harvesting of a forest tree species,  
3 application of chemicals, and disposal of slash;

4 (b) Temporary on-site structures that are auxiliary to and used during the term of a  
5 particular forest operation;

6 (c) Physical alterations to the land auxiliary to forest practices including, but not limited  
7 to, those made for purposes of exploration, mining, commercial gravel extraction and  
8 processing, landfills, dams, reservoirs, road construction or recreational facilities; and

9 (d) For the purposes of section (2) of this rule "auxiliary" means a use or alteration of a  
10 structure or land that provides help or is directly associated with the conduct of a  
11 particular forest practice. An auxiliary structure is located on site, temporary in nature,  
12 and is not designed to remain for the forest's entire growth cycle from planting to  
13 harvesting. An auxiliary use is removed when a particular forest practice has concluded.

14 (3) The following uses may be allowed outright on forest lands:

15 (a) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries  
16 resources;

17 (b) Farm use as defined in ORS 215.203;

18 (c) Local distribution lines (*e.g.*, electric, telephone, natural gas) and accessory equipment  
19 (*e.g.*, electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals),  
20 or equipment that provides service hookups, including water service hookups;

21 (d) Temporary portable facility for the primary processing of forest products;

22 (e) Exploration for mineral and aggregate resources as defined in ORS chapter 517;

23 (f) Private hunting and fishing operations without any lodging accommodations;

24 (g) Towers and fire stations for forest fire protection;

25 (h) Widening of roads within existing rights-of-way in conformance with the  
26 transportation element of acknowledged comprehensive plans and public road and  
27 highway projects as described in ORS 215.213(1) and 215.283(1);

28 (i) Water intake facilities, canals and distribution lines for farm irrigation and ponds;

29 (j) Caretaker residences for public parks and public fish hatcheries;

30 (k) Uninhabitable structures accessory to fish and wildlife enhancement;

- 1 (l) Temporary forest labor camps;
- 2 (m) Exploration for and production of geothermal, gas, oil, and other associated  
3 hydrocarbons, including the placement and operation of compressors, separators and  
4 other customary production equipment for an individual well adjacent to the well head;
- 5 (n) Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.467 and  
6 Goal 8;
- 7 (o) ~~[Disposal site for solid waste that has been ordered established by the Oregon  
8 Environmental Quality Commission under ORS 459.049, together with the equipment,  
9 facilities or buildings necessary for its operation]~~ [(p)] Alteration, restoration or  
10 replacement of a lawfully established dwelling that:
- 11 (A) Has intact exterior walls and roof structures;
- 12 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities  
13 connected to a sanitary waste disposal system;
- 14 (C) Has interior wiring for interior lights;
- 15 (D) Has a heating system; and
- 16 (E) In the case of replacement, is removed, demolished or converted to an  
17 allowable nonresidential use within three months of the completion of the  
18 replacement dwelling;
- 19 [(q)] (p) An outdoor mass gathering as defined in ORS 433.735 or other gathering of  
20 fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in  
21 any three-month period is not a "land use decision" as defined in ORS 197.015(10) or  
22 subject to review under this division;
- 23 [(r)] (q) Dump truck parking as provided in ORS 215.311; and
- 24 [(s)] (r) An agricultural building, as defined in ORS 455.315, customarily provided in  
25 conjunction with farm use or forest use. A person may not convert an agricultural  
26 building authorized by this section to another use.
- 27 (4) The following uses may be allowed on forest lands subject to the review standards in section  
28 (5) of this rule:
- 29 (a) Permanent facility for the primary processing of forest products that is:[;]

30 **(A) Located in a building or buildings that do not exceed 10,000 square feet**  
31 **in total floor area, or**

1 **(B) Located in an outdoor area that does not exceed one acre excluding**  
2 **laydown and storage yards, or**

3 **(C) Located in a combination of indoor and outdoor areas described in**  
4 **paragraphs (A) and (B); and**

5 **(D) Adequately separated from surrounding properties to reasonably**  
6 **mitigate noise, odor and other impacts generated by the facility that**  
7 **adversely affect forest management and other existing uses, as determined by**  
8 **the governing body.**

9 (b) Permanent logging equipment repair and storage;

10 (c) Log scaling and weigh stations;

11 (d) Disposal site for solid waste approved by the governing body of a city or county or  
12 both and for which the Oregon Department of Environmental Quality has granted a  
13 permit under ORS 459.245, together with equipment, facilities or buildings necessary for  
14 its operation;

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

34 (B) Campsites may be occupied by a tent, travel trailer, yurt or recreational  
35 vehicle. Separate sewer, water or electric service hook-ups shall not be provided  
36 to individual camp sites except that electrical service may be provided to yurts  
37 allowed for by paragraph (4)(e)(C) of this rule.

1 (C) Subject to the approval of the county governing body or its designee, a private  
2 campground may provide yurts for overnight camping. No more than one-third or  
3 a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt  
4 shall be located on the ground or on a wood floor with no permanent foundation.  
5 Upon request of a county governing body, the Commission may provide by rule  
6 for an increase in the number of yurts allowed on all or a portion of the  
7 campgrounds in a county if the Commission determines that the increase will  
8 comply with the standards described in ORS 215.296(1). As used in this rule,  
9 "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame  
10 with no plumbing, sewage disposal hook-up or internal cooking appliance.

11 (f) Public parks including only those uses specified under OAR 660-034-0035 or 660-  
12 034-0040, whichever is applicable;

13 (g) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS  
14 chapter 520, and not otherwise permitted under subsection (3)(m) of this rule (*e.g.*,  
15 compressors, separators and storage serving multiple wells), and mining and processing  
16 of aggregate and mineral resources as defined in ORS chapter 517;

17 (h) Television, microwave and radio communication facilities and transmission towers;

18 (i) Fire stations for rural fire protection;

19 (j) Commercial utility facilities for the purpose of generating power. A power generation  
20 facility shall not preclude more than 10 acres from use as a commercial forest operation  
21 unless an exception is taken pursuant to OAR chapter 660, division 4;

22 (k) Aids to navigation and aviation;

23 (l) Water intake facilities, related treatment facilities, pumping stations, and distribution  
24 lines;

25 (m) Reservoirs and water impoundments;

26 (n) Firearms training facility **as provided in ORS 197.770(2)**;

27 (o) Cemeteries;

28 (p) Private seasonal accommodations for fee hunting operations may be allowed subject  
29 to section (5) of this rule, OAR 660-006-0029, and 660-006-0035 and the following  
30 requirements:

31 (A) Accommodations are limited to no more than 15 guest rooms as that term is  
32 defined in the Oregon Structural Specialty Code;

- 1 (B) Only minor incidental and accessory retail sales are permitted;
- 2 (C) Accommodations are occupied temporarily for the purpose of hunting during  
3 either or both game bird or big game hunting seasons authorized by the Oregon  
4 Fish and Wildlife Commission; and
- 5 (D) A governing body may impose other appropriate conditions.
- 6 (q) New electric transmission lines with right of way widths of up to 100 feet as specified  
7 in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic  
8 cable) with rights-of-way 50 feet or less in width;
- 9 (r) Temporary asphalt and concrete batch plants as accessory uses to specific highway  
10 projects;
- 11 (s) Home occupations as defined in ORS 215.448;
- 12 (t) A manufactured dwelling or recreational vehicle, or the temporary residential use of  
13 an existing building, in conjunction with an existing dwelling as a temporary use for the  
14 term of a hardship suffered by the existing resident or a relative as defined in ORS  
15 215.213 and 215.283. The manufactured dwelling shall use the same subsurface sewage  
16 disposal system used by the existing dwelling, if that disposal system is adequate to  
17 accommodate the additional dwelling. If the manufactured dwelling will use a public  
18 sanitary sewer system, such condition will not be required. Within three months of the  
19 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed  
20 or demolished or, in the case of an existing building, the building shall be removed,  
21 demolished or returned to an allowed nonresidential use. A temporary residence approved  
22 under this subsection is not eligible for replacement under subsection [~~(3)(p)~~] **(3)(o)** of  
23 this rule. Governing bodies every two years shall review the permit authorizing such  
24 mobile homes. When the hardships end, governing bodies or their designate shall require  
25 the removal of such mobile homes. Oregon Department of Environmental Quality review  
26 and removal requirements also apply to such mobile homes. As used in this section,  
27 "hardship" means a medical hardship or hardship for the care of an aged or infirm person  
28 or persons;
- 29 (u) Expansion of existing airports;
- 30 (v) Public road and highway projects as described in ORS 215.213(2)(p) through (r) and  
31 (10) and 215.283(2)(q) through (s) and (3);
- 32 (w) Private accommodations for fishing occupied on a temporary basis may be allowed  
33 subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035 and the  
34 following requirements:

- 1 (A) Accommodations limited to no more than 15 guest rooms as that term is  
2 defined in the Oregon Structural Specialty Code;
- 3 (B) Only minor incidental and accessory retail sales are permitted;
- 4 (C) Accommodations occupied temporarily for the purpose of fishing during  
5 fishing seasons authorized by the Oregon Fish and Wildlife Commission;
- 6 (D) Accommodations must be located within 1/4 mile of fish-bearing Class I  
7 waters; and
- 8 (E) A governing body may impose other appropriate conditions.
- 9 (x) Forest management research and experimentation facilities as defined by ORS  
10 526.215 or where accessory to forest operations; and
- 11 (y) An outdoor mass gathering subject to review by a county planning commission under  
12 the provisions of ORS 433.763. These gatherings are those of more than 3,000 persons  
13 that continue or can reasonably be expected to continue for more than 120 hours within  
14 any three-month period and any part of which is held in open spaces.
- 15 (z) Storage structures for emergency supplies to serve communities and households that  
16 are located in tsunami inundation zones, if:
- 17 (A) Areas within an urban growth boundary cannot reasonably accommodate the  
18 structures;
- 19 (B) The structures are located outside tsunami inundation zones and consistent  
20 with evacuation maps prepared by Department of Geology and Mineral Industries  
21 (DOGAMI) or the local jurisdiction;
- 22 (C) Sites where the structures could be co-located with an existing use approved  
23 under this section are given preference for consideration;
- 24 (D) The structures are of a number and size no greater than necessary to  
25 accommodate the anticipated emergency needs of the population to be served;
- 26 (E) The structures are managed by a local government entity for the single  
27 purpose of providing for the temporary emergency support needs of the public;  
28 and
- 29 (F) Written notification has been provided to the County Office of Emergency  
30 Management of the application for the storage structures.

1 (5) A use authorized by section (4) of this rule may be allowed provided the following  
2 requirements or their equivalent are met. These requirements are designed to make the use  
3 compatible with forest operations and agriculture and to conserve values found on forest lands:

4 (a) The proposed use will not force a significant change in, or significantly increase the  
5 cost of, accepted farming or forest practices on agriculture or forest lands;

6 (b) The proposed use will not significantly increase fire hazard or significantly increase  
7 fire suppression costs or significantly increase risks to fire suppression personnel; and

8 (c) A written statement recorded with the deed or written contract with the county or its  
9 equivalent is obtained from the land owner that recognizes the rights of adjacent and  
10 nearby land owners to conduct forest operations consistent with the Forest Practices Act  
11 and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.

12 (6) Nothing in this rule relieves governing bodies from complying with other requirement  
13 contained in the comprehensive plan or implementing ordinances such as the requirements  
14 addressing other resource values (e.g., Goal 5) that exist on forest lands.

15 **660-006-0026**

16 **New Land Division Requirements in Forest Zones**

17 (1) Governing bodies shall legislatively amend their land division standards to incorporate one or  
18 more of the following parcel sizes. Under these provisions, a governing body may not determine  
19 minimum parcel sizes for forest land on a case-by-case basis:

20 (a) An 80-acre or larger minimum parcel size; or

21 (b) One or more numeric minimum parcel sizes less than 80 acres provided that each  
22 parcel size is large enough to ensure:

23 (A) The opportunity for economically efficient forest operations typically  
24 occurring in the area;

25 (B) The opportunity for the continuous growing and harvesting of forest tree  
26 species;

27 (C) The conservation of other values found on forest lands as described in Goal 4;  
28 and

29 (D) That parcel meets the requirements of ORS 527.630.

30 (2) New land divisions less than the parcel size in section (1) of this rule may be approved for  
31 any of the following circumstances:

1 (a) For the uses listed in OAR 660-006-0025(3)(m) [~~through (o)~~] **and (n)** and (4)(a)  
2 through (o) provided that such uses have been approved pursuant to OAR 660-060-  
3 0025(5) and the parcel created from the division is the minimum size necessary for the  
4 use.

5 (b) For the establishment of a parcel for a dwelling that has existed since before June 1,  
6 1995, subject to the following requirements:

7 (A) The parcel established may not be larger than five acres, except as necessary  
8 to recognize physical factors such as roads or streams, in which case the parcel  
9 shall not be larger than 10 acres; and

10 (B) The parcel that does not contain the dwelling is not entitled to a dwelling  
11 unless subsequently authorized by law or goal and the parcel either:

12 (i) Meets the minimum land division standards of the zone; or

13 (ii) Is consolidated with another parcel, and together the parcels meet the  
14 minimum land division standards of the zone.

15 (c) To allow a division of forest land to facilitate a forest practice as defined in ORS  
16 527.620 that results in a parcel that does not meet the minimum area requirements of  
17 subsection (1)(a) or (b). Approvals shall be based on findings that demonstrate that there  
18 are unique property specific characteristics present in the proposed parcel that require an  
19 amount of land smaller than the minimum area requirements of subsections (1)(a) or (b)  
20 of this rule in order to conduct the forest practice. Parcels created pursuant to this  
21 subsection:

22 (A) Are not eligible for siting of new dwelling;

23 (B) May not serve as the justification for the siting of a future dwelling on other  
24 lots or parcels;

25 (C) May not, as a result of the land division, be used to justify redesignation or  
26 rezoning of resource lands; and

27 (D) May not result in a parcel of less than 35 acres, unless the purpose of the land  
28 division is to:

29 (i) Facilitate an exchange of lands involving a governmental agency; or

30 (ii) Allow transactions in which at least one participant is a person with a  
31 cumulative ownership of at least 2,000 acres of forest land.

32 (d) To allow a division of a lot or parcel zoned for forest use if:

1 (A) At least two dwellings lawfully existed on the lot or parcel prior to November  
2 4, 1993;

3 (B) Each dwelling complies with the criteria for a replacement dwelling under  
4 ORS 215.213(1) or 215.283(1);

5 (C) Except for one lot or parcel, each lot or parcel created under this paragraph is  
6 between two and five acres in size;

7 (D) At least one dwelling is located on each lot or parcel created under this  
8 paragraph; and

9 (E) The landowner of a lot or parcel created under this paragraph provides  
10 evidence that a restriction prohibiting the landowner and the landowner's  
11 successors in interest from further dividing the lot or parcel has been recorded  
12 with the county clerk of the county in which the lot or parcel is located. A  
13 restriction imposed under this paragraph shall be irrevocable unless a statement of  
14 release is signed by the county planning director of the county in which the lot or  
15 parcel is located indicating that the comprehensive plan or land use regulations  
16 applicable to the lot or parcel have been changed so that the lot or parcel is no  
17 longer subject to statewide planning goals protecting forestland or unless the land  
18 division is subsequently authorized by law or by a change in a statewide planning  
19 goal for land zoned for forest use.

20 (e) To allow a proposed division of land as provided in ORS 215.783.

21 (3) A county planning director shall maintain a record of lots and parcels that do not qualify for  
22 division under the restrictions imposed by OAR 660-006-0026(2)(d) and (4). The record shall be  
23 available to the public.

24 (4) A lot or parcel may not be divided under OAR 660-006-0026(2)(d) if an existing dwelling on  
25 the lot or parcel was approved under:

26 (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015  
27 that required removal of the dwelling or that prohibited subsequent division of the lot or  
28 parcel; or

29 (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and  
30 forest use zone under statewide goal 4 (Forest Lands).

31 (5) (a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this rule shall  
32 provide evidence that a restriction on the remaining parcel, not containing the dwelling,  
33 has been recorded with the county clerk of the county where the property is located. The  
34 restriction shall allow no dwellings unless authorized by law or goal on land zoned for  
35 forest use except as permitted under section (2) of this rule.

1 (b) A restriction imposed under this ~~[subsection]~~ **section** shall be irrevocable unless a  
2 statement of release is signed by the county planning director of the county where the  
3 property is located indicating that the comprehensive plan or land use regulations  
4 applicable to the property have been changed in such a manner that the parcel is no  
5 longer subject to statewide planning goals pertaining to agricultural land or forest land.

6 (c) The county planning director shall maintain a record of parcels that do not qualify for  
7 the siting of a new dwelling under restrictions imposed by this rule. The record shall be  
8 readily available to the public.

9 (6) A landowner allowed a land division under section (2) of this rule shall sign a statement that  
10 shall be recorded with the county clerk of the county in which the property is located, declaring  
11 that the landowner will not in the future complain about accepted farming or forest practices on  
12 nearby lands devoted to farm or forest use.

13 **(7) The county governing body or its designate may not approve a property line adjustment**  
14 **of a lot or parcel in a manner that separates a temporary hardship dwelling or home**  
15 **occupation from the parcel on which the primary residential use exists.**

16 **(8) A division of a lawfully established unit of land may occur along an urban growth**  
17 **boundary where the parcel remaining outside the urban growth boundary is zoned for**  
18 **forest use or mixed farm and forest use and is smaller than the minimum parcel size,**  
19 **provided that:**

20 **(a) If the parcel contains a dwelling, it must be large enough to support continued**  
21 **residential use.**

22 **(b) If the parcel does not contain a dwelling:**

23 **(A) It is not eligible for siting a dwelling, except as may be authorized under**  
24 **ORS 195.120;**

25 **(B) It may not be considered in approving or denying an application for any**  
26 **other dwelling;**

27 **(C) It may not be considered in approving a redesignation or rezoning of**  
28 **forest lands, except to allow a public park, open space or other natural**  
29 **resource use; and**

30 **(D) The owner of the parcel shall record with the county clerk an irrevocable**  
31 **deed restriction prohibiting the owner and all successors in interest from**  
32 **pursuing a cause of action or claim of relief alleging injury from farming or**  
33 **forest practices for which a claim or action is not allowed under ORS 30.936**  
34 **or 30.937.**

1 **660-006-0027**

2 **Dwellings in Forest Zones**

3 The following standards apply to dwellings described at OAR 660-006-0025(1)(d):

4 (1) A lot of record dwelling authorized under ORS 215.705 may be allowed if:

5 (a) The lot or parcel on which the dwelling will be sited was lawfully created and was  
6 acquired and owned continuously by the present owner as defined in subsection (d) of  
7 this section:

8 (A) Since prior to January 1, 1985; or

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

11 (b) The tract on which the dwelling will be sited does not include a dwelling;

12 (c) The lot or parcel on which the dwelling will be sited was part of a tract on November  
13 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.

14 (d) For purposes of this section, "owner" includes the wife, husband, son, daughter,  
15 mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law,  
16 mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild,  
17 grandparent or grandchild of the owner or a business entity owned by any one or  
18 combination of these family members.

19 (e) The dwelling must be located:

20 (A) On a tract in western Oregon that is composed of soil is not capable of  
21 producing 5,000 cubic feet per year of commercial tree species and is located  
22 within 1,500 feet of a public road as defined under ORS 368.001 that provides or  
23 will provide access to the subject tract. The road shall be maintained and either  
24 paved or surfaced with rock and shall not be:

25 (i) A United States Bureau of Land Management road; or

26 (ii) A United States Forest Service road unless the road is paved to a  
27 minimum width of 18 feet, there is at least one defined lane in each  
28 direction and a maintenance agreement exists between the United States  
29 Forest Service and landowners adjacent to the road, a local government or  
30 a state agency.

31 (B) On a tract in eastern Oregon that is composed of soils not capable of  
32 producing 4,000 cubic feet per year of commercial tree species and is located

1 within 1,500 feet of a public road as defined under ORS 368.001 that provides or  
2 will provide access to the subject tract. The road shall be maintained and either  
3 paved or surfaced with rock and shall not be:

4 (i) A United States Bureau of Land Management road; or

5 (ii) A United States Forest Service road unless the road is paved to a  
6 minimum width of 18 feet, there is at least one defined lane in each  
7 direction and a maintenance agreement exists between the United States  
8 Forest Service and landowners adjacent to the road, a local government or  
9 a state agency.

10 (f) When the lot or parcel on which the dwelling will be sited lies within an area  
11 designated in an acknowledged comprehensive plan as habitat of big game, the siting of  
12 the dwelling shall be consistent with the limitations on density upon which the  
13 acknowledged comprehensive plan and land use regulations intended to protect the  
14 habitat are based; and

15 (g) When the lot or parcel on which the dwelling will be sited is part of a tract, the  
16 remaining portions of the tract shall be consolidated into a single lot or parcel when the  
17 dwelling is allowed.

18 (2) If a dwelling is not allowed pursuant to section (1) of this rule, a large tract forest dwelling  
19 authorized under ORS 215.740 may be allowed on land zoned for forest use if it complies with  
20 other provisions of law and is sited on a tract that does not include a dwelling:

21 (a) In eastern Oregon of at least 240 contiguous acres or 320 acres in one ownership that  
22 are not contiguous but are in the same county or adjacent counties and zoned for forest  
23 use. A deed restriction shall be filed pursuant to section (7) of this rule for all tracts that  
24 are used to meet the acreage requirements of this subsection.

25 (b) In western Oregon of at least 160 contiguous acres or 200 acres in one ownership that  
26 are not contiguous but are in the same county or adjacent counties and zoned for forest  
27 use. A deed restriction shall be filed pursuant to section (7) of this rule for all tracts that  
28 are used to meet the acreage requirements of this subsection.

29 (c) A tract shall not be considered to consist of less than 240 acres or 160 acres because it  
30 is crossed by a public road or a waterway.

31 (3) In western Oregon, a governing body of a county or its designate may allow the  
32 establishment of a single family "template" dwelling authorized under ORS 215.750 on a lot or  
33 parcel located within a forest zone if the lot or parcel is predominantly composed of soils that  
34 are:

35 (a) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:

1 (A) All or part of at least three other lots or parcels that existed on January 1,  
2 1993, are within a 160-acre square centered on the center of the subject tract; and

3 (B) At least three dwellings existed on January 1, 1993 and continue to exist on  
4 the other lots or parcels.

5 (b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

6 (A) All or part of at least seven other lots or parcels that existed on January 1,  
7 1993, are within a 160-acre square centered on the center of the subject tract; and

8 (B) At least three dwellings existed on January 1, 1993 and continue to exist on  
9 the other lots or parcels.

10 (c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

11 (A) All or part of at least 11 other lots or parcels that existed on January 1, 1993,  
12 are within a 160-acre square centered on the center of the subject tract; and

13 (B) At least three dwellings existed on January 1, 1993 and continue to exist on  
14 the other lots or parcels.

15 (4) In eastern Oregon, a governing body of a county or its designate may allow the establishment  
16 of a single family “template” dwelling authorized under ORS 215.750 on a lot or parcel located  
17 within a forest zone if the lot or parcel is predominantly composed of soils that are:

18 (a) Capable of producing zero to 20 cubic feet per acre per year of wood fiber if:

19 (A) All or part of at least three other lots or parcels that existed on January 1,  
20 1993, are within a 160-acre square centered on the center of the subject tract; and

21 (B) At least three dwellings existed on January 1, 1993 and continue to exist on  
22 the other lots or parcels.

23 (b) Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

24 (A) All or part of at least seven other lots or parcels that existed on January 1,  
25 1993, are within a 160-acre square centered on the center of the subject tract; and

26 (B) At least three dwellings existed on January 1, 1993 and continue to exist on  
27 the other lots or parcels.

28 (c) Capable of producing more than 50 cubic feet per acre per year of wood fiber if:

1 (A) All or part of at least 11 other lots or parcels that existed on January 1, 1993,  
2 are within a 160-acre square centered on the center of the subject tract; and

3 (B) At least three dwellings existed on January 1, 1993 and continue to exist on  
4 the other lots or parcels.

5 (5) The following review standards apply to “template” dwellings approved under sections (3) or  
6 (4) of this rule:

7 (a) Lots or parcels within urban growth boundaries shall not be used to satisfy the  
8 eligibility requirements under sections (3) or (4) of this rule.

9 (b) Except as provided by subsection (c) of this section, if the tract under section (3) or (4)  
10 of this rule abuts a road that existed on January 1, 1993, the measurement may be made  
11 by creating a 160-acre rectangle that is one mile long and 1/4 mile wide centered on the  
12 center of the subject tract and that is to the maximum extent possible, aligned with the  
13 road.

14 (c) (A) If a tract 60 acres or larger described under section (3) or (4) of this rule abuts  
15 a road or perennial stream, the measurement shall be made in accordance with  
16 subsection (b) of this section. However, one of the three required dwellings shall  
17 be on the same side of the road or stream as the tract, and:

18 (i) Be located within a 160-acre rectangle that is one mile long and one-  
19 quarter mile wide centered on the center of the subject tract and that is, to  
20 the maximum extent possible aligned with the road or stream; or

21 (ii) Be within one-quarter mile from the edge of the subject tract but not  
22 outside the length of the 160-acre rectangle, and on the same side of the  
23 road or stream as the tract.

24 (B) If a road crosses the tract on which the dwelling will be located, at least one of  
25 the three required dwellings shall be on the same side of the road as the proposed  
26 dwelling.

27 (6) A proposed “template” dwelling under this rule is not allowed:

28 (a) If it is prohibited by or will not comply with the requirements of an acknowledged  
29 comprehensive plan, acknowledged land use regulations, or other provisions of law;

30 (b) Unless it complies with the requirements of OAR 660-006-0029 and 660-006-0035;

31 (c) Unless no dwellings are allowed on other lots or parcels that make up the tract and  
32 deed restrictions established under section (7) of this rule for the other lots or parcels that  
33 make up the tract are met; or

1 (d) If the tract on which the dwelling will be sited includes a dwelling.

2 (7) (a) The applicant for a dwelling authorized by [~~subsections (2)(a) or (b) of this rule that~~  
3 ~~requires one or more lot or parcel to meet minimum acreage requirements~~] **paragraph**  
4 **(A) or (B) below** shall provide evidence that the covenants, conditions and restrictions  
5 form adopted as "Exhibit A" has been recorded with the county clerk of the county or  
6 counties where the property subject to the covenants, conditions and restrictions is  
7 locatedd.

8 **(A) Subsections (2)(a) or (b) of this rule requiring one or more lot or parcel**  
9 **to meet minimum acreage requirements.**

10 **(B) Sections (3) or (4) of this rule applying to other lots or parcels that make**  
11 **up a tract in subsection (6).**

12 (b) The covenants, conditions and restrictions are irrevocable, unless a statement of  
13 release is signed by an authorized representative of the county or counties where the  
14 property subject to the covenants, conditions and restrictions is located.

15 (c) Enforcement of the covenants, conditions and restrictions may be undertaken by the  
16 department or by the county or counties where the property subject to the covenants,  
17 conditions and restrictions is located.

18 (d) The failure to follow the requirements of this section shall not affect the validity of  
19 the transfer of property or the legal remedies available to the buyers of property that is  
20 subject to the covenants, conditions and restrictions required by this section.

21 (e) The county planning director shall maintain a copy of the covenants, conditions and  
22 restrictions filed in the county deed records pursuant to this section and a map or other  
23 record depicting tracts do not qualify for the siting of a dwelling under the covenants,  
24 conditions and restrictions filed in the county deed records pursuant to this section. The  
25 map or other record required by this subsection shall be readily available to the public in  
26 the county planning office.

27 (8) Notwithstanding subsection (6)(a) of this rule, if the acknowledged comprehensive plan and  
28 land use regulations of a county require that a dwelling be located in a 160-acre square or  
29 rectangle described in sections (3) or (4) or subsections (5)(b) or (c) of this rule, a dwelling is in  
30 the 160-acre square or rectangle if any part of the dwelling is in the 160-acre square or rectangle.

**DIVISION 25**

**PERIODIC REVIEW**

1 **660-025-0020**

2 **Definitions**

3 For the purposes of this division, the definitions contained in ORS 197.015, 197.303, and  
4 197.747 shall apply unless the context requires otherwise. In addition, the following definitions  
5 apply:

6 [~~(1) "Economic Revitalization Team" means the team established under ORS 284.555.~~]

7 [~~(2)~~ **(1)** "Filed" or "Submitted" means that the required documents have been received by the  
8 Department of Land Conservation and Development at its Salem, Oregon, office.

9 [~~(3)~~ **(2)** "Final Decision" means the completion by the local government of a work task on an  
10 approved work program, including the adoption of supporting findings and any amendments to  
11 the comprehensive plan or land use regulations. A decision is final when the local government's  
12 decision is transmitted to the department for review.

13 [~~(4)~~ **(3)** "Metropolitan planning organization" means an organization located wholly within the  
14 State of Oregon and designated by the Governor to coordinate transportation planning in an  
15 urbanized area of the state pursuant to 49 USC § 5303(c).

16 [~~(5)~~ **(4)** "Objection" means a written complaint concerning the adequacy of an evaluation,  
17 proposed work program, or completed work task.

18 [~~(6)~~ **(5)** "Participated at the local level" means to have provided substantive comment, evidence,  
19 documents, correspondence, or testimony to the local government during the local proceedings  
20 regarding a decision on an evaluation, work program or work task.

21 **(6) "Regional Solutions Team" means a team described in Oregon Laws 2014, chapter 82,**  
22 **section 3.**

23 (7) "Work Program" means a detailed listing of tasks necessary to revise or amend the local  
24 comprehensive plan or land use regulations to ensure the plan and regulations achieve the  
25 statewide planning goals. A work program must indicate the date that each work task must be  
26 submitted to the department for review.

27 (8) "Work Task" or "task" means an activity that is included on an approved work program and  
28 that generally results in an adopted amendment to a comprehensive plan or land use regulation.

29 **660-025-0035**

30 **Initiating Periodic Review Outside the Schedule**

31 (1) A local government may request, and the commission may approve, initiation of periodic  
32 review not otherwise provided for in the schedule established under OAR 660-025-0030. The

1 request must be submitted to the commission along with justification for the requested action.  
2 The justification must include a statement of local circumstances that warrant periodic review  
3 and identification of the statewide planning goals to be addressed.

4 **(2) A city may request, and the commission may approve, initiation of periodic review for**  
5 **the limited purpose of completing changes to proposed amendments to a comprehensive**  
6 **plan and land use regulations required on remand after review by the commission in the**  
7 **manner provided for review of a work task under ORS 197.626(1)(b) and OAR 660-025-**  
8 **0175(1)(b). If periodic review is initiated under this section, the city may adopt, and the**  
9 **director may approve, a work program that includes only the changes required on remand.**

10 [~~(2)~~] **(3)** In consideration of the request filed pursuant to section (1) **or (2)**, the commission must  
11 consider the needs of the jurisdiction to address the issue(s) identified in the request for periodic  
12 review, the interrelationships of the statewide planning goals to be addressed in the periodic  
13 review project, and other factors the commission finds relevant. If the commission approves the  
14 request, the provisions of this division apply, except as provided in section [~~(3)~~] **(4)** of this rule.

15 [~~(3)~~] **(4)** The [~~Economic Revitalization Team~~] **Regional Solutions Team** may work with a city  
16 to create a voluntary comprehensive plan review that focuses on the unique vision of the city,  
17 instead of conducting a standard periodic review, if the team identifies a city that the team  
18 determines can benefit from a customized voluntary comprehensive plan review. In order for a  
19 voluntary comprehensive plan review to be initiated by the commission, the city must request  
20 initiation of such a modified periodic review. The provisions of this division apply except as  
21 follows:

22 (a) If the city is subject to the periodic review schedule in OAR 660-025-0030, the  
23 periodic review under this section will not replace or delay the next scheduled periodic  
24 review;

25 (b) If the city misses a deadline related to an evaluation, work program or work task,  
26 including any extension, the commission must terminate the evaluation, work program, or  
27 work task or impose sanctions pursuant to OAR 660-025-0170(3).

28 [~~(4)~~] **(5)** If the commission pays the costs of a local government that is not subject to OAR 660-  
29 025-0030 to perform new work programs and work tasks, the commission may require the local  
30 government to complete periodic review when the local government has not completed periodic  
31 review within the previous five years if:

32 (a) A city has been growing faster than the annual population growth rate of the state for  
33 five consecutive years;

34 (b) A major transportation project on the Statewide Transportation Improvement Program  
35 that is approved for funding by the Oregon Transportation Commission is likely to:

36 (A) Have a significant impact on a city or an urban unincorporated community; or

37 (B) Be significantly affected by growth and development in a city or an urban  
38 unincorporated community;

39 (c) A major facility, including a prison, is sited or funded by a state agency; or

1 (d) Approval by the city or county of a facility for a major employer will increase  
2 employment opportunities and significantly affect the capacity of housing and public  
3 facilities in the city or urban unincorporated community.

4 ~~[(5)]~~ **(6)** As used in section ~~[(4)]~~ **(5)** of this rule, “the costs of a local government” means: normal  
5 and customary expenses for supplies, personnel and services directly related to preparing a work  
6 program, and completing studies and inventories, drafting of ordinances, preparing and sending  
7 notices of hearings and meetings, conducting meetings and workshops, and conducting hearings  
8 on possible adoption of amendments to plans or codes, to complete a work task.

9 **660-025-0040**

10 **Exclusive Jurisdiction of LCDC**

11 (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction for review of  
12 completed periodic review work tasks for compliance with the statewide planning goals and  
13 applicable statutes and administrative rules, as provided in ORS 197.633(3). The director also  
14 has authority to review the periodic review evaluation, work program and completed work tasks,  
15 as provided in ORS 197.633 and 197.644.

16 (2) Pursuant to ORS 197.626, the commission has exclusive jurisdiction for review of the  
17 following final decisions for compliance with the statewide planning goals:

18 (a) An amendment of an urban growth boundary by a metropolitan service district that  
19 adds more than 100 acres to the area within its urban growth boundary;

20 (b) An amendment of an urban growth boundary by a city with a population of 2,500 or  
21 more within its urban growth boundary that adds more than 50 acres to the area within  
22 the urban growth boundary, **except as provided by ORS 197A.325 and OAR 660-038-**  
23 **0020(10)**;

24 (c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a  
25 metropolitan service district or by a city with a population of 2,500 or more within its  
26 urban growth boundary;

27 (d) An amendment of the boundary of an urban reserve by a metropolitan service district;

28 (e) An amendment of the boundary of an urban reserve to add more than 50 acres to the  
29 urban reserve by a city with a population of 2,500 or more within its urban growth  
30 boundary; and

31 (f) A designation or an amendment to the designation of a rural reserve under ORS  
32 195.137 to 195.145 by a county, in coordination with a metropolitan service district,  
33 including an amendment of the boundary of a rural reserve.

34 (3) A final order of the commission pursuant to sections (1) or (2) of this rule may be subject to  
35 judicial review in the manner provided in applicable provisions of ORS 197.650 and 197.651.

1 (4) The director may transfer one or more matters arising from review of a work task, urban  
2 growth boundary amendment or designation or amendment of an urban reserve area to the Land  
3 Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-025-0250.

4 **660-025-0060**

5 **Periodic Review Assistance Team(s)**

6 (1) The director may create one or more Periodic Review Assistance Team(s) to coordinate state,  
7 regional or local public agency comment, assistance, and information into the evaluation and  
8 work program development process. The director must seek input from agencies, regional  
9 governments and local governments on the membership of Periodic Review Assistance Team(s).

10 (2) Members of the Periodic Review Assistance Team will provide, as appropriate:

11 (a) Information relevant to the periodic review process;

12 (b) New and updated information;

13 (c) Technical and professional land use planning assistance; or

14 (d) Coordinated evaluation and comment from state agencies.

15 (3) Membership. The Periodic Review Assistance Team may include representatives of state  
16 agencies with programs affecting land use described in ORS 197.180, and representatives of  
17 regional or local governments who may have an interest in the review.

18 (4) Meetings. The Periodic Review Assistance Team shall meet as necessary to provide  
19 information and advice to a local government in periodic review.

20 (5) Authority. The Periodic Review Assistance Team shall be an advisory body. The team may  
21 make recommendations concerning an evaluation, a work program or work task undertaken  
22 pursuant to an approved work program. The team may also make recommendations to cities,  
23 counties, state agencies and the commission regarding any other issues related to periodic  
24 review.

25 (6) In addition to the Periodic Review Assistance Team(s), the department may utilize the  
26 [~~Economic Revitalization Team~~] **Regional Solutions Team** or institute an alternative process for  
27 coordinating agency participation in the periodic review of comprehensive plans.

28 (7) The commission must consider the recommendations, if any, of the Periodic Review  
29 Assistance Team(s).

30 **660-025-0085**

31 **Commission Hearings Notice and Procedures**

32 (1) Hearings before the commission on a referral of a local government submittal of a work  
33 program or hearings on referral or appeal of a work task must be noticed and conducted in  
34 accordance with this rule.

1 (2) The commission shall take final action on an appeal or referral of a completed work task  
2 within 90 days of the date the appeal was filed or the director issued notice of the referral unless:

3 (a) At the request of a local government and a person who files a valid objection or  
4 appeals the director's decision, the department may provide mediation services to resolve  
5 disputes related to the appeal. Where mediation is underway, the commission shall delay  
6 its hearing until the mediation process is concluded or the director, after consultation with  
7 the mediator, determines that mediation is of no further use in resolution of the work  
8 program or work task disagreements;

9 (b) If the appeal or referral raises new or complex issues of fact or law that make it  
10 unreasonable for the commission to give adequate consideration to the issues within the  
11 90-day limit the commission is not required to take final action within that time limit; or

12 (c) If the parties to the appeal and the commission agree to an extension, the hearing may  
13 be continued for a period not to exceed an additional 90 days.

14 (3) The director must provide written notice of the hearing to the local government, the  
15 appellant, objectors, and individuals requesting notice in writing. The notice must contain the  
16 date and location of the hearing.

17 (4) The director may prepare a written report to the commission on an appeal or referral. If a  
18 report is prepared, the director must ~~mail~~ send a copy to the local government, objectors, the  
19 appellant, and individuals requesting the report in writing.

20 (5) Commission hearings will be conducted using the following procedures:

21 (a) The chair will open the hearing and explain the proceedings;

22 (b) The director or designee will present an oral report regarding the nature of the matter  
23 before the commission, an explanation of the director's decision, if any, and other  
24 information to assist the commission in reaching a decision. If another state agency  
25 participated in the periodic review under ORS 197.637 or 197.638, the agency may  
26 participate in the director's oral report.

27 (c) Participation in the hearing is limited to:

28 (A) The local government or governments whose decision is under review;

29 (B) Persons who filed a valid objection to the local decision in the case of  
30 commission hearing on a referral;

31 (C) Persons who filed a valid appeal of the director's decision in the case of a  
32 commission hearing on an appeal; and

33 (D) Other affected local governments.

34 (d) Standing to file an appeal of a work task is governed by OAR 660-025-0150.

35 (e) Persons or their authorized representative may present oral argument.

1 (f) The local government that submitted the task may provide general information from  
2 the record on the task submittal and address those issues raised in the department review,  
3 objections, or the appeal. A person who submitted objections or an appeal may address  
4 only those issues raised in the objections or the appeal submitted by that person. Other  
5 affected local governments may address only those issues raised in objections or an  
6 appeal.

7 (g) As provided in ORS 197.633(3), the commission will confine its review of evidence  
8 to the local record.

9 (h) The director or commission may take official notice of law defined as:

10 (A) The decisional, constitutional and public statutory law of Oregon, the United  
11 States and any state, territory or other jurisdiction of the United States.

12 (B) Public and private official acts of the legislative, executive and judicial  
13 departments of this state, the United States, and any other state, territory or other  
14 jurisdiction of the United States.

15 (C) Regulations, ordinances and similar legislative enactments issued by or under  
16 the authority of the United States or any state, territory or possession of the  
17 United States.

18 (D) Rules of court of any court of this state or any court of record of the United  
19 States or of any state, territory or other jurisdiction of the United States.

20 (E) The law of an organization of nations and of foreign nations and public  
21 entities in foreign nations.

22 (F) An ordinance, comprehensive plan or enactment of any local government in  
23 this state, or a right derived therefrom.

24 **660-025-0090**

25 **Evaluation, Work Program or Decision that No Work Is Necessary**

26 (1) The local government must conduct an evaluation of its plan and land use regulations based  
27 on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The local evaluation  
28 process must comply with the following requirements:

29 (a) The local government must follow its citizen involvement program and the  
30 requirements of OAR 660-025-0080 for conducting the evaluation and determining the  
31 scope of a work program.

32 (b) The local government must provide opportunities for participation by the department  
33 and Periodic Review Assistance Team. The local government must consider issues  
34 related to coordination between local government comprehensive plan provisions and  
35 certified state agency coordination programs that are raised by the affected agency or  
36 Periodic Review Assistance Team.

1 (c) The local government may provide opportunities for participation by the [~~Economic~~  
2 ~~Revitalization Team~~] **Regional Solutions Team**.

3 (d) At least 21 days before submitting the evaluation and work program, or decision that  
4 no work program is required, the local government must provide copies of the evaluation  
5 to members of the Periodic Review Assistance Team, if formed, and others who have, in  
6 writing, requested copies.

7 (e) After review of comments from interested persons, the local government must adopt an  
8 evaluation and work program or decision that no work program is required.

9 (2) The local government must submit the evaluation and work program, or decision that no  
10 work program is required, to the department according to the following requirements:

11 (a) The evaluation must include completed evaluation forms that are appropriate to the  
12 jurisdiction as determined by the director. Evaluation forms will be based on the  
13 jurisdiction's size, growth rate, geographic location, and other factors that relate to the  
14 planning situation at the time of periodic review. Issues related to coordination between  
15 local government comprehensive plan provisions and certified agency coordination  
16 programs may be included in evaluation forms.

17 (b) The local government must also submit to the department a list of persons who  
18 requested notice of the evaluation and work program or decision that no work program is  
19 required.

20 (c) The evaluation and work program, or decision that no work program is necessary,  
21 must be submitted within six months of the date the department sent the letter initiating  
22 the periodic review process, including any extension granted under section (3) of this  
23 rule.

24 (3) A local government may request an extension of time for submitting its evaluation and work  
25 program, or decision that no work program is required. The director may grant the request if the  
26 local government shows good cause for the extension. A local government may be permitted  
27 only one extension, which shall be for no more than 90 days.

28 (4) A decision by the director to deny a request for an extension may be appealed to the  
29 commission according to the procedures in OAR 660-025-0110(5), or the director may refer a  
30 request for extension under section (3) of this rule to the commission pursuant to OAR 660-025-  
31 0085.

32 (5) If a local government fails to submit its evaluation and work program, or decision that no  
33 work program is necessary, by the deadline set by the director or the commission, including any  
34 extension, the director shall schedule a hearing before the commission according to OAR 660-  
35 025-0170(3).

1 **660-025-0130**

2 **Submission of Completed Work Task**

3 (1) A local government must submit completed work tasks as provided in the approved work  
4 program **or a submittal pursuant to OAR 660-025-0175** to the department along with the  
5 notice required in OAR 660-025-0140 and any form required by the department. A local  
6 government must submit to the department a list of persons who participated orally or in writing  
7 in the local proceedings leading to the adoption of the work task or who requested notice of the  
8 local government's final decision on a work task.

9 (2) After receipt of a work task **or a submittal pursuant to OAR 660-025-0175**, the department  
10 must determine whether the submittal is complete.

11 (3) [Task] **For a periodic review task to** be complete, a submittal must be a final decision  
12 containing all required elements identified for that task in the work program. The department  
13 may accept a portion of a task or subtask as a complete submittal if the work program identified  
14 that portion of the task or subtask as a separate item for adoption by the local government. [Task]  
15 **All** submittals **required by section (1) of this rule** are subject to the following requirements:

16 (a) If the local record does not exceed 2,000 pages, a submittal must include the entire  
17 local record, including but not limited to adopted ordinances and orders, studies,  
18 inventories, findings, staff reports, correspondence, hearings minutes, written testimony  
19 and evidence, and any other items specifically listed in the work program;

20 (b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances,  
21 resolutions, and orders; any amended comprehensive or regional framework plan  
22 provisions or land use regulations; findings; hearings minutes; materials from the record  
23 that the local government deems necessary to explain the submittal or cites in its findings;  
24 and a detailed index listing all items in the local record and indicating whether or not the  
25 item is included in the submittal. All items in the local record must be made available for  
26 public review during the period for submitting objections under OAR 660-025-0140. The  
27 director or commission may require a local government to submit any materials from the  
28 local record not included in the initial submittal;

29 (c) A [task] submittal of over 500 pages must include an index of all submitted materials.  
30 **Each document must be separately indexed, in chronological order, with the last**  
31 **document on the top. Pages must be consecutively numbered at the bottom of the**  
32 **page.**

33 (4) A submittal includes only the materials provided to the department pursuant to section (3) of  
34 this rule. Following submission of objections pursuant to OAR 660-025-0140, the local  
35 government may:

36 (a) Provide written correspondence that is not part of the local record which identifies  
37 material in the record relevant to filed objections. The correspondence may not include or  
38 refer to materials not in the record submitted or listed pursuant to section (3) of this rule.  
39 The local government must provide the correspondence to each objector at the same time  
40 it is sent to the department.

1 (b) Submit materials in the record that were not part of the submittal under section (3) if  
2 the materials are relevant to one or more filed objections. The local government may not  
3 include or refer to materials not in the local record. The local government must provide  
4 the materials to each objector at the same time it is sent to the department.

5 (5) If the department determines that a submittal is incomplete, it must notify the local  
6 government. If the department determines that the submittal should be reviewed despite missing  
7 information, the department may commence a formal review of the submittal. Missing material  
8 may be identified as a deficiency in the review process and be a basis to require further work by  
9 the local government.

10 (6) A local government may request an extension of time for submitting a work task. The  
11 director may grant the request if the local government shows good cause for the extension. A  
12 local government may be permitted only one extension, which shall be for no more than one  
13 year.

14 (7) If a local government fails to submit a complete work task by the deadline set by the director,  
15 or the commission, including any extension, the director must schedule a hearing before the  
16 commission. The hearing must be conducted according to the procedures in OAR 660-025-  
17 0170(3).

18 **660-025-0140**

19 **Notice and Filing of Objections (Work Task Phase)**

20 (1) After the local government makes a final decision on a work task **or comprehensive plan**  
21 **amendment listed in ORS 197.626(1) and OAR 660-025-0175**, the local government must  
22 notify the department and persons who participated at the local level orally or in writing during  
23 the local process or who requested notice in writing. The local government notice must contain  
24 the following information:

25 (a) Where a person can review a copy of the local government's final decision, and how a  
26 person may obtain a copy of the final decision;

27 (b) The requirements listed in section (2) of this rule for filing a valid objection to the  
28 work task **or comprehensive plan amendment listed in OAR 660-025-0175**; and

29 (c) That objectors must give a copy of the objection to the local government.

30 (2) Persons who participated orally or in writing in the local process leading to the final decision  
31 may object to the local government's [~~work task~~] submittal. To be valid, objections must:

32 (a) Be in writing and filed with the department's Salem office no later than 21 days from  
33 the date the local government [~~mailed~~] **sent** the notice;

34 (b) Clearly identify an alleged deficiency in the work task **or adopted comprehensive**  
35 **plan amendment** sufficiently to identify the relevant section of the final decision and the  
36 statute, goal, or administrative rule the [~~task~~] submittal is alleged to have violated;

37 (c) Suggest specific revisions that would resolve the objection; and

1 (d) Demonstrate that the objecting party participated orally or in writing in the local  
2 process leading to the final decision.

3 (3) Objections that do not meet the requirements of section (2) of this rule will not be considered  
4 by the director or commission.

5 (4) If no valid objections are received within the 21-day objection period, the director may  
6 approve the [~~work task~~] **submittal**. Regardless of whether valid objections are received, the  
7 director may make a determination of whether the [~~work task~~] final decision complies with the  
8 statewide planning goals and applicable statutes and administrative rules.

9 (5) When a subsequent work task conflicts with a work task that has been deemed  
10 acknowledged, or violates a statewide planning goal, applicable statute or administrative rule  
11 related to a previous work task, the director or commission shall not approve the submittal until  
12 all conflicts and compliance issues are resolved. In such case, the director or commission may  
13 enter an order deferring acknowledgment of all, or part, of the work task until completion of  
14 additional tasks.

15 (6) If valid objections are received or the department conducts its own review, the department  
16 must issue a report. The report shall address the issues raised in valid objections. The report shall  
17 identify specific work tasks **or measures** to resolve valid objections or department concerns. A  
18 valid objection shall either be sustained or rejected by the department or commission based on  
19 the statewide planning goals, or applicable statutes or administrative rules.

20 **660-025-0150**

21 **Director Action and Appeal of Director Action (Work Task Phase)**

22 (1) In response to a completed work task **or other plan amendment** submitted to the department  
23 for review in accordance with OAR 660-025-0140, the director may:

24 (a) Issue an order approving the completed work task **or plan amendment**;

25 (b) Issue an order remanding the work task **or plan amendment** to the local government  
26 including, **for a work task only**, a date for resubmittal;

27 (c) Refer the work task **or plan amendment** to the commission for review and action; or

28 (d) The director may issue an order approving portions of the completed work task **or**  
29 **plan amendment** provided these portions are not affected by an order remanding or  
30 referring the completed work task.

31 (2) The director must send the order to the local government, persons who filed objections and  
32 persons who, in writing, requested a copy of the action.

33 (3) The director shall take action on, and the order or referral must be sent, not later than 120  
34 days of the date the department received the task submittal from the local government, unless the  
35 local government waives the 120-day deadline or the commission grants the director an  
36 extension. The local government may withdraw the submittal, in which case the 120-day  
37 deadline does not apply, provided the withdrawal will not result in the local government passing

1 the deadline for work task submittal in the work program and any extension allowed in OAR  
2 660-025-0130(6).

3 (4) If the director does not issue an order or refer the work task within the time limits set by  
4 section (3) of this rule, and the department did not receive any valid objections to the work task,  
5 the work task shall be deemed approved. In such cases, the department will provide a letter to the  
6 local government certifying that the work task is approved.

7 (5) If the department received one or more valid objections to the work task **or plan**  
8 **amendment**, the director must either issue an order **within the time limits set by section (3) of**  
9 **this rule** or refer the work task **or plan amendment** to the commission for review.

10 (6) Appeals of a director's decision are subject to the following requirements:

11 (a) A director's decision approving or partially approving a work task **or plan**  
12 **amendment** may be appealed to the commission only by a person who filed a valid  
13 objection.

14 (b) A director's decision remanding or partially remanding a work task **or plan**  
15 **amendment** may be appealed to the commission only by the local government, a person  
16 who filed a valid objection, or by another person who participated orally or in writing in  
17 the local proceedings leading to adoption of the local decision under review.

18 (c) Appeals of a director's decision must be filed with the department's Salem office  
19 within 21 days of the date the director's action was [~~mailed~~] **sent**;

20 (d) A person, other than the local government that submitted the work task **or plan**  
21 **amendment** and an affected local government, appealing the director's decision must:

22 (A) Show that the person participated in the local proceedings leading to adoption  
23 of the work task **or plan amendment** orally or in writing;

24 (B) Clearly identify a deficiency in the work task **or plan amendment**  
25 sufficiently to identify the relevant section of the [~~submitted task~~] **submittal** and  
26 the statute, goal, or administrative rule the local government is alleged to have  
27 violated; and

28 (C) Suggest a specific modification to the work task **or plan amendment**  
29 necessary to resolve the alleged deficiency.

30 (7) If no appeal to the commission is filed within the time provided by section (6) of this rule, the  
31 director's order is deemed affirmed by the commission. If the order approved a [~~work task~~]  
32 **submittal**, the work task **or plan amendment** is deemed acknowledged.

33 (8) When a subsequent work task conflicts with a work task that has been deemed  
34 acknowledged, or violates a statewide planning goal, applicable statute or administrative rule  
35 related to a previous work task, the director or commission shall not approve the submittal until  
36 all conflicts and compliance issues are resolved. In such case, the director or commission may  
37 enter an order deferring acknowledgment of all, or part, of the subsequent work task until  
38 completion of additional tasks.

1 (9) The director’s standard of review is the same as the standard that governs the commission  
2 expressed in OAR 660-025-0160(2).

3 **660-025-0160**

4 **Commission Review of Referrals and Appeals (Work Task Phase)**

5 (1) The commission shall hear appeals and referrals of work tasks **or other plan amendments**  
6 according to the applicable procedures in OAR 660-025-0085 and 660-025-0150.

7 (2) The commission’s standard of review, as provided in ORS 197.633(3), is:

8 (a) For evidentiary issues, whether there is substantial evidence in the record as a whole  
9 to support the local government’s decision.

10 (b) For procedural issues, whether the local government failed to follow the procedures  
11 applicable to the matter before the local government in a manner that prejudiced the  
12 substantial rights of a party to the proceeding.

13 (c) For issues concerning compliance with applicable laws, whether the local  
14 government’s decision on the whole complies with applicable statutes, statewide land use  
15 planning goals, administrative rules, the comprehensive plan, the regional framework  
16 plan, the functional plan and land use regulations. The commission shall defer to a local  
17 government’s interpretation of its comprehensive plan or land use regulation in the  
18 manner provided in ORS 197.829 or to Metro’s interpretation of its regional framework  
19 plan or functional plans. For purposes of this subsection, “complies” has the meaning  
20 given the term “compliance” in the phrase “compliance with the goals” in ORS 197.747.

21 (3) In response to a referral or appeal, the director may prepare and submit a report to the  
22 commission.

23 (4) The department must [~~mail~~] **send** a copy of the report to the local government, all persons  
24 who submitted objections, and other persons who appealed the director's decision. The  
25 department must [~~mail~~] **send** the report at least 21 days before the commission meeting to  
26 consider the referral or appeal.

27 (5) The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to the  
28 director's report within 10 days of the date the report is [~~mailed~~] **sent**. Objectors may refer to or  
29 append to their exceptions any document from the local record, whether or not the local  
30 government submitted it to the department under OAR 660-025-0130. The director may issue a  
31 response to exceptions and may make revisions to the director's report in response to exceptions.  
32 The department may provide the commission a response or revised report at or prior to its  
33 hearing on the referral or appeal. A revised director's report [~~does not require mailing~~] **is not**  
34 **required to be sent at least** 21 days prior to the commission hearing.

35 (6) The commission shall hear appeals based on the local record. The written record shall consist  
36 of the submittal, timely objections, the director's report, timely exceptions to the director's report  
37 including materials described in section (5) of this rule, the director's response to exceptions and  
38 revised report if any, and the appeal if one was filed.

1 (7) Following its hearing, the commission must issue an order that does one or more of the  
2 following:

3 (a) Approves the work task or plan amendment or a portion of the task or plan  
4 amendment;

5 (b) Remands the work task or plan amendment or a portion of the task or plan  
6 amendment to the local government, including, for a work task only, a date for  
7 resubmittal;

8 (c) Requires specific plan or land use regulation revisions to be completed by a specific  
9 date. Where specific revisions are required, the order shall specify that no further review  
10 is necessary. These changes are final when adopted by the local government. The failure  
11 to adopt the required revisions by the date established in the order shall constitute failure  
12 to complete a work task or plan amendment by the specified deadline requiring the  
13 director to initiate a hearing before the commission according to the procedures in OAR  
14 660-025-0170(3);

15 (d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b);  
16 or

17 (e) Modifies the schedule for the approved work program in order to accommodate  
18 additional work on a remanded work task.

19 (8) If the commission approves the work task or plan amendment or portion of a work task or  
20 plan amendment under subsection (7)(a) of this rule and no appeal to the Court of Appeals is  
21 filed within the time provided in ORS [483.482] **197.651**, the work task or plan amendment or  
22 portion of a work task or plan amendment shall be deemed acknowledged. If the commission  
23 decision on a work task or plan amendment is under subsection (7)(b) through (e) of this rule  
24 and no appeal to the Court of Appeals is filed within the time provided in ORS [483.482]  
25 **197.651**, the decision is final.

## 26 **660-025-0175**

### 27 **Review of UGB Amendments and Urban Reserve Area Designations**

28 (1) A local government must submit the following land use decisions to the department for  
29 review for compliance with the applicable statewide planning goals, statutes and rules in the  
30 manner provided for review of a work task under ORS 197.633:

31 (a) An amendment of an urban growth boundary by a metropolitan service district that adds more  
32 than 100 acres to the area within its urban growth boundary;

33 (b) An amendment of an urban growth boundary by a city with a population of 2,500 or more  
34 within its urban growth boundary that adds more than 50 acres to the area within the urban  
35 growth boundary, except as provided by ORS 197A.325 and OAR 660-038-0020(10);

36 (c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a  
37 metropolitan service district or by a city with a population of 2,500 or more within its urban  
38 growth boundary;

- 1 (d) An amendment of the boundary of an urban reserve by a metropolitan service district;
- 2 (e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban  
3 reserve by a city with a population of 2,500 or more within its urban growth boundary; and
- 4 (f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to  
5 195.145 by a county, in coordination with a metropolitan service district, including an  
6 amendment of the boundary of a rural reserve.
- 7 (2) The standards and procedures in this rule govern the local government process and submittal,  
8 and department and commission review.
- 9 (3) The local government must provide notice of the proposed amendment according to the  
10 procedures and requirements for post-acknowledgement plan amendments in ORS 197.610 and  
11 OAR 660-018-0020.
- 12 (4) The local government must submit its final decision amending its urban growth boundary, or  
13 designating urban reserve areas, to the department according to all the requirements for a work  
14 task submittal in OAR 660-025-0130 and 660-025-0140.
- 15 (5) Department and commission review and decision on the submittal from the local government  
16 must follow the procedures and requirements for review and decision of a work task submittal in  
17 OAR 660-025-0085, and 660-025-0140 to 660-025-0160.

**DIVISION 33**

**AGRICULTURAL LAND**

1 **660-033-0030**

2 **Identifying Agricultural Land**

3 (1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as  
4 agricultural land.

5 (2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel  
6 it need only look to the land within the lot or parcel being inventoried. However, whether land is  
7 "suitable for farm use" requires an inquiry into factors beyond the mere identification of  
8 scientific soil classifications. The factors are listed in the definition of agricultural land set forth  
9 at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing  
10 outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV  
11 soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "Lands in other classes  
12 which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A  
13 determination that a lot or parcel is not agricultural land requires findings supported by  
14 substantial evidence that addresses each of the factors set forth in 660-033-0020(1).

15 (3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether  
16 it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the  
17 extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices  
18 to be undertaken on adjacent or nearby lands" outside the lot or parcel.

19 (4) When inventoried land satisfies the definition requirements of both agricultural land and  
20 forest land, an exception is not required to show why one resource designation is chosen over  
21 another. The plan need only document the factors that were used to select an agricultural, forest,  
22 agricultural/forest, or other appropriate designation.

23 (5) (a) More detailed data on soil capability than is contained in the USDA Natural  
24 Resources Conservation Service (NRCS) soil maps and soil surveys may be used to  
25 define agricultural land. However, the more detailed soils data shall be related to the  
26 NRCS land capability classification system.

27 (b) If a person concludes that more detailed soils information than that contained in the  
28 Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to  
29 make a better determination of whether land qualifies as agricultural land, the person  
30 must request that the department arrange for an assessment of the capability of the land  
31 by a professional soil classifier who is chosen by the person, using the process described  
32 in OAR 660-033-0045.

33 (c) This section and OAR 660-033-0045 apply to:

1 (A) A change to the designation of [~~land~~] **a lot or parcel** planned and zoned for  
2 exclusive farm use, forest use or mixed farm-forest use to a non-resource plan  
3 designation and zone on the basis that such land is not agricultural land; and

4 (B) Excepting land use decisions under section (7) of this rule, any other proposed  
5 land use decision in which more detailed data is used to demonstrate that [~~land~~] **a**  
6 **lot or parcel** planned and zoned for exclusive farm use does not meet the  
7 definition of agricultural land under OAR 660-033-0020(1)(a)(A).

8 (d) This section and OAR 660-033-0045 implement ORS 215.211, effective on October  
9 1, 2011. After this date, only those soils assessments certified by the department under  
10 section (9) of this rule may be considered by local governments in land use proceedings  
11 described in subsection (c) of this section. However, a local government may consider  
12 soils assessments that have been completed and submitted prior to October 1, 2011.

13 (e) This section and OAR 660-033-0045 authorize a person to obtain additional  
14 information for use in the determination of whether [~~land~~] **a lot or parcel** qualifies as  
15 agricultural land, but do not otherwise affect the process by which a county determines  
16 whether land qualifies as agricultural land as defined by Goal 3 and OAR 660-033-0020.

17 (6) Any county that adopted marginal lands provisions before January 1, 1993, may continue to  
18 designate lands as “marginal lands” according to those provisions and criteria in former ORS  
19 197.247 (1991), as long as the county has not applied the provisions of ORS 215.705 to 215.750  
20 to lands zoned for exclusive farm use.

21 (7) (a) For the purposes of approving a land use application on high-value farmland under  
22 ORS 215.705, the county may change the soil class, soil rating or other soil designation  
23 of a specific lot or parcel if the property owner:

24 (A) Submits a statement of agreement from the NRCS that the soil class, soil  
25 rating or other soil designation should be adjusted based on new information; or

26 (B) Submits a report from a soils scientist whose credentials are acceptable to the  
27 Oregon Department of Agriculture that the soil class, soil rating or other soil  
28 designation should be changed; and

29 (C) Submits a statement from the Oregon Department of Agriculture that the  
30 Director of Agriculture or the director’s designee has reviewed the report  
31 described in paragraph (a)(B) of this section and finds the analysis in the report to  
32 be soundly and scientifically based.

33 (b) Soil classes, soil ratings or other soil designations used in or made pursuant to this  
34 section are those of the NRCS Web Soil Survey for that class, rating or designation  
35 before November 4, 1993, except for changes made pursuant to subsection (a) of this  
36 section.

1 (8) For the purposes of approving a land use application on high-value farmland under OAR  
2 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other  
3 soil designations used in or made pursuant to this definition are those of the NRCS Web Soil  
4 Survey as of January 2, 2012 for that class, rating or designation.

5 **660-033-0045**  
6 **Soils Assessments by Professional Soil Classifiers**

7 (1) A “professional soil classifier” means any professional in good standing with the Soil Science  
8 Society of America (SSSA) who the SSSA has certified to have met its requirements that existed  
9 as of October 1, 2011 for:

10 (a) Certified Professional Soil Classifier; or

11 (b) Certified Professional Soil Scientist, and who has been determined by an independent  
12 panel of soils professionals as defined in section (8) of this rule to have:

13 (A) Completed five semester hours in soil genesis, morphology and classification;

14 (B) At least five years of field experience in soils classification and mapping that  
15 meets National Cooperative Soil Survey standards, as maintained by the NRCS,  
16 or three years of field experience if the applicant holds an MS or PhD degree; and

17 (C) Demonstrated competence in practicing soils classification and mapping without  
18 direct supervision, based on published SSSA standards.

19 (2) The department will develop, update quarterly and post a list of professional soil classifiers  
20 (henceforth ‘soils professionals’) who are qualified to perform soils assessments under this rule.

21 (a) Qualified soils professionals shall include those individuals who have either met the  
22 requirements of subsection (1)(a) of this section or the requirements of subsection (1)(b)  
23 of this section as determined by a majority vote of an independent panel of soils  
24 professionals.

25 (A) A person must apply to the department for initial inclusion on the list  
26 described in section (2) of this rule.

27 (B) Qualified soils professionals must reapply to the department for listing on a  
28 biennial basis.

29 (b) A soils assessment auditing committee as defined in section (9) of this rule will  
30 periodically reevaluate qualifications of soils professionals by auditing soils assessments,  
31 considering sample department reviews and field checks as described in section (6) of  
32 this rule and verifying continued good standing of soils professionals with the SSSA.

1 (A) When reviewing applications for relisting, the department will consider the  
2 recommendations of the auditing committee and make final determinations as to the  
3 continued qualifications of soils professionals to perform soils assessments under this  
4 rule.

5 (B) The department will re-approve soils professionals for listing when audits, sample  
6 reviews and field checks reveal a pattern of demonstrated competence in practicing soils  
7 classification and mapping consistent with paragraph (1)(b)(C) of this rule, and when the  
8 SSSA verifies that the soils professional is in good standing with the SSSA.

9 (3) A person requesting a soils assessment shall:

10 (a) Choose a soils professional from the posted list described in section (2) of this rule:

11 (b) Privately contract for a soils assessment to be prepared; and

12 (c) On completion of the soils assessment, submit to the department payment of the non-  
13 refundable administrative fee established by the department as provided in statute to meet  
14 department costs to administer this rule.

15 (4) On completion of the soils assessment, the selected soils professional shall submit to the  
16 department:

17 (a) A Soils Assessment Submittal Form that includes the property owner's and soils  
18 professional's authorized signatures and a liability waiver for the department; and

19 (b) A soils assessment that is soundly and scientifically based and that meets reporting  
20 requirements as established by the department.

21 (5) The department shall deposit fees collected under this rule in the Soils Assessment Fund  
22 established under Oregon Laws 2010, chapter 44, section 2.

23 (6) The department shall review the soils assessment by:

24 (a) Performing completeness checks for consistency with reporting requirements for all  
25 submitted soils assessments; and

26 (b) Performing sample reviews and field checks for some submitted soils assessments, as  
27 follows:

28 (A) The department shall arrange for a person who meets the qualifications of  
29 'professional soil classifier' in section (1) of this rule to conduct systematic  
30 sample reviews and field checks of soils assessments and make recommendations  
31 to the department as to whether they are soundly and scientifically based.

1 (B) Within 30 days of the receipt of a soils assessment subject to review under  
2 this subsection **that the department determines to be complete pursuant to**  
3 **subsection (a) of this section**, the department shall determine whether the soils  
4 assessment is soundly and scientifically based. Where soils assessments are  
5 determined not to be soundly and scientifically based, the department will provide  
6 an opportunity to the soils professional to correct any noted deficiencies. Where  
7 noted deficiencies are not corrected to the satisfaction of the department, the  
8 department will provide written notification of the noted deficiencies to the soils  
9 professional, property owner and person who requested the soils assessment.

10 (7) (a) A soils assessment produced under this rule is not a public record, as defined in ORS  
11 192.410, unless the person requesting the assessment utilizes the assessment in a land use  
12 proceeding. If the person decides to utilize a soils assessment produced under this section  
13 in a land use proceeding, the person shall inform the department and consent to the  
14 release by the department of certified copies of all assessments produced under this  
15 section regarding the land to the local government conducting the land use proceeding.  
16 The department may not disclose a soils assessment prior to its utilization in a land use  
17 proceeding as described in this rule without written consent of the person paying the fee  
18 for the assessment and the property owner.

19 (b) On receipt of written consent, the department shall release to the local government all  
20 soils assessments produced under this rule as well as any department notifications  
21 provided under section (6) of this rule regarding land to which the land use proceeding  
22 applies.

23 (8) As used in this rule, “Independent panel of soils professionals” means a committee of three  
24 professionals appointed by the department that, quarterly or as needed, reviews and makes  
25 determinations regarding the qualifications of individuals seeking to be listed as soils  
26 professionals to perform soils analyses.

27 (a) Such panel shall consist of:

28 (A) A member of the SSSA;

29 (B) The Oregon State Soil Scientist; and

30 (C) An Oregon college or university soils professional.

31 (b) Panel members shall meet the qualifications of professional soil classifiers as defined  
32 in this rule or shall have experience mapping and teaching soil genesis, morphology and  
33 classification in a college or university setting.

34 (c) The department’s farm and forest lands specialist shall serve as staff to the panel.

1 (d) In reviewing qualifications of applicants with respect to required semester hours of  
2 academic study under paragraph (1)(b)(A) of this rule, panel members may adjust for  
3 differences in academic calendars.

4 (9) As used in this rule, “Soils assessment auditing committee” means a group of three  
5 professionals that, annually or as needed, reviews and makes recommendations to the department  
6 regarding the continuing qualifications of soils professionals to perform soils analyses under this  
7 rule.

8 (a) Committee members shall be appointed by the independent panel of soils  
9 professionals and shall meet the qualifications of professional soil classifier as defined in  
10 section (1) of this rule.

11 (b) The department’s farm and forest lands specialist shall serve as staff to the committee.

12 (10) As used in this rule, “person” shall have the meaning set forth in ORS 197.015(18).

13 **660-033-0120**

14 **Uses Authorized on Agricultural Lands**

15 The uses listed in the table adopted and referenced by this rule may be allowed on agricultural  
16 land in areas that meet the applicable requirements of this division, statewide goals and  
17 applicable laws. All uses are subject to the requirements, special conditions, additional  
18 restrictions and exceptions set forth in ORS [€]chapter 215, Goal 3 and this division. The  
19 abbreviations used within the table shall have the following meanings:

20 (1) “A” — The use is allowed. Authorization of some uses may require notice and the  
21 opportunity for a hearing because the authorization qualifies as a land use decision pursuant to  
22 ORS [€]chapter 197. Minimum standards for uses in the table that include a numerical reference  
23 are specified in OAR 660-033-0130. Counties may prescribe additional limitations and  
24 requirements to meet local concerns only to the extent authorized by law.

25 (2) “R” — The use may be allowed, after required review. The use requires notice and the  
26 opportunity for a hearing. Minimum standards for uses in the table that include a numerical  
27 reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and  
28 requirements to address local concerns.

29 (3) “\*” — The use is not allowed.

30 (4) “#” — Numerical references for specific uses shown in the table refer to the corresponding  
31 section of OAR 660-033-0130. Where no numerical reference is noted for a use in the table, this  
32 rule does not establish criteria for the use.

1 **660-033-0130**

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

3 The following requirements apply to uses specified, and as listed in the table adopted by OAR  
4 660-033-0120. For each section of this rule, the corresponding section number is shown in the  
5 table. Where no numerical reference is indicated on the table, this rule does not specify any  
6 minimum review or approval criteria. Counties may include procedures and conditions in  
7 addition to those listed in the table, as authorized by law.

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

10 (2) (a) No enclosed structure with a design capacity greater than 100 people, or group of  
11 structures with a total design capacity of greater than 100 people, shall be approved in  
12 connection with the use within three miles of an urban growth boundary, unless an  
13 exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or  
14 unless the structure is described in a master plan adopted under the provisions of OAR  
15 chapter 660, division 34.

16 (b) Any enclosed structures or group of enclosed structures described in subsection (a)  
17 within a tract must be separated by at least one-half mile. For purposes of this section,  
18 “tract” means a tract as defined by ORS 215.010(2) that is in existence as of June 17,  
19 2010.

20 (c) Existing facilities wholly within a farm use zone may be maintained, enhanced or  
21 expanded on the same tract, subject to other requirements of law, but enclosed existing  
22 structures within a farm use zone within three miles of an urban growth boundary may  
23 not be expanded beyond the requirements of this rule.

24 (3) (a) A dwelling may be approved on a pre-existing lot or parcel if:

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

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

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

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

32 (C) The lot or parcel on which the dwelling will be sited was part of a tract on  
33 November 4, 1993, no dwelling exists on another lot or parcel that was part of  
34 that tract;

1 (D) The proposed dwelling is not prohibited by, and will comply with, the  
2 requirements of the acknowledged comprehensive plan and land use regulations  
3 and other provisions of law;

4 (E) The lot or parcel on which the dwelling will be sited is not high-value  
5 farmland except as provided in subsections (3)(c) and (d) of this rule; and

6 (F) When the lot or parcel on which the dwelling will be sited lies within an area  
7 designated in an acknowledged comprehensive plan as habitat of big game, the  
8 siting of the dwelling is consistent with the limitations on density upon which the  
9 acknowledged comprehensive plan and land use regulations intended to protect  
10 the habitat are based.

11 (b) When the lot or parcel on which the dwelling will be sited is part of a tract, the  
12 remaining portions of the tract are consolidated into a single lot or parcel when the  
13 dwelling is allowed;

14 (c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family  
15 dwelling may be sited on high-value farmland if:

16 (A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

17 (B) The lot or parcel is protected as high-value farmland as defined in OAR 660-  
18 033-0020(8)(a);

19 (C) A hearings officer of a county determines that:

20 (i) The lot or parcel cannot practicably be managed for farm use, by itself  
21 or in conjunction with other land, due to extraordinary circumstances  
22 inherent in the land or its physical setting that do not apply generally to  
23 other land in the vicinity. For the purposes of this section, this criterion  
24 asks whether the subject lot or parcel can be physically put to farm use  
25 without undue hardship or difficulty because of extraordinary  
26 circumstances inherent in the land or its physical setting. Neither size  
27 alone nor a parcel's limited economic potential demonstrates that a lot of  
28 parcel cannot be practicably managed for farm use. Examples of  
29 "extraordinary circumstances inherent in the land or its physical setting"  
30 include very steep slopes, deep ravines, rivers, streams, roads, railroad or  
31 utility lines or other similar natural or physical barriers that by themselves  
32 or in combination separate the subject lot or parcel from adjacent  
33 agricultural land and prevent it from being practicably managed for farm  
34 use by itself or together with adjacent or nearby farms. A lot or parcel that  
35 has been put to farm use despite the proximity of a natural barrier or since  
36 the placement of a physical barrier shall be presumed manageable for farm  
37 use;

1 (ii) The dwelling will comply with the provisions of ORS 215.296(1); and

2 (iii) The dwelling will not materially alter the stability of the overall land  
3 use pattern in the area by applying the standards set forth in paragraph  
4 (4)(a)(D) of this rule; and

5 (D) A local government shall provide notice of all applications for dwellings  
6 allowed under subsection (3)(c) of this rule to the Oregon Department of  
7 Agriculture. Notice shall be provided in accordance with the governing body's  
8 land use regulations but shall be mailed at least 20 calendar days prior to the  
9 public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

10 (d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family  
11 dwelling may be sited on high-value farmland if:

12 (A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

13 (B) The tract on which the dwelling will be sited is:

14 (i) Identified in OAR 660-033-0020(8)(c) or (d);

15 (ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

16 (iii) Twenty-one acres or less in size; and

17 (C) The tract is bordered on at least 67 percent of its perimeter by tracts that are  
18 smaller than 21 acres, and at least two such tracts had dwellings on January 1,  
19 1993; or

20 (D) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter  
21 by tracts that are smaller than 21 acres, and at least four dwellings existed on  
22 January 1, 1993, within one-quarter mile of the center of the subject tract. Up to  
23 two of the four dwellings may lie within an urban growth boundary, but only if  
24 the subject tract abuts an urban growth boundary; or

25 (E) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by  
26 tracts that are smaller than 21 acres, and at least four dwellings existed on January  
27 1, 1993, within one-quarter mile of the center of the subject tract and on the same  
28 side of the public road that provides access to the subject tract. The governing  
29 body of a county must interpret the center of the subject tract as the geographic  
30 center of the flaglot if the applicant makes a written request for that interpretation  
31 and that interpretation does not cause the center to be located outside the flaglot.  
32 Up to two of the four dwellings may lie within an urban growth boundary, but  
33 only if the subject tract abuts an urban growth boundary:

1 (i) "Flaglot" means a tract containing a narrow strip or panhandle of land  
2 providing access from the public road to the rest of the tract.

3 (ii) "Geographic center of the flaglot" means the point of intersection of  
4 two perpendicular lines of which the first line crosses the midpoint of the  
5 longest side of a flaglot, at a 90-degree angle to the side, and the second  
6 line crosses the midpoint of the longest adjacent side of the flaglot.

7 (e) If land is in a zone that allows both farm and forest uses, is acknowledged to be in  
8 compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under  
9 ORS [€]chapter 215, a county may apply the standards for siting a dwelling under either  
10 section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of  
11 the tract on January 1, 1993;

12 (f) A county may, by application of criteria adopted by ordinance, deny approval of a  
13 dwelling allowed under section (3) of this rule in any area where the county determines  
14 that approval of the dwelling would:

15 (A) Exceed the facilities and service capabilities of the area;

16 (B) Materially alter the stability of the overall land use pattern of the area; or

17 (C) Create conditions or circumstances that the county determines would be  
18 contrary to the purposes or intent of its acknowledged comprehensive plan or land  
19 use regulations.

20 (g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband,  
21 son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law,  
22 daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent,  
23 stepchild, grandparent or grandchild of the owner or a business entity owned by any one  
24 or a combination of these family members;

25 (h) The county assessor shall be notified that the governing body intends to allow the  
26 dwelling.

27 (i) When a local government approves an application for a single-family dwelling under  
28 section (3) of this rule, the application may be transferred by a person who has qualified  
29 under section (3) of this rule to any other person after the effective date of the land use  
30 decision.

31 (4) A single-family residential dwelling not provided in conjunction with farm use requires  
32 approval of the governing body or its designate in any farmland area zoned for exclusive farm  
33 use:

34 (a) In the Willamette Valley, the use may be approved if:

1 (A) The dwelling or activities associated with the dwelling will not force a  
2 significant change in or significantly increase the cost of accepted farming or  
3 forest practices on nearby lands devoted to farm or forest use;

4 (B) The dwelling will be sited on a lot or parcel that is predominantly composed  
5 of Class IV through VIII soils that would not, when irrigated, be classified as  
6 prime, unique, Class I or II soils;

7 (C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

8 (D) The dwelling will not materially alter the stability of the overall land use  
9 pattern of the area. In determining whether a proposed nonfarm dwelling will alter  
10 the stability of the land use pattern in the area, a county shall consider the  
11 cumulative impact of possible new nonfarm dwellings and parcels on other lots or  
12 parcels in the area similarly situated. To address this standard, the county shall:

13 (i) Identify a study area for the cumulative impacts analysis. The study  
14 area shall include at least 2000 acres or a smaller area not less than 1000  
15 acres, if the smaller area is a distinct agricultural area based on  
16 topography, soil types, land use pattern, or the type of farm or ranch  
17 operations or practices that distinguish it from other, adjacent agricultural  
18 areas. Findings shall describe the study area, its boundaries, the location of  
19 the subject parcel within this area, why the selected area is representative  
20 of the land use pattern surrounding the subject parcel and is adequate to  
21 conduct the analysis required by this standard. Lands zoned for rural  
22 residential or other urban or nonresource uses shall not be included in the  
23 study area;

24 (ii) Identify within the study area the broad types of farm uses (irrigated or  
25 nonirrigated crops, pasture or grazing lands), the number, location and  
26 type of existing dwellings (farm, nonfarm, hardship, etc.), and the  
27 dwelling development trends since 1993. Determine the potential number  
28 of nonfarm/lot-of-record dwellings that could be approved under  
29 subsection (3)(a) and section (4) of this rule, including identification of  
30 predominant soil classifications, the parcels created prior to January 1,  
31 1993 and the parcels larger than the minimum lot size that may be divided  
32 to create new parcels for nonfarm dwellings under ORS 215.263(4). The  
33 findings shall describe the existing land use pattern of the study area  
34 including the distribution and arrangement of existing uses and the land  
35 use pattern that could result from approval of the possible nonfarm  
36 dwellings under this subparagraph; and

37 (iii) Determine whether approval of the proposed nonfarm/lot-of-record  
38 dwellings together with existing nonfarm dwellings will materially alter  
39 the stability of the land use pattern in the area. The stability of the land use

1 pattern will be materially altered if the cumulative effect of existing and  
2 potential nonfarm dwellings will make it more difficult for the existing  
3 types of farms in the area to continue operation due to diminished  
4 opportunities to expand, purchase or lease farmland, acquire water rights  
5 or diminish the number of tracts or acreage in farm use in a manner that  
6 will destabilize the overall character of the study area; and

7 (E) The dwelling complies with such other conditions as the governing body or its  
8 designate considers necessary.

9 (b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(7), the  
10 use may be approved if:

11 (A) The dwelling or activities associated with the dwelling will not force a  
12 significant change in or significantly increase the cost of accepted farming or  
13 forest practices on nearby lands devoted to farm or forest use;

14 (B) The dwelling will not materially alter the stability of the overall land use  
15 pattern of the area. In determining whether a proposed nonfarm dwelling will alter  
16 the stability of the land use pattern in the area, a county shall consider the  
17 cumulative impact of nonfarm dwellings on other lots or parcels in the area  
18 similarly situated and whether creation of the parcel will lead to creation of other  
19 nonfarm parcels, to the detriment of agriculture in the area by applying the  
20 standards set forth in paragraph (4)(a)(D) of this rule; and

21 (C) The dwelling complies with such other conditions as the governing body or its  
22 designate considers necessary.

23 (c) In counties located outside the Willamette Valley require findings that:

24 (A) The dwelling or activities associated with the dwelling will not force a  
25 significant change in or significantly increase the cost of accepted farming or  
26 forest practices on nearby lands devoted to farm or forest use;

27 (B) (i) The dwelling, **including essential or accessory improvements or**  
28 **structures,** is situated upon a lot or parcel, or, **in the case of an existing**  
29 **lot or parcel, upon** a portion of a lot or parcel, that is generally unsuitable  
30 land for the production of farm crops and livestock or merchantable tree  
31 species, considering the terrain, adverse soil or land conditions, drainage  
32 and flooding, vegetation, location and size of the tract. A lot or parcel or  
33 portion of a lot or parcel shall not be considered unsuitable solely because  
34 of size or location if it can reasonably be put to farm or forest use in  
35 conjunction with other land; and

1 (ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable"  
2 simply because it is too small to be farmed profitably by itself. If a lot or  
3 parcel or portion of a lot or parcel can be sold, leased, rented or otherwise  
4 managed as a part of a commercial farm or ranch, then the lot or parcel or  
5 portion of the lot or parcel is not "generally unsuitable". A lot or parcel or  
6 portion of a lot or parcel is presumed to be suitable if, in Western Oregon  
7 it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it  
8 is composed predominantly of Class I-VI soils. Just because a lot or parcel  
9 or portion of a lot or parcel is unsuitable for one farm use does not mean it  
10 is not suitable for another farm use; or

11 (iii) If the parcel is under forest assessment, the dwelling shall be situated  
12 upon generally unsuitable land for the production of merchantable tree  
13 species recognized by the Forest Practices Rules, considering the terrain,  
14 adverse soil or land conditions, drainage and flooding, vegetation, location  
15 and size of the parcel. If a lot or parcel is under forest assessment, the area  
16 is not "generally unsuitable" simply because it is too small to be managed  
17 for forest production profitably by itself. If a lot or parcel under forest  
18 assessment can be sold, leased, rented or otherwise managed as a part of a  
19 forestry operation, it is not "generally unsuitable". If a lot or parcel is  
20 under forest assessment, it is presumed suitable if, in Western Oregon, it is  
21 composed predominantly of soils capable of producing 50 cubic feet of  
22 wood fiber per acre per year, or in Eastern Oregon it is composed  
23 predominantly of soils capable of producing 20 cubic feet of wood fiber  
24 per acre per year. If a lot or parcel is under forest assessment, to be found  
25 compatible and not seriously interfere with forest uses on surrounding land  
26 it must not force a significant change in forest practices or significantly  
27 increase the cost of those practices on the surrounding land;

28 (C) The dwelling will not materially alter the stability of the overall land use  
29 pattern of the area. In determining whether a proposed nonfarm dwelling will alter  
30 the stability of the land use pattern in the area, a county shall consider the  
31 cumulative impact of nonfarm dwellings on other lots or parcels in the area  
32 similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this  
33 rule. If the application involves the creation of a new parcel for the nonfarm  
34 dwelling, a county shall consider whether creation of the parcel will lead to  
35 creation of other nonfarm parcels, to the detriment of agriculture in the area by  
36 applying the standards set forth in paragraph (4)(a)(D) of this rule; and

37 (D) The dwelling complies with such other conditions as the governing body or  
38 its designate considers necessary.

39 (d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of  
40 this rule or OAR 660-006-0027, no additional dwelling may later be sited under the  
41 provisions of section (4) of this rule;

1 (e) Counties that have adopted marginal lands provisions before January 1, 1993, shall  
2 apply the standards in ORS 215.213(3) through 215.213(8) for nonfarm dwellings on  
3 lands zoned exclusive farm use that are not designated marginal or high-value farmland.

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

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

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

10 (6) A facility for the primary processing of forest products shall not seriously interfere with  
11 accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2).  
12 Such facility may be approved for a one-year period that is renewable and is intended to be only  
13 portable or temporary in nature. The primary processing of a forest product, as used in this  
14 section, means the use of a portable chipper or stud mill or other similar methods of initial  
15 treatment of a forest product in order to enable its shipment to market. Forest products as used in  
16 this section means timber grown upon a tract where the primary processing facility is located.

17 (7) A personal-use airport as used in this section means an airstrip restricted, except for aircraft  
18 emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests,  
19 and by commercial aviation activities in connection with agricultural operations. No aircraft may  
20 be based on a personal-use airport other than those owned or controlled by the owner of the  
21 airstrip. Exceptions to the activities allowed under this definition may be granted through waiver  
22 action by the Oregon Department of Aviation in specific instances. A personal-use airport  
23 lawfully existing as of September 13, 1975, shall continue to be allowed subject to any  
24 applicable rules of the Oregon Department of Aviation.

25 (8) (a) A lawfully established dwelling may be altered, restored or replaced under ORS  
26 215.213(1)(q) or 215.283(1)(p) if, when an application for a permit is submitted, the permitting  
27 authority finds to its satisfaction, based on substantial evidence that:

28 (A) The dwelling to be altered, restored or replaced has, or formerly had:

29 (i) Intact exterior walls and roof structure;

30 (ii) Indoor plumbing consisting of a kitchen sink, toilet and bathing  
31 facilities connected to a sanitary waste disposal system;

32 (iii) Interior wiring for interior lights; and

33 (iv) A heating system; and

1 (B) The dwelling was assessed as a dwelling for purposes of ad valorem taxation  
2 for the previous five property tax years, or, if the dwelling has existed for less  
3 than five years, from that time. [~~and~~]

4 (C) Notwithstanding paragraph (B), if the value of the dwelling was eliminated as  
5 a result of either of the following circumstances, the dwelling was assessed as a  
6 dwelling until such time as the value of the dwelling was eliminated:

7 (i) The destruction (i.e by fire or natural hazard), or demolition in the case  
8 of restoration, of the dwelling; or

9 (ii) The applicant establishes to the satisfaction of the permitting authority  
10 that the dwelling was improperly removed from the tax roll by a person  
11 other than the current owner. "Improperly removed" means that the  
12 dwelling has taxable value in its present state, or had taxable value when  
13 the dwelling was first removed from the tax roll or was destroyed by fire  
14 or natural hazard, and the county stopped assessing the dwelling even  
15 though the current or former owner did not request removal of the  
16 dwelling from the tax roll.

17 (b) For replacement of a lawfully established dwelling under ORS 215.213(1)(q) or  
18 215.283(1)(p):

19 (A) The dwelling to be replaced must be removed, demolished or converted to an  
20 allowable nonresidential use:

21 (i) Within one year after the date the replacement dwelling is certified for  
22 occupancy pursuant to ORS 455.055; or

23 (ii) If the dwelling to be replaced is, in the discretion of the permitting  
24 authority, in such a state of disrepair that the structure is unsafe for  
25 occupancy or constitutes an attractive nuisance, on or before a date set by  
26 the permitting authority that is not less than 90 days after the replacement  
27 permit is issued; and

28 (iii) If a dwelling is removed by moving it off the subject parcel to another  
29 location, the applicant must obtain approval from the permitting authority  
30 for the new location.

31 (B) The applicant must cause to be recorded in the deed records of the county a  
32 statement that the dwelling to be replaced has been removed, demolished or  
33 converted.

34 (C) As a condition of approval, if the dwelling to be replaced is located on a  
35 portion of the lot or parcel that is not zoned for exclusive farm use, the applicant

1 shall execute and cause to be recorded in the deed records of the county in which  
2 the property is located a deed restriction prohibiting the siting of another dwelling  
3 on that portion of the lot or parcel. The restriction imposed is irrevocable unless  
4 the county planning director, or the director's designee, places a statement of  
5 release in the deed records of the county to the effect that the provisions of 2013  
6 Oregon Laws, [C]chapter 462, Section 2 and either ORS 215.213 or 215.283  
7 regarding replacement dwellings have changed to allow the lawful siting of  
8 another dwelling.

9 (D) The county planning director, or the director's designee, shall maintain a  
10 record of:

11 (i) The lots and parcels for which dwellings to be replaced have been  
12 removed, demolished or converted; and

13 (ii) The lots and parcels that do not qualify for the siting of a new dwelling  
14 under subsection (b) of this section, including a copy of the deed  
15 restrictions filed under paragraph (B) of this subsection.

16 (c) A replacement dwelling under ORS 215.213(1)(q) or 215.283(1)(p) must comply with  
17 applicable building codes, plumbing codes, sanitation codes and other requirements  
18 relating to health and safety or to siting at the time of construction. However, the  
19 standards may not be applied in a manner that prohibits the siting of the replacement  
20 dwelling.

21 (A) The siting standards of paragraph (B) of this subsection apply when a  
22 dwelling under ORS 215.213(1)(q) or 215.213(1)(p) qualifies for replacement  
23 because the dwelling:

24 (i) Formerly had the features described in paragraph (a)(A) of this section;

25 (ii) Was removed from the tax roll as described in paragraph (C) of  
26 subsection (a); or

27 (iii) Had a permit that expired as described under paragraph (d)(C) of this  
28 section.

29 (B) The replacement dwelling must be sited on the same lot or parcel:

30 (i) Using all or part of the footprint of the replaced dwelling or near a road,  
31 ditch, river, property line, forest boundary or another natural boundary of  
32 the lot or parcel; and

1 (ii) If possible, for the purpose of minimizing the adverse impacts on  
2 resource use of land in the area, within a concentration or cluster of  
3 structures or within 500 yards of another structure.

4 (C) Replacement dwellings that currently have the features described in paragraph  
5 (a)(A) of this subsection and that have been on the tax roll as described in  
6 paragraph (B) of subsection (a) may be sited on any part of the same lot or parcel.

7 (d) A replacement dwelling permit that is issued under ORS 215.213(1)(q) or  
8 215.283(1)(p):

9 (A) Is a land use decision as defined in ORS 197.015 where the dwelling to be  
10 replaced:

11 (i) Formerly had the features described in paragraph (a)(A) of this section;  
12 or

13 (ii) Was removed from the tax roll as described in paragraph (a)(C) of this  
14 section;

15 (B) Is not subject to the time to act limits of ORS 215.417; and

16 (C) If expired before January 1, 2014, shall be deemed to be valid and effective if,  
17 before January 1, 2015, the holder of the permit:

18 (i) Removes, demolishes or converts to an allowable nonresidential use the  
19 dwelling to be replaced; and

20 (ii) Causes to be recorded in the deed records of the county a statement  
21 that the dwelling to be replaced has been removed, demolished or  
22 converted.

23 (9) (a) To qualify for a relative farm help dwelling, a dwelling shall be occupied by relatives  
24 whose assistance in the management and farm use of the existing commercial farming  
25 operation is required by the farm operator. **However, farming of a marijuana crop may**  
26 **not be used to demonstrate compliance with the approval criteria for a relative farm**  
27 **help dwelling.** The farm operator shall continue to play the predominant role in the  
28 management and farm use of the farm. A farm operator is a person who operates a farm,  
29 doing the work and making the day-to-day decisions about such things as planting,  
30 harvesting, feeding and marketing.

31 (b) **A relative farm help dwelling must be located on the same lot or parcel as the**  
32 **dwelling of the farm operator and must be on real property used for farm use.**

1 **(c) For the purpose of subsection (a), “relative” means a child, parent, stepparent,**  
2 **grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or**  
3 **first cousin of the farm operator or the farm operator’s spouse.**

4 **(d)** Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements  
5 under 215.780, if the owner of a dwelling described in this section obtains construction  
6 financing or other financing secured by the dwelling and the secured party forecloses on  
7 the dwelling, the secured party may also foreclose on the “homesite,” as defined in  
8 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new  
9 parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

10 [~~(e)~~] **(e)** For the purpose of subsection [~~(b)~~] **(d)**, "foreclosure" means only those  
11 foreclosures that are exempt from partition under ORS 92.010(9)(a).

12 (10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an  
13 existing building allowed under this provision is a temporary use for the term of the hardship  
14 suffered by the existing resident or relative as defined in ORS [~~C~~]chapter 215. The manufactured  
15 dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if  
16 that disposal system is adequate to accommodate the additional dwelling. If the manufactured  
17 home will use a public sanitary sewer system, such condition will not be required. Governing  
18 bodies shall review the permit authorizing such manufactured homes every two years. Within  
19 three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall  
20 be removed or demolished or, in the case of an existing building, the building shall be removed,  
21 demolished or returned to an allowed nonresidential use. A temporary residence approved under  
22 this section is not eligible for replacement under 215.213(1)(q) or 215.283(1)(p). Department of  
23 Environmental Quality review and removal requirements also apply. As used in this section  
24 "hardship" means a medical hardship or hardship for the care of an aged or infirm person or  
25 persons.

26 (11) Subject to the issuance of a license, permit or other approval by the Department of  
27 Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in  
28 compliance with rules adopted under 468B.095, and with the requirements of 215.246, 215.247,  
29 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial  
30 process water or biosolids for agricultural, horticultural or silvicultural production, or for  
31 irrigation in connection with a use allowed in an exclusive farm use zones under this division is  
32 allowed.

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

35 (13) Roads, highways and other transportation facilities, and improvements not otherwise  
36 allowed under this rule may be established, subject to the adoption of the governing body or its  
37 designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with  
38 which the facility or improvement does not comply. In addition, transportation uses and

1 improvements may be authorized under conditions and standards as set forth in OAR 600-012-  
2 0035 and 660-012-0065.

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

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

12 (16) (a) A utility facility established under ORS 215.213(1)(c) or 215.283(1)(c) is necessary  
13 for public service if the facility must be sited in an exclusive farm use zone in order to  
14 provide the service. To demonstrate that a utility facility is necessary, an applicant must:

15 (A) Show that reasonable alternatives have been considered and that the facility  
16 must be sited in an exclusive farm use zone due to one or more of the following  
17 factors:

18 (i) Technical and engineering feasibility;

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

23 (iii) Lack of available urban and nonresource lands;

24 (iv) Availability of existing rights of way;

25 (v) Public health and safety; and

26 (vi) Other requirements of state and federal agencies.

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

32 (C) The owner of a utility facility approved under this section shall be responsible  
33 for restoring, as nearly as possible, to its former condition any agricultural land

1 and associated improvements that are damaged or otherwise disturbed by the  
2 siting, maintenance, repair or reconstruction of the facility. Nothing in this  
3 paragraph shall prevent the owner of the utility facility from requiring a bond or  
4 other security from a contractor or otherwise imposing on a contractor the  
5 responsibility for restoration.

6 (D) The governing body of the county or its designee shall impose clear and  
7 objective conditions on an application for utility facility siting to mitigate and  
8 minimize the impacts of the proposed facility, if any, on surrounding lands  
9 devoted to farm use in order to prevent a significant change in accepted farm  
10 practices or a significant increase in the cost of farm practices on surrounding  
11 farmlands.

12 (E) Utility facilities necessary for public service may include on-site and off-site  
13 facilities for temporary workforce housing for workers constructing a utility  
14 facility. Such facilities must be removed or converted to an allowed use under  
15 OAR 660-033-0130(19) or other statute or rule when project construction is  
16 complete. Off-site facilities allowed under this paragraph are subject to 660-033-  
17 0130(5). Temporary workforce housing facilities not included in the initial  
18 approval may be considered through a minor amendment request. A minor  
19 amendment request shall have no effect on the original approval.

20 (F) In addition to the provisions of paragraphs (A) to (D) of this subsection, the  
21 establishment or extension of a sewer system as defined by OAR 660-011-  
22 0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of 660-  
23 011-0060.

24 (G) The provisions of paragraphs (A) to (D) of this subsection do not apply to  
25 interstate natural gas pipelines and associated facilities authorized by and subject  
26 to regulation by the Federal Energy Regulatory Commission.

27 (b) An associated transmission line is necessary for public service and shall be approved  
28 by the governing body of a county or its designee if an applicant for approval under ORS  
29 215.213(1)(c) or 215.283(1)(c) demonstrates to the governing body of a county or its  
30 designee that the associated transmission line meets either the requirements of paragraph  
31 (A) of this subsection or the requirements of paragraph (B) of this subsection.

32 (A) An applicant demonstrates that the entire route of the associated transmission  
33 line meets at least one of the following requirements:

34 (i) The associated transmission line is not located on high-value farmland,  
35 as defined in ORS 195.300, or on arable land;

36 (ii) The associated transmission line is co-located with an existing  
37 transmission line;

1 (iii) The associated transmission line parallels an existing transmission  
2 line corridor with the minimum separation necessary for safety; or

3 (iv) The associated transmission line is located within an existing right of  
4 way for a linear facility, such as a transmission line, road or railroad, that  
5 is located above the surface of the ground.

6 (B) After an evaluation of reasonable alternatives, an applicant demonstrates that  
7 the entire route of the associated transmission line meets, subject to paragraphs  
8 (C) and (D) of this subsection, two or more of the following criteria:

9 (i) Technical and engineering feasibility;

10 (ii) The associated transmission line is locationally-dependent because the  
11 associated transmission line must cross high-value farmland, as defined in  
12 ORS 195.300, or arable land to achieve a reasonably direct route or to  
13 meet unique geographical needs that cannot be satisfied on other lands;

14 (iii) Lack of an available existing right of way for a linear facility, such as  
15 a transmission line, road or railroad, that is located above the surface of  
16 the ground;

17 (iv) Public health and safety; or

18 (v) Other requirements of state or federal agencies.

19 (C) As pertains to paragraph (B), the applicant shall present findings to the  
20 governing body of the county or its designee on how the applicant will mitigate  
21 and minimize the impacts, if any, of the associated transmission line on  
22 surrounding lands devoted to farm use in order to prevent a significant change in  
23 accepted farm practices or a significant increase in the cost of farm practices on the  
24 surrounding farmland.

25 (D) The governing body of a county or its designee may consider costs associated  
26 with any of the factors listed in paragraph (B) of this subsection, but consideration  
27 of cost may not be the only consideration in determining whether the associated  
28 transmission line is necessary for public service.

29 **(17) Permanent features of a power generation facility shall not preclude more than 12**  
30 **acres from use as a commercial agricultural enterprise unless an exception is taken**  
31 **pursuant to ORS 197.732 and OAR chapter 660, division 4.** A power generation facility may  
32 include on-site and off-site facilities for temporary workforce housing for workers constructing a  
33 power generation facility. Such facilities must be removed or converted to an allowed use under  
34 OAR 660-033-0130(19) or other statute or rule when project construction is complete.  
35 Temporary workforce housing facilities not included in the initial approval may be considered

1 through a minor amendment request. A minor amendment request shall be subject to 660-033-  
2 0130(5) and shall have no effect on the original approval. [~~Permanent features of a power~~  
3 ~~generation facility shall not preclude more than 12 acres from use as a commercial agricultural~~  
4 ~~enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division~~  
5 ~~4.]~~

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

10 (b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter,  
11 restore or replace a use that has been disallowed by the enactment or amendment of a  
12 zoning ordinance or regulation, [~~a use~~ **schools as** formerly allowed pursuant to **ORS**  
13 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, the effective date of  
14 2009 Oregon Laws, chapter 850, section 14, may be expanded subject to:

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

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

17 (c) A nonconforming use described in subsection (b) of this section may be expanded  
18 under this section if:

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

20 (B) The expansion occurs on:

21 (i) The tax lot on which the use was established on or before January 1,  
22 2009; or

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

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

1 retail stores or gas stations. Overnight temporary use in the same campground by a  
2 camper or camper's vehicle shall not exceed a total of 30 days during any consecutive  
3 six-month period.

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

8 (c) Subject to the approval of the county governing body or its designee, a private  
9 campground may provide yurts for overnight camping. No more than one-third or a  
10 maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be  
11 located on the ground or on a wood floor with no permanent foundation. Upon request of  
12 a county governing body, the commission may provide by rule for an increase in the  
13 number of yurts allowed on all or a portion of the campgrounds in a county if the  
14 commission determines that the increase will comply with the standards described in  
15 ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or  
16 canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal  
17 cooking appliance.

18 (20) "Golf Course" means an area of land with highly maintained natural turf laid out for the  
19 game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green,  
20 and often one or more natural or artificial hazards. A "golf course" for purposes of ORS  
21 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or  
22 a combination nine and 18 hole regulation golf course consistent with the following:

23 (a) A regulation 18 hole golf course is generally characterized by a site of about 120 to  
24 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73  
25 strokes;

26 (b) A regulation nine hole golf course is generally characterized by a site of about 65 to  
27 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36  
28 strokes;

29 (c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation  
30 golf course" means a golf course or golf course-like development that does not meet the  
31 definition of golf course in this rule, including but not limited to executive golf courses,  
32 Par three golf courses, pitch and putt golf courses, miniature golf courses and driving  
33 ranges;

34 (d) Counties shall limit accessory uses provided as part of a golf course consistent with  
35 the following standards:

36 (A) An accessory use to a golf course is a facility or improvement that is  
37 incidental to the operation of the golf course and is either necessary for the

1 operation and maintenance of the golf course or that provides goods or services  
2 customarily provided to golfers at a golf course. An accessory use or activity does  
3 not serve the needs of the non-golfing public. Accessory uses to a golf course may  
4 include: Parking; maintenance buildings; cart storage and repair; practice range or  
5 driving range; clubhouse; restrooms; lockers and showers; food and beverage  
6 service; pro shop; a practice or beginners course as part of an 18 hole or larger  
7 golf course; or golf tournament. Accessory uses to a golf course do not include:  
8 Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and  
9 weight rooms; wholesale or retail operations oriented to the non-golfing public; or  
10 housing;

11 (B) Accessory uses shall be limited in size and orientation on the site to serve the  
12 needs of persons and their guests who patronize the golf course to golf. An  
13 accessory use that provides commercial services (e.g., pro shop, etc.) shall be  
14 located in the clubhouse rather than in separate buildings; and

15 (C) Accessory uses may include one or more food and beverage service facilities  
16 in addition to food and beverage service facilities located in a clubhouse. Food  
17 and beverage service facilities must be part of and incidental to the operation of  
18 the golf course and must be limited in size and orientation on the site to serve only  
19 the needs of persons who patronize the golf course and their guests. Accessory  
20 food and beverage service facilities shall not be designed for or include structures  
21 for banquets, public gatherings or public entertainment.

22 (21) "Living History Museum" means a facility designed to depict and interpret everyday life  
23 and culture of some specific historic period using authentic buildings, tools, equipment and  
24 people to simulate past activities and events. As used in this rule, a living history museum shall  
25 be related to resource based activities and shall be owned and operated by a governmental  
26 agency or a local historical society. A living history museum may include limited commercial  
27 activities and facilities that are directly related to the use and enjoyment of the museum and  
28 located within authentic buildings of the depicted historic period or the museum administration  
29 building, if areas other than an exclusive farm use zone cannot accommodate the museum and  
30 related activities or if the museum administration buildings and parking lot are located within  
31 one quarter mile of an urban growth boundary. "Local historical society" means the local  
32 historical society, recognized as such by the county governing body and organized under ORS  
33 [C]chapter 65.

34 (22) **Permanent features of a power generation facility shall not preclude more than 20**  
35 **acres from use as a commercial agricultural enterprise unless an exception is taken**  
36 **pursuant to ORS 197.732 and OAR chapter 660, division 4.** A power generation facility may  
37 include on-site and off-site facilities for temporary workforce housing for workers constructing a  
38 power generation facility. Such facilities must be removed or converted to an allowed use under  
39 OAR 660-033-0130(19) or other statute or rule when project construction is complete.  
40 Temporary workforce housing facilities not included in the initial approval may be considered  
41 through a minor amendment request. A minor amendment request shall be subject to 660-033-

1 0130(5) and shall have no effect on the original approval. [~~Permanent features of a power~~  
2 ~~generation facility shall not preclude more than 20 acres from use as a commercial agricultural~~  
3 ~~enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division~~  
4 ~~4.~~]

5 (23) A farm stand may be approved if:

6 (a) The structures are designed and used for sale of farm crops and livestock grown on  
7 the farm operation, or grown on the farm operation and other farm operations in the local  
8 agricultural area, including the sale of retail incidental items and fee-based activity to  
9 promote the sale of farm crops or livestock sold at the farm stand if the annual sales of  
10 the incidental items and fees from promotional activity do not make up more than 25  
11 percent of the total annual sales of the farm stand; and

12 (b) The farm stand does not include structures designed for occupancy as a residence or  
13 for activities other than the sale of farm crops and livestock and does not include  
14 structures for banquets, public gatherings or public entertainment.

15 (c) As used in this section, "farm crops or livestock" includes both fresh and processed  
16 farm crops and livestock grown on the farm operation, or grown on the farm operation  
17 and other farm operations in the local agricultural area. As used in this subsection,  
18 "processed crops and livestock" includes jams, syrups, apple cider, animal products and  
19 other similar farm crops and livestock that have been processed and converted into  
20 another product but not prepared food items.

21 (d) As used in this section, "local agricultural area" includes Oregon or an adjacent  
22 county in Washington, Idaho, Nevada or California that borders the Oregon county in  
23 which the farm stand is located.

24 **(e) A farm stand may not be used for the sale, or to promote the sale, of marijuana**  
25 **products or extracts.**

26 (24) Accessory farm dwellings as defined by subsection (e) of this section may be considered  
27 customarily provided in conjunction with farm use if:

28 (a) Each accessory farm dwelling meets all the following requirements:

29 (A) The accessory farm dwelling will be occupied by a person or persons who  
30 will be principally engaged in the farm use of the land and whose seasonal or  
31 year-round assistance in the management of the farm use, such as planting,  
32 harvesting, marketing or caring for livestock, is or will be required by the farm  
33 operator;

34 (B) The accessory farm dwelling will be located:

- 1 (i) On the same lot or parcel as the primary farm dwelling;
- 2 (ii) On the same tract as the primary farm dwelling when the lot or parcel  
3 on which the accessory farm dwelling will be sited is consolidated into a  
4 single parcel with all other contiguous lots and parcels in the tract;
- 5 (iii) On a lot or parcel on which the primary farm dwelling is not located,  
6 when the accessory farm dwelling is limited to only a manufactured  
7 dwelling with a deed restriction. The deed restriction shall be filed with  
8 the county clerk and require the manufactured dwelling to be removed  
9 when the lot or parcel is conveyed to another party. The manufactured  
10 dwelling may remain if it is reapproved under these rules;
- 11 (iv) On any lot or parcel, when the accessory farm dwelling is limited to  
12 only attached multi-unit residential structures allowed by the applicable  
13 state building code or similar types of farmworker housing as that existing  
14 on farm or ranch operations registered with the Department of Consumer  
15 and Business Services, Oregon Occupational Safety and Health Division  
16 under ORS 658.750. A county shall require all accessory farm dwellings  
17 approved under this subparagraph to be removed, demolished or converted  
18 to a nonresidential use when farmworker housing is no longer required.  
19 “Farmworker housing” shall have the meaning set forth in 215.278 and not  
20 the meaning in 315.163; or
- 21 (v) On a lot or parcel on which the primary farm dwelling is not located,  
22 when the accessory farm dwelling is located on a lot or parcel at least the  
23 size of the applicable minimum lot size under ORS 215.780 and the lot or  
24 parcel complies with the gross farm income requirements in OAR 660-  
25 033-0135(3) or (4), whichever is applicable; and
- 26 (C) There is no other dwelling on the lands designated for exclusive farm use  
27 owned by the farm operator that is vacant or currently occupied by persons not  
28 working on the subject farm or ranch and that could reasonably be used as an  
29 accessory farm dwelling.
- 30 (b) In addition to the requirements in subsection (a) of this section, the primary farm  
31 dwelling to which the proposed dwelling would be accessory, meets one of the following:
- 32 (A) On land not identified as high-value farmland, the primary farm dwelling is  
33 located on a farm or ranch operation that is currently employed for farm use, as  
34 defined in ORS 215.203, on which, in each of the last two years or three of the  
35 last five years or in an average of three of the last five years, the farm operator  
36 earned the lower of the following:

1 (i) At least \$40,000 in gross annual income from the sale of farm products.  
2 In determining the gross income, the cost of purchased livestock shall be  
3 deducted from the total gross income attributed to the tract; or

4 (ii) Gross annual income of at least the midpoint of the median income  
5 range of gross annual sales for farms in the county with the gross annual  
6 sales of \$10,000 or more according to the 1992 Census of Agriculture,  
7 Oregon. In determining the gross income, the cost of purchased livestock  
8 shall be deducted from the total gross income attributed to the tract;

9 (B) On land identified as high-value farmland, the primary farm dwelling is  
10 located on a farm or ranch operation that is currently employed for farm use, as  
11 defined in ORS 215.203, on which the farm operator earned at least \$80,000 in  
12 gross annual income from the sale of farm products in each of the last two years  
13 or three of the last five years or in an average of three of the last five years. In  
14 determining the gross income, the cost of purchased livestock shall be deducted  
15 from the total gross income attributed to the tract;

16 (C) On land not identified as high-value farmland in counties that have adopted  
17 marginal lands provisions under former ORS 197.247 (1991 Edition) before  
18 January 1, 1993, the primary farm dwelling is located on a farm or ranch  
19 operation that meets the standards and requirements of 215.213(2)(a) or (b) or  
20 paragraph (A) of this subsection; or

21 (D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8);  
22 and

23 (i) The building permits, if required, have been issued and construction  
24 has begun or been completed for the buildings and animal waste facilities  
25 required for a commercial dairy farm;

26 (ii) The Oregon Department of Agriculture has approved a permit for a  
27 "confined animal feeding operation" under ORS 468B.050 and 468B.200  
28 to 468B.230; and

29 (iii) A Producer License for the sale of dairy products under ORS 621.072.

30 (c) The governing body of a county shall not approve any proposed division of a lot or  
31 parcel for an accessory farm dwelling approved pursuant to this section. If it is  
32 determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-  
33 0135, a parcel may be created consistent with the minimum parcel size requirements in  
34 660-033-0100.

1 (d) An accessory farm dwelling approved pursuant to this section cannot later be used to  
2 satisfy the requirements for a dwelling not provided in conjunction with farm use  
3 pursuant to section (4) of this rule.

4 (e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all  
5 types of residential structures allowed by the applicable state building code.

6 **(f) Farming of a marijuana crop shall not be used to demonstrate compliance with**  
7 **the approval criteria for an accessory farm dwelling.**

8 (25) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991  
9 Edition) before January 1, 1993, an armed forces reserve center is allowed, if the center is within  
10 one-half mile of a community college. An "armed forces reserve center" includes an armory or  
11 National Guard support facility.

12 (26) Buildings and facilities associated with a site for the takeoff and landing of model aircraft  
13 shall not be more than 500 square feet in floor area or placed on a permanent foundation unless  
14 the building or facility preexisted the use approved under this section. The site shall not include  
15 an aggregate surface or hard surface area unless the surface preexisted the use approved under  
16 this section. An owner of property used for the purpose authorized in this section may charge a  
17 person operating the use on the property rent for the property. An operator may charge users of  
18 the property a fee that does not exceed the operator's cost to maintain the property, buildings and  
19 facilities. As used in this section, "model aircraft" means a small-scale version of an airplane,  
20 glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is  
21 controlled by radio, lines or design by a person on the ground.

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

27 (28) A farm on which a processing facility is located must provide at least one-quarter of the  
28 farm crops processed at the facility. A farm may also be used for an establishment for the  
29 slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a  
30 building is established or used for the processing facility or establishment, the farm operator may  
31 not devote more than 10,000 square feet of floor area to the processing facility or establishment,  
32 exclusive of the floor area designated for preparation, storage or other farm use. A processing  
33 facility or establishment must comply with all applicable siting standards but the standards may  
34 not be applied in a manner that prohibits the siting of the processing facility or establishment. A  
35 county may not approve any division of a lot or parcel that separates a processing facility or  
36 establishment from the farm operation on which it is located.

37 (29) (a) Composting operations and facilities allowed on high-value farmland are limited to  
38 those that are accepted farming practices in conjunction with and auxiliary to farm use on

1 the subject tract, and that meet the performance and permitting requirements of the  
2 Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060.  
3 Excess compost may be sold to neighboring farm operations in the local area and shall be  
4 limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities  
5 used in conjunction with the composting operation shall only be those required for the  
6 operation of the subject facility.

7 (b) Composting operations and facilities allowed on land not defined as high-value  
8 farmland shall meet the performance and permitting requirements of the Department of  
9 Environmental Quality under OAR 340-093-0050 and 340-096-0060. Composting  
10 operations that are accepted farming practices in conjunction with and auxiliary to farm  
11 use on the subject tract are allowed uses, while other composting operations are subject to  
12 the review standards of ORS 215.296. Buildings and facilities used in conjunction with  
13 the composting operation shall only be those required for the operation of the subject  
14 facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in  
15 size that are transported in one vehicle.

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

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

24 (32) Utility facility service lines are utility lines and accessory facilities or structures that end at  
25 the point where the utility service is received by the customer and that are located on one or more  
26 of the following:

27 (a) A public right of way;

28 (b) Land immediately adjacent to a public right of way, provided the written consent of  
29 all adjacent property owners has been obtained; or

30 (c) The property to be served by the utility.

31 (33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer  
32 persons that is not anticipated to continue for more than 120 hours in any three-month period is  
33 not a "land use decision" as defined in 197.015(10) or subject to review under this division. Agri-  
34 tourism and other commercial events or activities may not be permitted as mass gatherings under  
35 215.213(11) and 215.283(4).

1 (34) Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more  
2 than 120 hours in any three-month planning period is subject to review by a county planning  
3 commission under the provisions of ORS 433.763.

4 (35) (a) As part of the conditional use approval process under ORS 215.296 and OAR 660-  
5 033-0130(5), for the purpose of verifying the existence, continuity and nature of the  
6 business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the  
7 business may apply to the county and submit evidence including, but not limited to,  
8 sworn affidavits or other documentary evidence that the business qualifies; and

9 (b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or  
10 215.283(2)(y) may be altered, restored or replaced pursuant to 215.130(5), (6) and (9).

11 (36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under  
12 this section may provide services to veterans, including but not limited to emergency and  
13 transitional shelter, preparation and service of meals, vocational and educational counseling and  
14 referral to local, state or federal agencies providing medical, mental health, disability income  
15 replacement and substance abuse services, only in a facility that is in existence on January 1,  
16 2006. The services may not include direct delivery of medical, mental health, disability income  
17 replacement or substance abuse services.

18 (37) For purposes of this rule a wind power generation facility includes, but is not limited to, the  
19 following system components: all wind turbine towers and concrete pads, permanent  
20 meteorological towers and wind measurement devices, electrical cable collection systems  
21 connecting wind turbine towers with the relevant power substation, new or expanded private  
22 roads (whether temporary or permanent) constructed to serve the wind power generation facility,  
23 office and operation and maintenance buildings, temporary lay-down areas and all other  
24 necessary appurtenances, including but not limited to on-site and off-site facilities for temporary  
25 workforce housing for workers constructing a wind power generation facility. Such facilities  
26 must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute  
27 or rule when project construction is complete. Temporary workforce housing facilities not  
28 included in the initial approval may be considered through a minor amendment request filed after  
29 a decision to approve a power generation facility. A minor amendment request shall be subject to  
30 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power  
31 generation facility shall be subject to the following provisions:

32 (a) For high-value farmland soils described at ORS 195.300(10), the governing body or  
33 its designate must find that all of the following are satisfied:

34 (A) Reasonable alternatives have been considered to show that siting the wind  
35 power generation facility or component thereof on high-value farmland soils is  
36 necessary for the facility or component to function properly or if a road system or  
37 turbine string must be placed on such soils to achieve a reasonably direct route  
38 considering the following factors:

- 1 (i) Technical and engineering feasibility;
- 2 (ii) Availability of existing rights of way; and
- 3 (iii) The long term environmental, economic, social and energy  
4 consequences of siting the facility or component on alternative sites, as  
5 determined under paragraph (B);
- 6 (B) The long-term environmental, economic, social and energy consequences  
7 resulting from the wind power generation facility or any components thereof at  
8 the proposed site with measures designed to reduce adverse impacts are not  
9 significantly more adverse than would typically result from the same proposal  
10 being located on other agricultural lands that do not include high-value farmland  
11 soils;
- 12 (C) Costs associated with any of the factors listed in paragraph (A) may be  
13 considered, but costs alone may not be the only consideration in determining that  
14 siting any component of a wind power generation facility on high-value farmland  
15 soils is necessary;
- 16 (D) The owner of a wind power generation facility approved under subsection (a)  
17 shall be responsible for restoring, as nearly as possible, to its former condition any  
18 agricultural land and associated improvements that are damaged or otherwise  
19 disturbed by the siting, maintenance, repair or reconstruction of the facility.  
20 Nothing in this subsection shall prevent the owner of the facility from requiring a  
21 bond or other security from a contractor or otherwise imposing on a contractor the  
22 responsibility for restoration; and
- 23 (E) The criteria of subsection (b) are satisfied.
- 24 (b) For arable lands, meaning lands that are cultivated or suitable for cultivation,  
25 including high-value farmland soils described at ORS 195.300(10), the governing body  
26 or its designate must find that:
- 27 (A) The proposed wind power facility will not create unnecessary negative  
28 impacts on agricultural operations conducted on the subject property. Negative  
29 impacts could include, but are not limited to, the unnecessary construction of  
30 roads, dividing a field or multiple fields in such a way that creates small or  
31 isolated pieces of property that are more difficult to farm, and placing wind farm  
32 components such as meteorological towers on lands in a manner that could disrupt  
33 common and accepted farming practices;
- 34 (B) The presence of a proposed wind power facility will not result in unnecessary  
35 soil erosion or loss that could limit agricultural productivity on the subject  
36 property. This provision may be satisfied by the submittal and county approval of

1 a soil and erosion control plan prepared by an adequately qualified individual,  
2 showing how unnecessary soil erosion will be avoided or remedied and how  
3 topsoil will be stripped, stockpiled and clearly marked. The approved plan shall  
4 be attached to the decision as a condition of approval;

5 (C) Construction or maintenance activities will not result in unnecessary soil  
6 compaction that reduces the productivity of soil for crop production. This  
7 provision may be satisfied by the submittal and county approval of a plan  
8 prepared by an adequately qualified individual, showing how unnecessary soil  
9 compaction will be avoided or remedied in a timely manner through deep soil  
10 decompaction or other appropriate practices. The approved plan shall be attached  
11 to the decision as a condition of approval; and

12 (D) Construction or maintenance activities will not result in the unabated  
13 introduction or spread of noxious weeds and other undesirable weeds species.  
14 This provision may be satisfied by the submittal and county approval of a weed  
15 control plan prepared by an adequately qualified individual that includes a long-  
16 term maintenance agreement. The approved plan shall be attached to the decision  
17 as a condition of approval.

18 (c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing  
19 body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D)  
20 are satisfied.

21 (d) In the event that a wind power generation facility is proposed on a combination of  
22 arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the  
23 approval criteria of 660-033-0130(37)(b) shall apply to the entire project.

24 (38) A proposal to site a photovoltaic solar power generation facility shall be subject to the  
25 following definitions and provisions:

26 (a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently  
27 cultivated, predominantly comprised of arable soils.

28 (b) "Arable soils" means soils that are suitable for cultivation as determined by the  
29 governing body or its designate based on substantial evidence in the record of a local land  
30 use application, but "arable soils" does not include high-value farmland soils described at  
31 ORS 195.300(10) unless otherwise stated.

32 (c) "Nonarable land" means land in a tract that is predominantly not cultivated and  
33 predominantly comprised of nonarable soils.

34 (d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an  
35 NRCS agricultural capability class V–VIII and no history of irrigation shall be considered  
36 nonarable in all cases. The governing body or its designate may determine other soils,

1 including soils with a past history of irrigation, to be nonarable based on substantial  
2 evidence in the record of a local land use application.

3 (e) “Photovoltaic solar power generation facility” includes, but is not limited to, an  
4 assembly of equipment that converts sunlight into electricity and then stores, transfers, or  
5 both, that electricity. This includes photovoltaic modules, mounting and solar tracking  
6 equipment, foundations, inverters, wiring, storage devices and other components.  
7 Photovoltaic solar power generation facilities also include electrical cable collection  
8 systems connecting the photovoltaic solar generation facility to a transmission line, all  
9 necessary grid integration equipment, new or expanded private roads constructed to serve  
10 the photovoltaic solar power generation facility, office, operation and maintenance  
11 buildings, staging areas and all other necessary appurtenances. For purposes of applying  
12 the acreage standards of this section, a photovoltaic solar power generation facility  
13 includes all existing and proposed facilities on a single tract, as well as any existing and  
14 proposed facilities determined to be under common ownership on lands with fewer than  
15 1320 feet of separation from the tract on which the new facility is proposed to be sited.  
16 Projects connected to the same parent company or individuals shall be considered to be in  
17 common ownership, regardless of the operating business structure. A photovoltaic solar  
18 power generation facility does not include a net metering project established consistent  
19 with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project  
20 established consistent with ORS 757.365 and OAR chapter 860, division 84.

21 (f) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power  
22 generation facility shall not preclude more than 12 acres from use as a commercial  
23 agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR  
24 chapter 660, division 4. The governing body or its designate must find that:

25 (A) The proposed photovoltaic solar power generation facility will not create  
26 unnecessary negative impacts on agricultural operations conducted on any portion  
27 of the subject property not occupied by project components. Negative impacts  
28 could include, but are not limited to, the unnecessary construction of roads  
29 dividing a field or multiple fields in such a way that creates small or isolated  
30 pieces of property that are more difficult to farm, and placing photovoltaic solar  
31 power generation facility project components on lands in a manner that could  
32 disrupt common and accepted farming practices;

33 (B) The presence of a photovoltaic solar power generation facility will not result  
34 in unnecessary soil erosion or loss that could limit agricultural productivity on the  
35 subject property. This provision may be satisfied by the submittal and county  
36 approval of a soil and erosion control plan prepared by an adequately qualified  
37 individual, showing how unnecessary soil erosion will be avoided or remedied  
38 and how topsoil will be stripped, stockpiled and clearly marked. The approved  
39 plan shall be attached to the decision as a condition of approval;

1 (C) Construction or maintenance activities will not result in unnecessary soil  
2 compaction that reduces the productivity of soil for crop production. This  
3 provision may be satisfied by the submittal and county approval of a plan  
4 prepared by an adequately qualified individual, showing how unnecessary soil  
5 compaction will be avoided or remedied in a timely manner through deep soil  
6 decompaction or other appropriate practices. The approved plan shall be attached  
7 to the decision as a condition of approval;

8 (D) Construction or maintenance activities will not result in the unabated  
9 introduction or spread of noxious weeds and other undesirable weed species. This  
10 provision may be satisfied by the submittal and county approval of a weed control  
11 plan prepared by an adequately qualified individual that includes a long-term  
12 maintenance agreement. The approved plan shall be attached to the decision as a  
13 condition of approval;

14 (E) The project is not located on high-value farmland soils unless it can be  
15 demonstrated that:

16 (i) Non high-value farmland soils are not available on the subject tract;

17 (ii) Siting the project on non high-value farmland soils present on the  
18 subject tract would significantly reduce the project's ability to operate  
19 successfully; or

20 (iii) The proposed site is better suited to allow continuation of an existing  
21 commercial farm or ranching operation on the subject tract than other  
22 possible sites also located on the subject tract, including those comprised  
23 of non high-value farmland soils; and

24 (F) A study area consisting of lands zoned for exclusive farm use located within  
25 one mile measured from the center of the proposed project shall be established  
26 and:

27 (i) If fewer than 48 acres of photovoltaic solar power generation facilities  
28 have been constructed or received land use approvals and obtained  
29 building permits within the study area, no further action is necessary.

30 (ii) When at least 48 acres of photovoltaic solar power generation have  
31 been constructed or received land use approvals and obtained building  
32 permits, either as a single project or as multiple facilities within the study  
33 area, the local government or its designate must find that the photovoltaic  
34 solar energy generation facility will not materially alter the stability of the  
35 overall land use pattern of the area. The stability of the land use pattern  
36 will be materially altered if the overall effect of existing and potential  
37 photovoltaic solar energy generation facilities will make it more difficult

1 for the existing farms and ranches in the area to continue operation due to  
2 diminished opportunities to expand, purchase or lease farmland or acquire  
3 water rights, or will reduce the number of tracts or acreage in farm use in a  
4 manner that will destabilize the overall character of the study area.

5 (g) For arable lands, a photovoltaic solar power generation facility shall not preclude  
6 more than 20 acres from use as a commercial agricultural enterprise unless an exception  
7 is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body  
8 or its designate must find that:

9 (A) The project is not located on high-value farmland soils or arable soils unless it  
10 can be demonstrated that:

11 (i) Nonarable soils are not available on the subject tract;

12 (ii) Siting the project on nonarable soils present on the subject tract would  
13 significantly reduce the project's ability to operate successfully; or

14 (iii) The proposed site is better suited to allow continuation of an existing  
15 commercial farm or ranching operation on the subject tract than other  
16 possible sites also located on the subject tract, including those comprised  
17 of nonarable soils;

18 (B) No more than 12 acres of the project will be sited on high-value farmland  
19 soils described at ORS 195.300(10) unless an exception is taken pursuant to  
20 197.732 and OAR chapter 660, division 4;

21 (C) A study area consisting of lands zoned for exclusive farm use located within  
22 one mile measured from the center of the proposed project shall be established  
23 and:

24 (i) If fewer than 80 acres of photovoltaic solar power generation facilities  
25 have been constructed or received land use approvals and obtained  
26 building permits within the study area no further action is necessary.

27 (ii) When at least 80 acres of photovoltaic solar power generation have  
28 been constructed or received land use approvals and obtained building  
29 permits, either as a single project or as multiple facilities, within the study  
30 area the local government or its designate must find that the photovoltaic  
31 solar energy generation facility will not materially alter the stability of the  
32 overall land use pattern of the area. The stability of the land use pattern  
33 will be materially altered if the overall effect of existing and potential  
34 photovoltaic solar energy generation facilities will make it more difficult  
35 for the existing farms and ranches in the area to continue operation due to  
36 diminished opportunities to expand, purchase or lease farmland, acquire

1 water rights or diminish the number of tracts or acreage in farm use in a  
2 manner that will destabilize the overall character of the study area; and

3 (D) The requirements of OAR 660-033-0130(38)(f)(A), (B), (C) and (D) are  
4 satisfied.

5 (h) For nonarable lands, a photovoltaic solar power generation facility shall not preclude  
6 more than 320 acres from use as a commercial agricultural enterprise unless an exception  
7 is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. The governing body  
8 or its designate must find that:

9 (A) The project is not located on high-value farmland soils or arable soils unless it  
10 can be demonstrated that:

11 (i) Siting the project on nonarable soils present on the subject tract would  
12 significantly reduce the project's ability to operate successfully; or

13 (ii) The proposed site is better suited to allow continuation of an existing  
14 commercial farm or ranching operation on the subject tract as compared to  
15 other possible sites also located on the subject tract, including sites that are  
16 comprised of nonarable soils;

17 (B) No more than 12 acres of the project will be sited on high-value farmland  
18 soils described at ORS 195.300(10);

19 (C) No more than 20 acres of the project will be sited on arable soils unless an  
20 exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4;

21 (D) The requirements of OAR 660-033-0130(38)(f)(D) are satisfied;

22 (E) If a photovoltaic solar power generation facility is proposed to be developed  
23 on lands that contain a Goal 5 resource protected under the county's  
24 comprehensive plan, and the plan does not address conflicts between energy  
25 facility development and the resource, the applicant and the county, together with  
26 any state or federal agency responsible for protecting the resource or habitat  
27 supporting the resource, will cooperatively develop a specific resource  
28 management plan to mitigate potential development conflicts. If there is no  
29 program present to protect the listed Goal 5 resource(s) present in the local  
30 comprehensive plan or implementing ordinances and the applicant and the  
31 appropriate resource management agency(ies) cannot successfully agree on a  
32 cooperative resource management plan, the county is responsible for determining  
33 appropriate mitigation measures; and

34 (F) If a proposed photovoltaic solar power generation facility is located on lands  
35 where, after site specific consultation with an Oregon Department of Fish and

1 Wildlife biologist, it is determined that the potential exists for adverse effects to  
2 state or federal special status species (threatened, endangered, candidate, or  
3 sensitive) or habitat or to big game winter range or migration corridors, golden  
4 eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a  
5 site-specific assessment of the subject property in consultation with all  
6 appropriate state, federal, and tribal wildlife management agencies. A professional  
7 biologist shall conduct the site-specific assessment by using methodologies  
8 accepted by the appropriate wildlife management agency and shall determine  
9 whether adverse effects to special status species or wildlife habitats are  
10 anticipated. Based on the results of the biologist's report, the site shall be  
11 designed to avoid adverse effects to state or federal special status species or to  
12 wildlife habitats as described above. If the applicant's site-specific assessment  
13 shows that adverse effects cannot be avoided, the applicant and the appropriate  
14 wildlife management agency will cooperatively develop an agreement for project-  
15 specific mitigation to offset the potential adverse effects of the facility. Where the  
16 applicant and the resource management agency cannot agree on what mitigation  
17 will be carried out, the county is responsible for determining appropriate  
18 mitigation, if any, required for the facility.

19 (G) The provisions of paragraph (F) are repealed on January 1, 2022.

20 (i) The county governing body or its designate shall require as a condition of approval for  
21 a photovoltaic solar power generation facility, that the project owner sign and record in  
22 the deed records for the county a document binding the project owner and the project  
23 owner's successors in interest, prohibiting them from pursuing a claim for relief or cause  
24 of action alleging injury from farming or forest practices as defined in ORS 30.930(2)  
25 and (4).

26 (j) Nothing in this section shall prevent a county from requiring a bond or other security  
27 from a developer or otherwise imposing on a developer the responsibility for retiring the  
28 photovoltaic solar power generation facility.

29 (k) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage  
30 thresholds identified in subsections (f), (g) and (h) of this section.

31 (39) Dog training classes or testing trials conducted outdoors or in farm buildings that existed on  
32 January 1, 2013, when:

33 (a) The number of dogs participating in training does not exceed 10 per training class and  
34 the number of training classes to be held on-site does not exceed six per day; and

35 (b) The number of dogs participating in a testing trial does not exceed 60 and the number  
36 of testing trials to be conducted on-site does not exceed four per calendar year.

1 (40) A youth camp may be established on agricultural land under the requirements of this  
2 section. The purpose of this section is to allow for the establishment of youth camps that are  
3 generally self-contained and located on a lawfully established unit of land of suitable size and  
4 location to limit potential impacts on nearby land and to ensure compatibility with surrounding  
5 farm uses.

6 (a) Definitions: In addition to the definitions provided for this division in OAR 660-033-  
7 0020 and ORS 92.010, for purposes of this section the following definitions apply:

8 (A) “Low impact recreational facilities” means facilities that have a limited  
9 amount of permanent disturbance on the landscape and are likely to create no, or  
10 only minimal impacts on adjacent private lands. Low impact recreational facilities  
11 include, but are not limited to, open areas, ball fields, volleyball courts, soccer  
12 fields, archery or shooting ranges, hiking and biking trails, horseback riding areas,  
13 swimming pools and zip lines. Low impact recreational facilities are designed and  
14 developed in a manner consistent with the lawfully established unit of land’s  
15 natural environment.

16 (B) “Youth camp” means a facility that is either owned or leased, and is operated  
17 by a state or local government or a nonprofit corporation as defined under ORS  
18 65.001 and is established for the purpose of providing an outdoor recreational and  
19 educational experience primarily for the benefit of persons 21 years of age and  
20 younger. Youth camps do not include a juvenile detention center or juvenile  
21 detention facility or similar use.

22 (C) “Youth camp participants” means persons directly involved with providing or  
23 receiving youth camp services, including but not limited to, campers, group  
24 leaders, volunteers or youth camp staff.

25 (b) Location: A youth camp may be located only on a lawfully established unit of land  
26 suitable to ensure an outdoor experience in a private setting without dependence on the  
27 characteristics of adjacent and nearby public and private land. In determining the  
28 suitability of a lawfully established unit of land for a youth camp the county shall  
29 consider its size, topography, geographic features and other characteristics, the proposed  
30 number of overnight participants and the type and number of proposed facilities. A youth  
31 camp may be located only on a lawfully established unit of land that is:

32 (A) At least 1,000 acres;

33 (B) In eastern Oregon;

34 (C) Composed predominantly of class VI, VII or VIII soils;

35 (D) Not within an irrigation district;

1 (E) Not within three miles of an urban growth boundary;

2 (F) Not in conjunction with an existing golf course;

3 (G) Suitable for the provision of protective buffers to separate the visual and  
4 audible aspects of youth camp activities from other nearby and adjacent lands and  
5 uses. Such buffers shall consist of natural vegetation, topographic or other natural  
6 features and shall be implemented through the requirement of setbacks from  
7 adjacent public and private lands, public roads, roads serving other ownerships  
8 and riparian areas. Setbacks from riparian areas shall be consistent with OAR  
9 660-023-0090. Setbacks from adjacent public and private lands, public roads and  
10 roads serving other ownerships shall be 250 feet unless the county establishes on  
11 a case-by-case basis a different setback distance sufficient to:

12 (i) Prevent significant conflicts with commercial resource management  
13 practices;

14 (ii) Prevent a significant increase in safety hazards associated with  
15 vehicular traffic on public roads and roads serving other ownerships; and

16 (iii) Minimize conflicts with resource uses on nearby resource lands;

17 (H) At least 1320 feet from any other lawfully established unit of land containing  
18 a youth camp approved pursuant to this section; and

19 (I) Suitable to allow for youth camp development that will not interfere with the  
20 exercise of legally established water rights on nearby properties.

21 (c) Overnight Youth Camp Participants: The maximum number of overnight youth camp  
22 participants is 350 participants unless the county finds that a lower number of youth camp  
23 participants is necessary to avoid conflicts with surrounding uses based on consideration  
24 of the size, topography, geographic features and other characteristics of the lawfully  
25 established unit of land proposed for the youth camp. Notwithstanding the preceding  
26 sentence, a county may approve a youth camp for more than 350 overnight youth camp  
27 participants consistent with this subsection if resource lands not otherwise needed for the  
28 youth camp that are located in the same county or adjacent counties that are in addition  
29 to, or part of, the lawfully established unit of land approved for the youth camp are  
30 permanently protected by restrictive covenant as provided in subsection (d) and subject to  
31 the following provisions:

32 (A) For each 160 acres of agricultural lands predominantly composed of class I-V  
33 soils that are permanently protected from development, an additional 50 overnight  
34 youth camp participants may be allowed;

1 (B) For each 160 acres of wildlife habitat that is either included on an  
2 acknowledged inventory in the local comprehensive plan or identified with the  
3 assistance and support of Oregon Department of Fish and Wildlife, regardless of  
4 soil types and resource land designation that are permanently protected from  
5 development, an additional 50 overnight youth camp participants may be allowed;

6 (C) For each 160 acres of agricultural lands predominantly composed of class VI-  
7 VIII soils that are permanently protected from development, an additional 25  
8 overnight youth camp participants may be allowed; or

9 (D) A youth camp may have 351 to 600 overnight youth camp participants when:

10 (i) The tract on which the youth camp will be located includes at least  
11 1,920 acres; and

12 (ii) At least 920 acres is permanently protected from development. The  
13 county may require a larger area to be protected from development when it  
14 finds a larger area necessary to avoid conflicts with surrounding uses.

15 (E) Under no circumstances shall more than 600 overnight youth camp  
16 participants be allowed.

17 (d) The county shall require, as a condition of approval of an increased number of  
18 overnight youth camp participants authorized by paragraphs (c)(A), (B), (C) or (D) of this  
19 section requiring other lands to be permanently protected from development, that the land  
20 owner of the other lands to be protected sign and record in the deed records for the  
21 county or counties where such other lands are located a document that protects the lands  
22 as provided herein, which for purposes of this section shall be referred to as a restrictive  
23 covenant.

24 (A) A restrictive covenant shall be sufficient if it is in a form substantially the  
25 same as the form attached hereto as Exhibit B.

26 (B) The county condition of approval shall require that the land owner record a  
27 restrictive covenant under this subsection:

28 (i) Within 90 days of the final land use decision if there is no appeal, or

29 (ii) Within 90 days after an appellate judgment affirming the final land use  
30 decision on appeal.

31 (C) The restrictive covenant is irrevocable, unless a statement of release is signed  
32 by an authorized representative of the county or counties where the land subject to  
33 the restrictive covenant is located.

1 (D) Enforcement of the restrictive covenant may be undertaken by the department  
2 or by the county or counties where the land subject to the restrictive covenant is  
3 located.

4 (E) The failure to follow the requirements of this section shall not affect the  
5 validity of the transfer of property or the legal remedies available to the buyers of  
6 property that is subject to the restrictive covenant required by this subsection.

7 (F) The county planning director shall maintain a copy of the restrictive covenant  
8 filed in the county deed records pursuant to this section and a map or other record  
9 depicting the tracts, or portions of tracts, subject to the restrictive covenant filed  
10 in the county deed records pursuant to this section. The map or other record  
11 required by this subsection shall be readily available to the public in the county  
12 planning office.

13 (e) In addition, the county may allow:

14 (A) Up to eight nights during the calendar year during which the number of  
15 overnight youth camp participants may exceed the total number of overnight  
16 youth camp participants allowed under subsection (c) of this section.

17 (B) Overnight stays at a youth camp for participants of adult programs that are  
18 intended primarily for individuals over 21 years of age, not including staff, for up  
19 to 30 days in any one calendar year.

20 (f) Facilities: A youth camp may provide only the facilities described in paragraphs (A)  
21 through (I) of this subsection:

22 (A) Low impact recreational facilities. Intensive developed facilities such as water  
23 parks and golf courses are not allowed;

24 (B) Cooking and eating facilities, provided they are within a building that  
25 accommodates youth camp activities but not in a building that includes sleeping  
26 quarters. Food services shall be limited to those provided in conjunction with the  
27 operation of the youth camp and shall be provided only for youth camp  
28 participants. The sale of individual meals may be offered only to family members  
29 or guardians of youth camp participants;

30 (C) Bathing and laundry facilities;

31 (D) Up to three camp activity buildings, not including a building for primary  
32 cooking and eating facilities.

33 (E) Sleeping quarters, including cabins, tents or other structures, for youth camp  
34 participants only, consistent with subsection (c) of this section. Sleeping quarters

1 intended as overnight accommodations for persons not participating in activities  
2 allowed under this section or as individual rentals are not allowed. Sleeping  
3 quarters may include restroom facilities and, except for the caretaker's dwelling,  
4 may provide only one shower for every five beds. Sleeping quarters may not  
5 include kitchen facilities.

6 (F) Covered areas that are not fully enclosed for uses allowed in this section;

7 (G) Administrative, maintenance and storage buildings including permanent  
8 structures for administrative services, first aid, equipment and supply storage, and  
9 a gift shop available to youth camp participants but not open to the general public;

10 (H) An infirmary, which may provide sleeping quarters for medical care providers  
11 (e.g., a doctor, registered nurse, or emergency medical technician);

12 (I) A caretaker's residence, provided no other dwelling is on the lawfully  
13 established unit of land on which the youth camp is located.

14 (g) A campground as described in ORS 215.283(2)(c), OAR 660-033-0120, and section  
15 (19) of this rule may not be established in conjunction with a youth camp.

16 (h) Conditions of Approval: In approving a youth camp application, a county must  
17 include conditions of approval as necessary to achieve the requirements of this section.

18 (A) With the exception of trails, paths and ordinary farm and ranch practices not  
19 requiring land use approval, youth camp facilities shall be clustered on a single  
20 development envelope of no greater than 40 acres.

21 (B) A youth camp shall adhere to standards for the protection of archaeological  
22 objects, archaeological sites, burials, funerary objects, human remains, objects of  
23 cultural patrimony and sacred objects, as provided in ORS 97.740 to 97.750 and  
24 358.905 to 358.961, as follows:

25 (i) If a particular area of the lawfully established unit of land proposed for  
26 the youth camp is proposed to be excavated, and if that area contains or is  
27 reasonably believed to contain resources protected by ORS 97.740 to  
28 97.750 and 358.905 to 358.961, the application shall include evidence that  
29 there has been coordination among the appropriate Native American  
30 Tribe, the State Historic Preservation Office (SHPO) and a qualified  
31 archaeologist, as described in 390.235(6)(b).

32 (ii) The applicant shall obtain a permit required by ORS 390.235 before  
33 any excavation of an identified archeological site begins.

1 (iii) The applicant shall monitor construction during the ground  
2 disturbance phase(s) of development if such monitoring is recommended  
3 by SHPO or the appropriate Native American Tribe.

4 (C) A fire safety protection plan shall be adopted for each youth camp that  
5 includes the following:

6 (i) Fire prevention measures;

7 (ii) On site pre-suppression and suppression measures; and

8 (iii) The establishment and maintenance of fire-safe area(s) in which camp  
9 participants can gather in the event of a fire.

10 (D) A youth camp's on-site fire suppression capability shall at least include:

11 (i) A 1000 gallon mobile water supply that can reasonably serve all areas  
12 of the camp;

13 (ii) A 60 gallon-per-minute water pump and an adequate amount of hose  
14 and nozzles;

15 (iii) A sufficient number of firefighting hand tools; and

16 (iv) Trained personnel capable of operating all fire suppression equipment  
17 at the camp during designated periods of fire danger.

18 (v) An equivalent level of fire suppression facilities may be determined by  
19 the governing body or its designate. The equivalent capability shall be  
20 based on the response time of the effective wildfire suppression agencies.

21 (E) The county shall require, as a condition of approval of a youth camp, that the  
22 land owner of the youth camp sign and record in the deed records for the county a  
23 document binding the land owner, the operator of the youth camp if different from  
24 the owner, and the land owner's or operator's successors in interest, prohibiting:

25 (i) a claim for relief or cause of action alleging injury from farming or  
26 forest practices for which no action or claim is allowed under ORS 30.936  
27 or 30.937;

28 (ii) future land divisions resulting in a lawfully established unit of land  
29 containing the youth camp that is smaller in size than required by the  
30 county for the original youth camp approval; and

1 (iii) development on the lawfully established unit of land that is not related  
2 to the youth camp and would require a land use decision as defined at  
3 ORS 197.015(10) unless the county's original approval of the camp is  
4 rescinded and the youth camp development is either removed or can  
5 remain, consistent with a county land use decision that is part of such  
6 rescission.

7 (F) Nothing in this rule relieves a county from complying with other requirements  
8 contained in the comprehensive plan or implementing land use regulations, such  
9 as the requirements addressing other resource values (e.g. resources identified in  
10 compliance with statewide planning Goal 5) that exist on agricultural lands.

11 (i) If a youth camp is proposed to be developed on lands that contain a  
12 Goal 5 resource protected under the county's comprehensive plan, and the  
13 plan does not address conflicts between youth camp development and the  
14 resource, the applicant and the county, together with any state or federal  
15 agency responsible for protecting the resource or habitat supporting the  
16 resource, will cooperatively develop a specific resource management plan  
17 to mitigate potential development conflicts consistent with OAR chapter  
18 660, divisions 16 and 23. If there is no program to protect the listed Goal 5  
19 resource(s) included in the local comprehensive plan or implementing  
20 ordinances and the applicant and the appropriate resource management  
21 agency cannot successfully agree on a cooperative resource management  
22 plan, the county is responsible for determining appropriate mitigation  
23 measures in compliance with OAR chapter 660, division 23; and

24 (ii) If a proposed youth camp is located on lands where, after site specific  
25 consultation with a district state biologist, the potential exists for adverse  
26 effects to state or federal special status species (threatened, endangered,  
27 candidate, or sensitive) or habitat, or to big game winter range or  
28 migration corridors, golden eagle or prairie falcon nest sites, or pigeon  
29 springs), the applicant shall conduct a site-specific assessment of the land  
30 in consultation with all appropriate state, federal, and tribal wildlife  
31 management agencies. A professional biologist shall conduct the site-  
32 specific assessment by using methodologies accepted by the appropriate  
33 wildlife management agency and shall determine whether adverse effects  
34 to special status species or wildlife habitats are anticipated. Based on the  
35 results of the biologist's report, the site shall be designed to avoid adverse  
36 effects to state or federal special status species or to wildlife habitats as  
37 described above. If the applicant's site-specific assessment shows that  
38 adverse effects cannot be avoided, the applicant and the appropriate  
39 wildlife management agency will cooperatively develop an agreement for  
40 project-specific mitigation to offset the potential adverse effects of the  
41 youth camp facility. Where the applicant and the resource management  
42 agency cannot agree on what mitigation will be carried out, the county is

1 responsible for determining appropriate mitigation, if any, required for the  
2 youth camp facility.

3 (iii) The commission shall consider the repeal of the provisions of  
4 subparagraph (ii) on or before January 1, 2022.

5 (i) Extension of Sewer to a Youth Camp. A Goal 11 exception to authorize the extension  
6 of a sewer system to serve a youth camp shall be taken pursuant to ORS 197.732(1)(c),  
7 Goal 2, and this section. The exceptions standards in OAR chapter 660, division 4 and  
8 OAR chapter 660, division 11 shall not apply. Exceptions adopted pursuant to this  
9 section shall be deemed to fulfill the requirements for goal exceptions under ORS  
10 197.732(1)(c) and Goal 2.

11 (A) A Goal 11 exception shall determine the general location for the proposed  
12 sewer extension and shall require that necessary infrastructure be no larger than  
13 necessary to accommodate the proposed youth camp.

14 (B) To address Goal 2, Part II(c)(1), the exception shall provide reasons justifying  
15 why the state policy in the applicable goals should not apply. Goal 2, Part II(c)(1)  
16 shall be found to be satisfied if the proposed sewer extension will serve a youth  
17 camp proposed for up to 600 youth camp participants.

18 (C) To address Goal 2, Part II(c)(2), the exception shall demonstrate that areas  
19 which do not require a new exception cannot reasonably accommodate the  
20 proposed sewer extension. Goal 2, Part II(c)(2) shall be found to be satisfied if the  
21 sewer system to be extended was in existence as of January 1, 1990 and is located  
22 outside of an urban growth boundary on lands for which an exception to Goal 3  
23 has been taken.

24 (D) To address Goal 2, Part II(c)(3), the exception shall demonstrate that the long  
25 term environmental, economic, social, and energy consequences resulting from  
26 the proposed extension of sewer with measures to reduce the effect of adverse  
27 impacts are not significantly more adverse than would typically result from the  
28 same proposal being located in areas requiring a goal exception other than the  
29 lawfully established unit of land proposed for the youth camp. Goal 2, Part  
30 II(c)(3) shall be found to be satisfied if the proposed sewer extension will serve a  
31 youth camp located on a tract of at least 1,000 acres.

32 (E) To address Goal 2, Part II(c)(4), the exception shall demonstrate that the  
33 proposed sewer extension is compatible with other adjacent uses or will be so  
34 rendered through measures designed to reduce adverse impacts. Goal 2, Part  
35 II(c)(4) shall be found to be satisfied if the proposed sewer extension for a youth  
36 camp is conditioned to comply with section (5) of this rule.

1 (F) An exception taken pursuant to this section does not authorize extension of  
2 sewer beyond what is justified in the exception.

3 (j) Applicability: The provisions of this section shall apply directly to any land use  
4 decision pursuant to ORS 197.646 and 215.427(3). A county may adopt provisions in its  
5 comprehensive plan or land use regulations that establish standards and criteria in  
6 addition to those set forth in this section, or that are necessary to ensure compliance with  
7 any standards or criteria in this section.

8 **660-033-0135**

9 **Dwellings in Conjunction with Farm Use**

10 (1) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling  
11 may be considered customarily provided in conjunction with farm use if:

12 (a) The parcel on which the dwelling will be located is at least:

13 (A) 160 acres and not designated rangeland; or

14 (B) 320 acres and designated rangeland; or

15 (C) As large as the minimum parcel size if located in a zoning district with an  
16 acknowledged minimum parcel size larger than indicated in paragraph (A) or (B)  
17 of this subsection.

18 (b) The subject tract is currently employed for farm use, as defined in ORS 215.203.

19 (c) The dwelling will be occupied by a person or persons who will be principally engaged  
20 in the farm use of the ~~land~~ **subject tract**, such as planting, harvesting, marketing or  
21 caring for livestock, at a commercial scale.

22 (d) Except ~~[as permitted in ORS 215.213(1)(r) and 215.283(1)(p)(1999 Edition)]~~ **for**  
23 **seasonal farmworker housing approved prior to 2001**, there is no other dwelling on  
24 the subject tract.

25 (2) (a) If a county prepares the potential gross sales figures pursuant to subsection (c) of this  
26 section, the county may determine that on land not identified as high-value farmland  
27 pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided  
28 in conjunction with farm use if:

29 (A) The subject tract is at least as large as the median size of those commercial  
30 farm or ranch tracts capable of generating at least \$10,000 in annual gross sales  
31 that are located within a study area that includes all tracts wholly or partially  
32 within one mile from the perimeter of the subject tract;

1 (B) The subject tract is capable of producing at least the median level of annual  
2 gross sales of county indicator crops as the same commercial farm or ranch tracts  
3 used to calculate the tract size in paragraph (A) of this subsection;

4 (C) The subject tract is currently employed for a farm use, as defined in ORS  
5 215.203, at a level capable of producing the annual gross sales required in  
6 paragraph (B) of this subsection;

7 (D) The subject lot or parcel on which the dwelling is proposed is not less than 10  
8 acres in western Oregon or 20 acres in eastern Oregon;

9 (E) Except [~~as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition)]~~  
10 **for seasonal farmworker housing approved prior to 2001**, there is no other  
11 dwelling on the subject tract;

12 (F) The dwelling will be occupied by a person or persons who will be principally  
13 engaged in the farm use of the [~~land~~] **subject tract**, such as planting, harvesting,  
14 marketing or caring for livestock, at a commercial scale; and

15 (G) If no farm use has been established at the time of application, land use  
16 approval shall be subject to a condition that no building permit may be issued  
17 prior to the establishment of the farm use required by paragraph (C) of this  
18 subsection.

19 **(H) In determining the gross sales capability required by paragraph (C):**

20 **(i) The actual or potential cost of purchased livestock shall be**  
21 **deducted from the total gross sales attributed to the farm or ranch**  
22 **tract;**

23 **(ii) Only actual or potential gross sales from land owned, not leased or**  
24 **rented, shall be counted; and**

25 **(iii) Actual or potential gross farm sales earned from a lot or parcel**  
26 **that has been used previously to qualify another lot or parcel for the**  
27 **construction or siting of a primary farm dwelling may not be used.**

28 (b) In order to identify the commercial farm or ranch tracts to be used in paragraph  
29 (2)(a)(A) of this rule, the gross sales capability of each tract in the study area, including  
30 the subject tract, must be determined, using the gross sales figures prepared by the county  
31 pursuant to subsection (2)(c) of this section as follows:

32 (A) Identify the study area. This includes all the land in the tracts wholly or  
33 partially within one mile of the perimeter of the subject tract;

1 (B) Determine for each tract in the study area the number of acres in every land  
2 classification from the county assessor's data;

3 (C) Determine the potential earning capability for each tract by multiplying the  
4 number of acres in each land class by the gross sales per acre for each land class  
5 provided by the commission pursuant to subsection (2)(c) of this section. Add  
6 these to obtain the potential earning capability for each tract;

7 (D) Identify those tracts capable of grossing at least \$10,000 based on the data  
8 generated in paragraph (C) of this subsection; and

9 (E) Determine the median size and median gross sales capability for those tracts  
10 capable of generating at least \$10,000 in annual gross sales to use in paragraphs  
11 (2)(a)(A) and (B) of this subsection.

12 (c) In order to review a farm dwelling pursuant to subsection (2)(a) of this section, a  
13 county may prepare, subject to review by the director **of the Department of Land**  
14 **Conservation and Development**, a table of the estimated potential gross sales per acre  
15 for each assessor land class (irrigated and nonirrigated) required in subsection (2)(b) of  
16 this section. The director shall provide assistance and guidance to a county in the  
17 preparation of this table. The table shall be prepared as follows:

18 (A) Determine up to three indicator crop types with the highest harvested acreage  
19 for irrigated and for nonirrigated lands in the county using the most recent OSU  
20 Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and  
21 State Agricultural Estimates," or other USDA/Extension Service documentation;

22 (B) Determine the combined weighted average of the gross sales per acre for the  
23 three indicator crop types for irrigated and for nonirrigated lands, as follows:

24 (i) Determine the gross sales per acre for each indicator crop type for the  
25 previous five years (i.e., divide each crop type's gross annual sales by the  
26 harvested acres for each crop type);

27 (ii) Determine the average gross sales per acre for each crop type for three  
28 years, discarding the highest and lowest sales per acre amounts during the  
29 five-year period;

30 (iii) Determine the percentage each indicator crop's harvested acreage is of  
31 the total combined harvested acres for the three indicator crop types **for**  
32 **the five-year period**;

33 (iv) Multiply the combined sales per acre for each crop type identified  
34 under subparagraph (ii) of this paragraph by its percentage of harvested

1 acres to determine a weighted sales per acre amount for each indicator  
2 crop; and

3 (v) Add the weighted sales per acre amounts for each indicator crop type  
4 identified in subparagraph (iv) of this paragraph. The result provides the  
5 combined weighted gross sales per acre.

6 (C) Determine the average land rent value for irrigated and nonirrigated land  
7 classes in the county's exclusive farm use zones according to the annual "income  
8 approach" report prepared by the county assessor pursuant to ORS 308A.092; and

9 (D) Determine the percentage of the average land rent value for each specific land  
10 rent for each land classification determined in paragraph (C) of this subsection.  
11 Adjust the combined weighted sales per acre amount identified in subparagraph  
12 (B)(v) of this subsection using the percentage of average land rent (i.e., multiply  
13 the weighted average determined in subparagraph (B)(v) of this subsection by the  
14 percent of average land rent value from paragraph (C) of this subsection). The  
15 result provides the estimated potential gross sales per acre for each assessor land  
16 class that will be provided to each county to be used as explained under paragraph  
17 (2)(b)(C) of this section.

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

20 (a) The subject tract is currently employed for the farm use, as defined in ORS 215.203,  
21 on which, in each of the last two years or three of the last five years, or in an average of  
22 three of the last five years, the farm operator earned the lower of the following:

23 (A) At least \$40,000 in gross annual income from the sale of farm products; or

24 (B) Gross annual income of at least the midpoint of the median income range of  
25 gross annual sales for farms in the county with gross annual sales of \$10,000 or  
26 more according to the 1992 Census of Agriculture, Oregon; and

27 (b) Except [~~as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition)~~] **for**  
28 **seasonal farmworker housing approved prior to 2001**, there is no other dwelling on  
29 lands designated for exclusive farm use pursuant to ORS [C]chapter 215 or for mixed  
30 farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or  
31 on the farm or ranch operation;

32 (c) The dwelling will be occupied by a person or persons who produced the commodities  
33 that grossed the income in subsection (a) of this section; and

34 (d) In determining the gross income required by subsection (a) of this section:

1 (A) The cost of purchased livestock shall be deducted from the total gross income  
2 attributed to the farm or ranch operation;

3 (B) Only gross income from land owned, not leased or rented, shall be counted;  
4 and

5 (C) Gross farm income earned from a lot or parcel that has been used previously  
6 to qualify another lot or parcel for the construction or siting of a primary farm  
7 dwelling may not be used.

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

10 (a) The subject tract is currently employed for the farm use, as defined in ORS 215.203,  
11 on which the farm operator earned at least \$80,000 in gross annual income from the sale  
12 of farm products in each of the last two years or three of the last five years, or in an  
13 average of three of the last five years; and

14 (b) Except [~~as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition)~~] **for**  
15 **seasonal farmworker housing approved prior to 2001**, there is no other dwelling on  
16 lands designated for exclusive farm use pursuant to ORS [C]chapter 215 or for mixed  
17 farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or  
18 on the farm or ranch operation; and

19 (c) The dwelling will be occupied by a person or persons who produced the commodities  
20 that grossed the income in subsection (a) of this section;

21 (d) In determining the gross income required by subsection (a) of this section;

22 (A) The cost of purchased livestock shall be deducted from the total gross income  
23 attributed to the farm or ranch operation;

24 (B) Only gross income from land owned, not leased or rented, shall be counted;  
25 and

26 (C) Gross farm income earned from a lot or parcel that has been used previously  
27 to qualify another lot or parcel for the construction or siting of a primary farm  
28 dwelling may not be used.

29 (5) (a) For the purpose of sections (3) or (4) of this rule, noncontiguous lots or parcels zoned  
30 for farm use in the same county or contiguous counties may be used to meet the gross  
31 income requirements. Except for Hood River and Wasco counties and Jackson and  
32 Klamath counties, when a farm or ranch operation has lots or parcels in both "western"  
33 and "eastern" Oregon as defined by this division, lots or parcels in eastern or western  
34 Oregon may not be used to qualify a dwelling in the other part of the state.

1 (b) Prior to the final approval for a dwelling authorized by sections (3) and (4) of this rule  
2 that requires one or more contiguous or non contiguous lots or parcels of a farm or ranch  
3 operation to comply with the gross farm income requirements, the applicant shall provide  
4 evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has  
5 been recorded with the county clerk of the county or counties where the property subject  
6 to the covenants, conditions and restrictions is located. The covenants, conditions and  
7 restrictions shall be recorded for each lot or parcel subject to the application for the  
8 primary farm dwelling and shall preclude:

9 (A) All future rights to construct a dwelling except for accessory farm dwellings,  
10 relative farm assistance dwellings, temporary hardship dwellings or replacement  
11 dwellings allowed by ORS [C]chapter 215; and

12 (B) The use of any gross farm income earned on the lots or parcels to qualify  
13 another lot or parcel for a primary farm dwelling.

14 (c) The covenants, conditions and restrictions are irrevocable, unless a statement of  
15 release is signed by an authorized representative of the county or counties where the  
16 property subject to the covenants, conditions and restrictions is located;

17 (d) Enforcement of the covenants, conditions and restrictions may be undertaken by the  
18 department or by the county or counties where the property subject to the covenants,  
19 conditions and restrictions is located;

20 (e) The failure to follow the requirements of this section shall not affect the validity of the  
21 transfer of property or the legal remedies available to the buyers of property that is  
22 subject to the covenants, conditions and restrictions required by this section;

23 (f) The county planning director shall maintain a copy of the covenants, conditions and  
24 restrictions filed in the county deed records pursuant to this section and a map or other  
25 record depicting the lots and parcels subject to the covenants, conditions and restrictions  
26 filed in the county deed records pursuant to this section. The map or other record required  
27 by this subsection shall be readily available to the public in the county planning office.

28 (6) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991  
29 Edition) before January 1, 1993, a dwelling may be considered customarily provided in  
30 conjunction with farm use if it is not on a lot or parcel identified as high-value farmland and it  
31 meets the standards and requirements of ORS 215.213(2)(a) or (b).

32 (7) A dwelling may be considered customarily provided in conjunction with a commercial dairy  
33 farm as defined by OAR 660-033-0135(8) if:

34 (a) The subject tract will be employed as a commercial dairy as defined by OAR 660-  
35 033-0135(8);

1 (b) The dwelling is sited on the same lot or parcel as the buildings required by the  
2 commercial dairy;

3 (c) Except [~~as permitted by ORS 215.213(r) and 215.283(1)(p) (1999 Edition)~~] **for**  
4 **seasonal farmworker housing approved prior to 2001**, there is no other dwelling on  
5 the subject tract;

6 (d) The dwelling will be occupied by a person or persons who will be principally engaged  
7 in the operation of the commercial dairy farm, such as the feeding, milking or pasturing  
8 of the dairy animals or other farm use activities necessary to the operation of the  
9 commercial dairy farm;

10 (e) The building permits, if required, have been issued for and construction has begun for  
11 the buildings and animal waste facilities required for a commercial dairy farm; and

12 (f) The Oregon Department of Agriculture has approved the following:

13 (A) A permit for a "confined animal feeding operation" under ORS 468B.050 and  
14 468B.200 to 468B.230; and

15 (B) A Producer License for the sale of dairy products under ORS 621.072.

16 (8) As used in this division, the following definitions apply:

17 (a) "Commercial dairy farm" is a dairy operation that owns a sufficient number of  
18 producing dairy animals capable of earning the gross annual income required by OAR  
19 660-033-0135(3)(a) or (4)(a), whichever is applicable, from the sale of fluid milk; and

20 (b) "Farm or ranch operation" means all lots or parcels of land in the same ownership that  
21 are used by the farm or ranch operator for farm use as defined in ORS 215.203.

22 (9) A dwelling may be considered customarily provided in conjunction with farm use if:

23 (a) Within the previous two years, the applicant owned and operated a different farm or  
24 ranch operation that earned the gross farm income in each of the last five years or four of  
25 the last seven years as required by OAR 660-033-0135(3) or (4) of this rule, whichever is  
26 applicable;

27 (b) The subject lot or parcel on which the dwelling will be located is:

28 (A) Currently employed for the farm use, as defined in ORS 215.203, that  
29 produced in each of the last two years or three of the last five years, or in an  
30 average of three of the last five years the gross farm income required by OAR  
31 660-033-0135(3) or (4) of this rule, whichever is applicable; and

1 (B) At least the size of the applicable minimum lot size under OAR 215.780;

2 (c) Except [~~as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition)~~] **for**  
3 **seasonal farmworker housing approved prior to 2001**, there is no other dwelling on  
4 the subject tract;

5 (d) The dwelling will be occupied by a person or persons who produced the commodities  
6 that grossed the income in subsection (a) of this section; and

7 (e) In determining the gross income required by subsections (a) and (b)(A) of this section:

8 (A) The cost of purchased livestock shall be deducted from the total gross income  
9 attributed to the tract; and

10 (B) Only gross income from land owned, not leased or rented, shall be counted.

11 **(10) Farming of a marijuana crop, and the gross sales derived from selling a marijuana**  
12 **crop, may not be used to demonstrate compliance with the approval criteria for a primary**  
13 **farm dwelling.**

14 **[660-033-0150**

15 **Notice of Decisions in Agriculture Zones**

16 ~~(1) Counties shall notify the department of all applications for dwellings and land divisions in~~  
17 ~~exclusive farm use zones. Such notice shall be in accordance with the county's acknowledged~~  
18 ~~comprehensive plan and land use regulations, and shall be mailed to the department's Salem~~  
19 ~~office at least 10 calendar days before any hearing or decision on such application.~~

20 ~~(2) Notice of proposed actions described in section (1) of this rule shall be provided as required~~  
21 ~~by procedures for notice contained in ORS 197.763 and 215.402 to 215.438.~~

22 ~~(3) The provisions of sections (1) and (2) of this rule are repealed on September 6, 1995.]~~

23 **660-033-0160**

24 **Effective Date**

25 The provisions of this division shall become effective upon filing.

## Land Conservation and Development Department

### Oregon Administrative Rules

#### Chapter 660, Division 033, Rule 0120, Table

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##### Uses Authorized on Agricultural Lands

**OAR 660-033-0120** 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:

**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.

**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.

\* Use not allowed.

# Numerical references for specific uses shown on the table refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the table, this rule does not establish criteria for the use.

<u>HV</u> <u>Farmland</u>	<u>All</u> <u>Other</u>	<u>USES</u>
		<b>Farm/Forest Resource</b>
A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R6	R6	A facility for the primary processing of forest products.

<u>HV Farmland</u>	<u>All Other</u>	<u>USES</u>
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.  <b>Natural Resource</b>
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.  <b>Residential</b>
A1,30	A1,30	Dwelling customarily provided in conjunction with farm use <b><u>as provided in OAR 660-033-0135.</u></b>
R9,30	R9,30	A <b><u>relative farm help</u></b> dwelling [ <del>on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step grandparent, grandchild, parent, step parent, child, brother, sister, sibling, step sibling, niece, nephew, or first cousin of either, if the farm operator does, or will, require the assistance of the relative in the management of the farm use].</del>
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 [ <del>or facility</del> ] 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.

<u>HV Farmland</u>	<u>All Other</u>	<u>USES</u>
<b>Commercial Uses</b>		
R5	R5	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or ORS 215.213(1)(u) and 215.283(1)(r), <b><u>but excluding activities in conjunction with a marijuana crop.</u></b>
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.
R or R5	R or R5	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.

HV      All  
Farmland   Other      USES

**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.

**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.

<u>HV Farmland</u>	<u>All Other</u>	<u>USES</u>
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	R	Transportation improvements on rural lands allowed by OAR 660-012-0065
<b>Utility/Solid Waste Disposal Facilities</b>		
R,16(a) or (b)	R,16(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.

<u>HV Farmland</u>	<u>All Other</u>	<u>USES</u>
*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.
<b>Parks/Public/Quasi-Public</b>		
18	R5,40	Youth camps in Eastern Oregon on land that is composed predominantly of class VI, VII or VIII soils.
2,*18(a) or R2,18(b-c)	R2,5, 18(b-c)	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.
2,*18(a)	R2	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
2,*18(a)	R2,5,19	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)	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 filing 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.

<u>HV Farmland</u>	<u>All Other</u>	<u>USES</u>
A11	A11	Land application of reclaimed water, agricultural or industrial process water or biosolids.
R5	R5	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(1).  <b>Outdoor Gatherings</b>
A33	A33	An outdoor mass gathering or other gathering described in ORS 197.015(10)(d).
R34	R34	Any outdoor gathering subject to review of a county planning commission under ORS 433.763.

(The numbers in the table above refer to the section numbers in OAR 660-033-0130)