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STAFF REPORT TO THE PLANNING COMMISSION FOR THE CONTINUED PUBLIC HEARING ON APRIL 4, 2011

PROPOSED AMENDMENTS TO THE EFU ZONE RELATED TO CONSISTENCY WITH THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA) AND IMPLEMENTATION OF HB 3099 (2009) CASE FILES # PC 2011-1395 and PC 10-006

PART I. INTRODUCTION

This proposed ordinance amendment includes new zoning code text that brings the Exclusive Farm Use (EFU) district regulations into alignment with two recent amendments to state rules. The Planning Commission considered draft amendments to address the RLUIPA amends at the February, 2011 meeting. At the October 2010 hearing, the Planning Commission adopted amendments to address the HB 3099 changes made by the 2009 legislature, and adopted by LCDC. Staff brought the HB 3099 amendments back to the Commission for rehearing in this combined ordinance after notification of EFU district property owners. In response to questions raised in testimony from a representative of the Open Door Baptist Church, the Commission continued the hearing to April 4 allowing that organization additional time to consider the proposed amendments.

In June of 2010, LCDC amended Oregon Administrative Rules (OAR) applicable to the Exclusive Farm Use (EFU) zones. The purpose of the revised rules was to ensure that uses associated with gatherings of people within structures that are allowable in EFU zones within 3 miles of an Urban Growth Boundary are all subject to the same limitations as are churches. The rulemaking was initiated by LCDC in response to a recent Oregon Court of Appeals decision affirming that rule amendments were needed for consistency with the "equal terms" provisions of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). This staff report follows the February 7, 2011 work session, and the March 7, 2011 hearing, and proposes zoning code amendments conforming to the LCDC rule for the Planning Commission to consider and recommend to the Board for adoption. The May 24, 2010 DLCD staff report is included for reference as Attachment 1.

The 2009 Legislature amended statutes that regulate uses in Exclusive Farm Use (EFU) zones by adoption of HB 3099. LCDC amended the Division 33 Administrative Rules effective January 1, 2010, to implement the legislation. The changes to the farm statutes in HB 3099:

- Remove schools and greyhound kennels as outright uses in EFU zones.
- Allow expansion of existing public schools and private schools on EFU lands that become nonconforming uses, notwithstanding changes to the zoning ordinance.
- Provide for landowners of model aircraft facilities to charge fees.
- Add conditional exception for public schools that primarily serve the rural area where sited.
- Prohibit golf courses on high value farmland.
- Remove disposal of solid waste as an outright use.

Staff notes that neither solid waste disposal sites nor golf courses were added to the allowed or review uses sections of the EFU zone district, therefore no changes are needed there.

The legislation also makes changes that allow counties greater flexibility when evaluating schools and golf courses. There are two main categories of land uses in the Exclusive Farm Use statutes in ORS 215.283(1) and (2). Under an Oregon Supreme Court decision in Brentmar v. Jackson County, 321 Or 481, 900 P2d 1030 (1995) those uses listed in 215.283 section (1) are required to be allowed and they are subject only to state regulations that limit or allow the use. The land uses listed in 215.283 section (2) are optional for a county. The county may choose not to include those land uses in their Zoning Code, and are allowed to add local approval criteria and conditions of approval.

This staff report is organized into the parts listed below. The Planning Commission recommended a text change in both parts IV and V at the March 7 hearing, and those are shown in *italic* font. In addition, staff included two attachments to the staff report. Attachment 2 is the DLCD October 23, 2009, staff report that that describes the changes, and Attachment 3 is a table listing the state and county standards that became applicable to schools. The attachments are available on the Planning Commission web page located at: http://web.multco.us/land-use-planning/planning-commission The zoning code citations shown in Parts II through V. are to MCC Chapter 3;, conforming amendments to Chapters 34, 35, and 36 will also be required.

II. Changes to Allowed and Review Uses in EFU Districts
III. Changes to Conditional Uses
IV. Proposed New Code Section and Standards
V. Changes to Conditional Use and Community Service Use Criteria

PART II. CHANGES TO ALLOWED AND REVIEW USES in EFU DISTRICTS

The changes in this section include proposed zoning code changes HB 3099 and OAR Division 33 made to EFU regulations applicable to uses the MCC lists as allowed and subject to administrative review. HB 3099:

- Deleted schools from 215.283(1) allowed use (moved to CU).
- Changed model aircraft facilities in 215.283(1) to allow rent and fees to be charged.

- Made minor changes to the language for wetland enhancement projects.
- Deleted breeding, kenneling of greyhounds from 215.283(1) allowed use.

The OAR Division 33 RLUIPA rule amendments in part C. below make churches subject to limitations on the design and capacity regulations that are added to the code and included in Part IV of this report. The extent of the change in regulations applicable to this use is the addition of the design and capacity limitations since churches are already prohibited within 3 miles of an UGB.

A. The use, public and private schools, including all buildings essential to the operation, is deleted from ORS 215.283(1) and moved to 215.283(2). The effect is to remove schools from the list of uses that counties must allow, and for which counties can only apply state criteria. The result is that counties can add regulations that apply to decisions for schools, and can choose not to allow them. For purposes of amending the allowed uses section of the MCC, the result is to delete the use. Further discussion of changes needed to allow new schools and alteration or expansion of existing schools is included in Part III of this report.

Delete 33.2620(N) and move the use to conditional use section.

§ 33.2620 Allowed Uses [The same changes are proposed for MCC 34.2620(N), 35.2620(N), and 36.2620(N).]

* * *

~~(N) Public or private schools, including all buildings essential to the operation of a school wholly within an EFU district may be maintained, enhanced or expanded:~~

~~(1) Except that no new use may be authorized within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4; and~~

~~(2) No new use may be authorized on high value farmland; and~~

~~(3) Must satisfy the requirements of MCC 33.4100 through MCC 33.4215, MCC 33.6020 (A), MCC 33.7000 through MCC 33.7060 and MCC 33.7450.~~

~~(4) The maintenance, enhancement or expansion shall not adversely impact the right to farm on surrounding EFU lands.~~

B. The revised statute and rule distinguish between maintenance, enhancement and expansion of existing schools, requiring conditional approval for expansion, but not for maintenance or enhancement. These provisions are in ORS 215.135 and OAR 660-33-0130(2). Enhancement of schools that are not nonconforming should be allowed under the more limited process of Design Review because this entails minor modifications of the facility that don't increase capacity or proximity to nearby farming. Adding the new section

below as a review use is intended to provide appropriate level of review for minor projects consistent with Framework Plan Policy 31 Community Facilities and Uses and current practice for other community service uses.

§ 33.2625 Review Uses [The same changes are proposed for MCC 34.2625(P), 35.2625(P), and 36.2625(R).]

* * *

(P) Existing schools may be enhanced subject to the requirements for Design Review in MCC in 33.7000 – 33.7060, Off-street Parking in MCC 33.4100 - 4215, and the applicable provisions of MCC 33.2640. Enhancement includes alteration of school facilities that do not add enclosed structures that could increase the design capacity of the school or that do not extend school-related activities closer to the boundary of the tract.

C. Amend the applicable standards for churches to incorporate compliance with the new design and capacity standards in Part IV.

§ 33.2620 Allowed Uses [The same changes are proposed for MCC 34.2620(O), 35.2620(O), and 36.2620(O).]

* * *

(O) Churches and cemeteries in conjunction with churches, consistent with ORS 441, wholly within an EFU district may be maintained, enhanced or expanded:

(1) ~~Except that no new use may be authorized within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4; and~~ Use is subject to MCC 33.2640.

(2) No new use may be authorized on high value farmland; and

(3) Must satisfy the requirements of MCC 33.4100 through MCC 33.4215, MCC 33.6020 (A), MCC 33.7000 through MCC 33.7060 and MCC 33.7450.

(4) The maintenance, enhancement or expansion shall not adversely impact the right to farm on surrounding EFU lands.

(5) Activities customarily associated with the practice of religious activity include worship services, religion classes, weddings, funerals, child care and meal programs, but do not include private or parochial school education for prekindergarten through grade 12 or higher education.

D. The model aircraft use was amended in ORS 215.283(1) to include provision to allow the landowner of a site to charge an operator a fee, and limits the amount and operator can charge users to certain costs.

Amend MCC 33.2620(V) to incorporate new provision.

§ 33.2620 Allowed Uses [The same changes are proposed for MCC 34.2620(V), 35.2620(V), and 36.2620(U).]

* * *

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

E. The minor change in ORS 215.283 to wetland enhancement projects removes "of"" in two places. Amend subsection (K) to remove "of."

§ 33.2620 Allowed Uses [The same changes are proposed for MCC 34.2620(K), 35.2626(K), and 36.2060(K).]

* * *

(K) Creation ~~of~~, restoration ~~of~~ or enhancement of wetlands.

F. The use, breeding, kenneling, and training of greyhounds for racing, listed under MCC 33.2625(G) is deleted as an allowed/review use. Dog kennels are allowable as Conditional Use in MCC 33.2630(J).

§ 33.2625 Review Uses [The same changes are proposed for MCC 34.2635(G), 35.2635(G), and 36.2635(G).]

~~(G) Facilities wholly within an EFU district used for the breeding, kenneling and training of greyhounds for racing may be maintained, enhanced or expanded except no new facilities may be authorized on high value farmland and provided that the following requirements are satisfied:~~

~~(1) MCC 33.6420 (A) and (B); and~~

~~(2) MCC 33.7450; and~~
~~(3) MCC 33.7000 through MCC 33.7060; and~~
~~(4) Minimum Dimensional standards:~~
~~(a) Area: Two acres.~~
~~(b) Width: Two hundred fifty feet.~~
~~(c) Depth: Two hundred fifty feet.~~
~~(d) Setback from all lot lines: One hundred feet.~~

PART III. CHANGES TO CONDITIONAL USES

The changes in G. of this section list the conditional uses that the OAR makes subject to standards based on their distance from an UGB. The affected uses are public and private parks and playgrounds, hunting and fishing preserves, campgrounds, and community centers. Public and private schools are also subject to the new standards, and this change is included in section H. along with the other amendments to the schools use related to related to HB 3099.

Section H. below incorporates changes HB 3099 and OAR Division 33 made to EFU regulations applicable to uses the MCC lists as allowable subject to Conditional Use approval. The legislation:

- Defines the schools use as providing grades K – 12 and adds the limitation that it primarily serve the rural area, adds other criteria from statute and OAR.
- Changes the dog kennels use to eliminate reference to greyhound kennels that were removed as allowed uses.
- Includes a provision not incorporated into ORS that cites nonconforming use statutes regarding alteration of schools not allowed due to change in HB 3099.

The MCC allowed maintenance, enhancement, or expansion of schools in EFU zones as an allowed use prior to HB 3099, but did not allow new schools, even as conditional uses. Staff included a discussion of the schools use in the work session staff report so that the Planning Commission could consider whether to add new rural schools as allowable conditional uses in EFU zones, and consider the nonconforming use provisions included in HB 3099, incorporated in ORS 215.135. The Commission agreed that the rural schools use should be included as an allowable conditional use in EFU zones.

Staff is also proposing an amendment to uses related to the provisions in HB 3099, but not specifically changed by that legislation. In Part III.B., staff recommends amending the Conditional Use and Community Service use criteria to incorporate the same farm compatibility language that is used in statute.

Staff also proposed a change to the health hardship dwelling provisions at the September 13, 2010 work session and received a recommendation for further changes from the Planning Commission. This subject has been added to the Planning Commission work program for 2011 to allow a more comprehensive approach to this use.

G. Amend the listed conditional use sections to add compliance with the new Limitation to the Design Capacity of Structures to review requirements for the uses.

§ 33.2630 Conditional Uses [The same changes are proposed for MCC 34.2630(C),(D),(E), and 35.2630(C),(D),(E).]

The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC 33.6300 to 33.6335:

* * *

(C) Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120 and MCC 33.2640.

(D) Private parks, playgrounds, hunting and fishing preserves, and campgrounds.

(1) Existing facilities wholly within an EFU district may be maintained, enhanced or expanded subject to the applicable requirements of this Chapter.

(2) New facilities may be allowed, but not on high-value farm lands.

(3) In addition to the approval standards in MCC 33.6300 to 33.6335, a private campground shall be subject to the following:

(a) Except on a lot or parcel contiguous to a lake or reservoir, ~~the~~ campgrounds ~~shall not be allowed~~ within three miles of an urban growth boundary shall meet the provisions in MCC 33.2640.
~~unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4.~~

(b) The campground shall be an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes.

(c) The campground is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

(d) The campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.

(e) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be pro-

vided to individual camp sites, except that electrical service may be provided to yurts. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(f) The campground shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

(g) A private campground may provide yurts for overnight camping provided:

* * *

(E) Community centers owned and operated by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community. The use shall meet the provisions in MCC 33.2640.

* * *

§ 36.2630 Conditional Uses

* * *

(C) Community centers owned and operated by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community. The use shall meet the provisions in MCC 33.2640.

* * *

H. The changes to schools-related regulations affect both new schools and expansion of existing schools, and consider additional elements of school sites including relationship to the UGB and high-value farmland. Subsequent to passage of HB 3099, LCDC adopted administrative rules. Please refer to the table in Attachment 3 that lists the rule requirements for each potential use description. As indicated above, the MCC does not allow new schools in EFU zones, but it does allow expansion of existing schools. The amendments in HB 3099 changed the use description to read:

> ORS 215.283(2)
> *(aa) 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.*

Two key changes to the use description are that it defines a school as providing for grades K – 12, and that it primarily serves residents of the rural area. DLCD staff described the grade range as intended to codify case law interpretation that the "schools" use means traditional educational facilities. The rural service element reflects existing administrative rule language that applies to community centers, and limits the potential for urban schools to be established in rural areas.

The Planning Commission directed staff to add new schools consistent with the amended statute and rule to the list of uses allowed conditionally in EFU zones. In addition, approaches to defining a "rural" school were discussed at the work session. Staff believes that a formal definition is unnecessary based on the discussion. A rural school is one where at least 51% of the students live in areas outside of the UGB, and the location and extent of the attendance area boundary are sufficient to make the determination.

Expansion is currently allowed in the zoning code subject to standards in the OAR, and county parking, yard, sign, and design review provisions. The new statute moves schools to the list of uses in ORS 215.283(2), thereby allowing the county to consider additional standards applicable to the use, and to continue not to allow new facilities in these zones. HB 3099 also imposes the farm compatibility standards in ORS 215.296 as applicable to expansion of existing schools. Please also refer to the table in Attachment 3 for provisions that should be added to the MCC as applicable to expansion of schools.

MCC 33.2620 – Existing code provides:
(N) Public or private schools, including all buildings essential to the operation of a school wholly within an EFU district may be maintained, enhanced or expanded:

(1) Except that no new use may be authorized within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4; and

(2) No new use may be authorized on high value farmland; and

(3) Must satisfy the requirements of MCC 33.4100 through MCC 33.4215, MCC 33.6020 (A), MCC 33.7000 through MCC 33.7060 and MCC 33.7450.

(4) The maintenance, enhancement or expansion shall not adversely impact the right to farm on surrounding EFU lands.

The revised regulations will potentially affect the two existing school facilities in the county on EFU zoned land. On the east side, there is an existing school on EFU zoned land adjacent to the city of Troutdale at the Open Door Baptist Church. The other is Skyline School. Both of these are within 3 miles of the UGB, are likely "urban" schools, and are on high-value farmland. Skyline School exceeds the design capacity in terms of structures and number of students for schools within 3 miles of the UGB, and staff thinks the east side school exceeds those standards as well.

In addition to adding the provisions in Attachment 3 to the MCC, staff understands that reference to the provisions in Section 14 of HB 3099 relating to nonconforming uses should be included. These provisions provide that nonconforming schools could be expanded through the Community Service process or altered or enhanced through nonconforming use review.

Amend the list of conditional uses to add two new sections that provide for new schools and expansion of existing schools subject to Community Service Use provisions in 33.600 through 33.6020.

§ 33.2630 Conditional Uses [The same changes are proposed for MCC 34.2630(U), 35.2630(U), and 36.2630(Q).]

* * *

(U) Rural schools as provided in this subsection. "Rural schools" means 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. Establishment and expansion of rural schools shall meet the requirements for approval of Community Service Uses in MCC 33.6000 – 33.6020 in lieu of the Conditional Use Provisions of MCC 33.6330 – 33.6335 and, if located within three miles of an urban growth boundary, the additional requirements set forth in MCC 33.2640.

(1) New rural schools may be established and existing rural schools may be expanded on land not identified as high-value farmland.

(2) Existing rural schools located on high-value farmland wholly within the EFU zone may be expanded on the same tract.

(V) Notwithstanding the authority in MCC 33.7200 – 33.7215 to expand a nonconforming use, but in addition and not in lieu of the authority therein to continue, alter, restore or replace a nonconforming use, schools located in an exclusive farm use zone that are no longer allowed under ORS 215.283 (1)(a), as in effect before January 1, 2010, but were established on or before January 1, 2009, and are not rural schools as defined in MCC 33.2630 (U) may be expanded only if:

(1) The expansion meets the requirements for approval of Community Service Uses in MCC 33.6000 – 33.6020 in lieu of the Conditional Use Provisions of MCC 33.6330 – 33.6335 and, if located within three miles of an urban growth boundary, the requirements set forth in MCC 33.2640;

(2) The expansion occurs on the tax lot on which the use was established prior to January 1, 2009, or a tax lot contiguous thereto that was owned by the applicant on January 1, 2009.

I. Delete the reference to the greyhound facilities previously allowed as review uses to conform to the change in HB 3099.

§ 33.2630 Conditional Uses [The same changes are proposed for MCC 34.2630(J), 35.2630(J), and 36.2630(G).]

* * *

(J) Dog kennels ~~not described in section MCC 33.2625(G)~~. Existing facilities wholly within an EFU district may be maintained, enhanced or expanded, subject to other requirements of law. New facilities may be allowed only on non-high-value lands.

PART IV. PROPOSED NEW CODE SECTION AND STANDARDS

J. This section of the staff report adds a new section to the EFU district zoning code text that contains the revised standards that apply to the uses within 3 miles of an UGB amended by LCDC in response to the RLUIPA ruling.

§ 33.2640 Limitations to the Design Capacity of Structures [The same changes are proposed for MCC 34.2640, 35.2640, and 36.2640.]

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

(B) Any enclosed structure or group of enclosed structures described in subsection (A) within a tract that existed on (effective date of this ordinance) must be separated *from other enclosed structures* by at least one-half mile.

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

PART V. CHANGES TO CONDITIONAL USE AND COMMUNITY SERVICE USE CRITERIA

K. Staff recommends amending the Conditional Use and Community Service Use criteria to make them consistent with the farm/forest compatibility criteria already in state statutes under ORS 215.296 (see italics below). The Conditional Use criteria include the phrase "not conflict with" that is not in statute. Staff understands that this phrase is not intended to impose an added test, rather compatibility (potential conflict) is determined by application of subsections (1) and (2). Changing the language will clarify this. Regarding the Community Service Use criteria, the existing code does not include the farm/forest compatibility test. Incorporating the revised standards in MCC 33.6315

(3)(a),(b) will properly implement the farm/forest compatibility standards applicable to Community Service Uses.

> ***ORS 215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.*** *(1) A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:*
>
> *(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or*
>
> *(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

Amend the Conditional Use criteria in MCC 33.6315 to more clearly apply the farm/forest compatibility standards in ORS 215.296.

§ 33.6315 Approval Criteria [The same changes are proposed for MCC 34.6315(3), 35.6315(3), and 36.6315(3)]

(3) The use will~~Will~~ not ~~conflict with farm or forest uses in the area:~~;
(a) ~~Will not f~~Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; *nor*~~*and*~~

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

Amend the Community Service use criteria in MCC 33.6010 to incorporate the same farm/forest compatibility standards in MCC -33.6315(3)(a) and (b) and ORS 215.296.

§ 33.6010 Approval Criteria [The same changes are proposed for MCC 34.6010(C), 35.6010(C), and 36.6010(C).]

* * *

(A) Is consistent with the character of the area;

(B) Will not adversely affect natural resources;

(C) The use~~Will~~ will not ~~conflict with farm or forest uses in the area~~;
(1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; *nor*~~and~~

(2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(D) Will not require public services other than those existing or programmed for the area;

(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

(F) Will not create hazardous conditions;

(G) Will satisfy the applicable policies of the Comprehensive Plan;

(H) Will satisfy such other applicable approval criteria as are stated in this Section.

Oregon
Theodore R. Kulongoski, Governor

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May 24, 2010

TO: Land Conservation and Development Commission

FROM: Michael Morrissey, Policy Analyst

SUBJECT: **Agenda Item 7, June 2-4, 2010, LCDC Meeting**

PUBLIC HEARING AND POSSIBLE ADOPTION OF PROPOSED PERMANENT RULES AMENDING OAR CHAPTER 660, DIVISION 33, AGRICULTURAL LANDS, FOR THE PURPOSE OF CONSISTENCY WITH THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA)

I. SUMMARY

This item is a rulemaking hearing for the commission to consider adoption of amendments to OAR 660-033-0120 and 0130 -- relating to uses allowed on EFU zoned lands within three miles of an urban growth boundary. The proposed amendments are for the purpose of addressing a recent decision by the Oregon Land Use Board of Appeals (LUBA) that found that the rules in question as applied to a particular land use application in Jackson County were not consistent with the "equal terms" provisions of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).[1] The proposed rules are a product of a rules advisory committee that met four times between October of 2009 and April 2010, chaired by LCDC commissioner Greg Macpherson.

II. RECOMMENDED ACTION

The department recommends that the commission hold a public hearing and adopt the proposed rule amendments.

III. BACKGROUND

OAR-660-033-0130 sets forth standards for permitted and conditional non-farm uses on agricultural lands. That rule and OAR 660-033-0120 prohibit new schools, new churches, and

[1] Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), Pub. L. No. 106-274, 114 Stat. 803 (codified as amended at 42 U.S.C. § 2000cc (2006)).

new private parks, playgrounds, hunting and fishing preserves and campgrounds within three miles of an urban growth boundary (UGB) unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. The genesis for the three-mile limitation was to protect the integrity of UGBs in preventing urban-level uses on rural agricultural lands near UGBs. Schools, churches and parks are relatively land-extensive uses that often seek land to purchase outside of a UGB, but close enough to serve their predominantly urban communities. Land outside UGBs is significantly less expensive than land inside UGBs due to the limits on rural and resource uses and the lack of available services. Uses regularly drawing from and serving urban populations, with urban impacts, are effectively urban uses. Under Goal 14, the state's long-standing policy is that urban uses of land should occur within urban growth boundaries.

The case which calls the application of the commission's rule into question is ***Young v. Jackson County***, LUBA No. 2008-076 (affirmed without opinion by the Oregon Court of Appeals in 2009). The LUBA opinion states that the application of the 3-mile rule with regard to the proposed church in that case violated the "equal terms" provisions in RLUIPA. The "equal terms" provision of RLUIPA, 42 USC section 2000cc-(b)(1) provides that:

> "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."

This portion of RLUIPA (unlike the "general rule" of that statute) does not require that a showing of substantial burden on religious exercise be made. ***Digrugilliers v. Consolidated City of Indianapolis***, 506 F.3d 612 (7th Cir. 2007). Under the equal terms provisions of RLUIPA, it also is not relevant whether the proposed religious use is allowed elsewhere. ***Id.*** Under the equal terms provisions of RLUIPA, the two pertinent questions are: (a) first, whether the regulation in question permits some secular assemblies or institutions while excluding religious ones; and (b) if the regulation does so, whether there is a neutral and generally applicable basis for doing so. ***Centro Familiar Cristiano Buenas Nuevas v. City of Yuma***, 615 F. Supp 2d 980 (D. Ariz. 2009). If the answer to the first question is positive, then the burden shifts to the government to prove a neutral and generally applicable basis for the disparate treatment. ***Id.***[2]

[2] "If a city permits a few nonreligious assemblies or institutions in a given district, that does not necessarily mean that it must permit all religious assemblies or institutions under RLUIPA. In such a hypothetical case, numerous other secular assemblies and institutions would be excluded from the district in addition to religious organizations. The government might be able to prove that some neutral and generally applicable principle causes the disadvantage, not religion. Read in the greater context of RLUIPA, the principal effect of the equal terms provisions is to enable a religious organization to easily shift to the zoning authority the burden of proving that the regulation is neutral and generally applicable. This serves Congress's purpose of rooting out covert discrimination without overreaching existing *Free Exerrcise Clause* principles by exempting religious uses from zoning regulation. A zoning regulation does not violate the equal terms provision, even if it permits some secular assemblies or institutions, so long as there is a neutral and generally applicable principle for doing so." *Id.* at 996

IV. ANALYSIS

With the proposed rule amendments in OAR 660-033-0120, table 1, and 0130 **Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses,** new uses involving the assembly of a significant number of people within a structure would generally be prohibited on agricultural lands within three miles of an urban growth boundary unless an exception is taken. The proposed amendments to the rules focus on assemblies in structures. In limiting the design capacity of an enclosed structure or group of structures to no greater than 100 persons, the proposed rules at 660-033-0130(2)(a) intend that the use of the structure remain rural in orientation and intensity, thus supporting the underlying purposes of statewide land use planning goals 3 and 14. Structures exceeding the capacity limits may be developed only if an exception is approved under ORS 197.732 and OAR 660-004, or if they are described in state and local park master plans adopted through a comprehensive plan amendment under provisions of OAR 660, division 34 (those rules contain their own limitations on uses and the intensity of uses).[3]

Section (2)(b) further reinforces the underlying purpose of avoiding urban uses on rural lands by imposing a minimum distance of one half mile between qualifying structures or groups of structures. This is intended to prevent development of a cluster of smaller structures that would function as an urban use in a rural area. Consideration was given by the rules committee to substituting or adding an acreage provision instead of a linear provision. Under this concept, the number of structures would be scaled to the acreage of the ownership. However, the advisory committee felt that a distance limitation was a more direct means of assuring that structures not function as an urban use.

The limitation of the design capacity of structures in the 0130 rule would apply to schools, parks (except as provided in OAR 660-034[4]), playgrounds, hunting and fishing preserves, campgrounds, community centers, golf courses, living history museums, firearms training facilities, and armed forces reserves centers as well as religious institutions to the extent such uses are allowed on agricultural lands zoned for exclusive farm use. These uses comprise all uses allowed (without an exception) on agricultural lands zoned EFU that involve assembly within a structure, and they are all limited for the same reason – to ensure that these uses are allowed within three miles of a UGB only if they are rural in nature, as contemplated by Goal 14. Of course, other land uses involving a structure for an assembly generally are not permitted on agricultural lands (such as a university facility, a sports stadium, retail, industrial and residential uses involving large numbers of people) without an exception to Goal 3 and Goal 14.

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[3] OAR 660-034-0035(2). That rule provides that if the uses listed at OAR 660-034-0035(2) must "* * * meet all other applicable requirements of statewide goals, * * *" which include the Goal 14 requirement that urban uses be located within an urban growth boundary. In other words, if a use listed at OAR 660-034-0035(2) is urban in nature, a Goal 14 exception is required.

[4] The proposed standards in OAR 660-033-0130(2)(a), (b) and (c) apply only to park facilities that have are not approved through the (alternate path of a) master plan process under OAR chapter 660, division 34.

V. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends the commission adopt proposed rule amendments to OAR 660-033-0120 Table 1, and OAR 660-033-0130 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses, limiting allowed uses on EFU zoned lands within three miles of urban growth boundaries.

Proposed Motion: I move the commission adopt amendments to OAR 660-033-0120 Table 1, and OAR 660-033-0130 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses.

ATTACHMENT A. Proposed Amendments to OAR 660-033-0120, Table 1, and OAR 660-033-0130 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses.

660-033-0120
Uses Authorized on Agricultural Lands
The specific development and uses listed in the following table are permitted 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 schedule shall have the following meanings:
(1) A -- Use may be 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. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.
(2) R -- Use may be approved, 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 as authorized by law.
(3) * -- Use not permitted.
(4) # -- Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.
[ED. NOTE: Tables referenced are available from the agency.]

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 033, RULE 0120, TABLE 1

Uses Authorized on Agricultural Lands

OAR 660-033-0120 The specific development and uses listed in the following table are permitted 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 schedule shall have the following meanings:

A Use may be 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. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

R Use may be approved, 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 as authorized by law.

***** Use not permitted.

Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

HV Farmland	All Other	USES
		Farm/Forest Resource
A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R6	R6	A facility for the primary processing of forest products.
R28	R28	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.
		Natural Resource
A	A	Creation of, restoration of, or enhancement of wetlands.
R5,27	R5,27	The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species.
		Residential
A1,30	A1,30	Dwelling customarily provided in conjunction with farm use.
R9,30	R9,30	A dwelling 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.
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 or facility 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.
R5,	R5	A wildlife habitat conservation and management plan pursuant to ORS 215.800 to 215.808.
		Commercial Uses
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)(x) and 215.283(1)(u).
R5,14	R5,14	Home occupations as provided in ORS 215.448.
*18(a)	R5	Dog kennels.
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.
A23	A23	Farm stands.
R5	R5	A landscaping 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.
		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 including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
R5	R5	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
R5	R5	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
R13	R13	Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
R	R	Transportation improvements on rural lands allowed by OAR 660-012-0065.
		Utility/Solid Waste Disposal Facilities
R16	R16	Utility facilities necessary for public service, including 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 in height.
R5	R5	Transmission towers over 200 feet in height.
A	A	Fire service facilities providing rural file protection services.
A	A	Irrigation canals, delivery lines and those structures and accessory operational 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.
R5, 37	R5, 37	Wind 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
A29(a) 18(a)	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.
		Parks/Public/Quasi-Public
*18(a) or (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.
*18(a)	R2	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
*18(a)	R2,5,19	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.
R5, 31	R2, 5, 31	Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
R5, 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.
18(a)	R2,5,20	Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.
R5,21	R2,5,21	Living history museum
R	R2	Firearms training facility as provided in ORS 197.770.
R25	R2, 25	Armed forces reserve center as provided for in ORS 215.213(1).

A	A	Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.
R5	R5	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.
A26	A26	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.
R5	R5	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
R5	R5	Operations for the extraction and bottling of water.
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(2).
		Outdoor Gatherings
A33	A33	An outdoor gathering described in ORS 197.015(10)(d).
R34	R34	Any 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 660-33-130)

660-033-0130. Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses. The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

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

~~(2) The use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.~~

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

(b) Any new enclosed structure or group of enclosed structures as described in subsection (a) shall be situated no less than one-half mile from other enclosed structures subject to this section on the same tract. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.

(3)(a) A dwelling may be approved if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

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

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

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

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

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

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

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

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

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

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

(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

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

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

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

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

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

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

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

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

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

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this rule, the use may be approved if:

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

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land

use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

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

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

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

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

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

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

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

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

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

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

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

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

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

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

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

(8)(a) A lawfully established dwelling is a single family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The

county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

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

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural

production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division.

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

(13) Such uses may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

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

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

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

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

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

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

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR chapter 660, division 4.

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

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be expanded subject to:

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

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

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

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

(B) The expansion occurs on:

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

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

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

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

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground

or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

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

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

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

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.

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

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

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and

located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

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

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

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

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

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

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

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

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi- unit residential structures allowed by

the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

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

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

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and

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

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

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

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

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

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

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

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

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

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (29)(a) of this rule or that require a permit from the Department of Environmental Quality under OAR 340-093-0050 . Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the

county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

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

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

(a) A public right of way;

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

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

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this Division.

(34) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings and any part of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period.

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

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

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

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:

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

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility

or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils.

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

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

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

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified

individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

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

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

[Publications: Publications referenced are available from the agency.]

Oregon
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October 23, 2009

TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director
Michael Morrissey, Policy Analyst
Katherine Daniels, Farm and Forest Lands Specialist

SUBJECT: **Agenda Item 6, November 5-6 LCDC Meeting**

PUBLIC HEARING AND POSSIBLE ADOPTION OF "HOUSEKEEPING" AMENDMENTS TO OREGON ADMINISTRATIVE RULE 660, DIVISION 33 IN RESPONSE TO HOUSE BILL 3099

I. AGENDA ITEM SUMMARY

This item involves a public hearing and an opportunity for the Land Conservation and Development Commission (LCDC) to receive testimony, deliberate, and decide whether to adopt proposed new "housekeeping" administrative rule amendments to Oregon Administrative Rule (OAR) chapter 660, division 33 regarding changes to uses in the exclusive farm use (EFU) zone (Attachment A). The proposed rule amendments are intended to provide consistency in administrative rule language with the provisions of House Bill (HB) 3099, passed in the 2009 legislative session, which takes effect January 1, 2010. As such, the changes to rule exactly reflect statutory language in HB 3099. The proposed amendments change OAR 660-033- 0120, Table 1, and OAR 660-033-0130, and would take effect January 1, 2010.

For additional information, please contact Michael Morrissey, Policy Analyst or Katherine Daniels, Farm and Forest Lands Specialist. Michael can be reached at 503-373-0050 ext. 320 or michael.morrissey@state.or.us. Katherine can be reached at 503-373-0050 ext. 329 or katherine.daniels@state.or.us.

II. SUMMARY OF RECOMMENDATIONS

The department recommends the commission receive testimony on the proposed administrative rule amendments and, at the conclusion of the public hearing, adopt the proposed administrative rule amendments.

III. BACKGROUND

On July 30, 2009, the commission adopted its 2009-11 policy and rulemaking agenda, which included the initiation of a number of legislatively mandated rule amendments from the 2009 legislative session. Among these are "housekeeping" changes to administrative rules to provide consistency with the provisions of HB 3099 and anticipated changes to ORS 215. This report describes minor or technical changes to the Goal 3 rule. When the commission amends rules for this reason, it does not appoint a rulemaking workgroup, and does not generally consider substantive rule amendments other than those necessary to respond to legislation and to clarify and synchronize proposed rules with existing rules.

ORS 215.213 (1) and 215.283 (1) list uses that counties permit in EFU zones subject only to standards in administrative rules. That is, counties are not permitted to prohibit or limit uses listed in subsection (1) of these sections of statute. ORS 215.213 (2) and 215.283 (2) list uses that counties may permit, subject to approval criteria in ORS 215.296.[1] Counties may opt to prohibit uses in the subsection (2) list.

IV. PROPOSED ADMINISTRATIVE RULE

HB 3099 amended ORS 215 regarding EFU zones to delete the following two uses from ORS 215.213 (1) and 215.283 (1):

1. The breeding, kenneling and training of greyhounds for racing; and
2. A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.

These two uses are proposed to be deleted as well from OAR 660-033-0120, Table 1.

HB 3099 amended the review standards for the following uses in ORS 215.213 (2) and 215.283 (2):

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[1] **215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.** (1) A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (2) or 215.283 (2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

* * *

1. Public or private schools, including all buildings essential to the operation of a school
2. Golf courses on high value farmland
3. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.

Language reflecting the amended review standards for schools and model aircraft sites is proposed as well to be incorporated into OAR 660-033-0130; no new amended language is needed for golf courses (see discussion below).

A. OAR 660-033-0120 – Summary of Changes

OAR 660-033-0120, Table 1. Table 1 of OAR 660-033-0120 identifies all the various uses that may occur on lands protected by Goal 3, and sets forth the applicable review criteria, including those for where the use would be located on high-value farmland.

Breeding, kenneling and training of greyhounds for racing will no longer be a use permitted in EFU zones, and is deleted from Table 1; other dog kennels continue to be allowed subject to approval criteria. The authorization for solid waste disposal sites ordered by the Environmental Quality Commission was rarely used and is deleted from Table 1. Other solid waste disposal sites continue to be allowed by the statute, subject to approval standards.

Golf courses on high-value farmland will no longer be an allowed use in EFU zones. However, Table 1 already prohibits golf courses on high-value farmland and therefore no change to the table is needed.

The most significant changes in HB 3099 involve schools. The existing provision for schools as a permitted use[2] is modified as follows: "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."

The statutory amendments involve three changes. First, new schools are moved from subsection (1) to subsection (2) of ORS 215.213 and 215.283, so they will be allowed subject to approval criteria rather than as outright permitted uses. This means they will be subject to the review standards of ORS 215.296. Second, the proposed K-12 language effectively codifies case law that currently interprets "schools" to mean traditional educational facilities only. Third, the requirement that new schools in EFU zones primarily serve rural residents is consistent with existing rule language that applies to community centers, and will help assure that schools intended to serve primarily urban populations do not seek rural sites. Rule amendments are proposed for OAR 660-033-0120, Table 1 that would exactly reflect statutory language.

[2] "Public or private schools, including all buildings essential to the operation of a school."

B. OAR 660-033-0130 – Summary of Changes

OAR 660-033-0130(1). The deletion of two uses from ORS 215 permitted use lists will change the alphabetic references in statute for all subsequent uses. OAR 660-033-0130 makes only two cross-references to permitted EFU uses where a reference change will be needed. Subsection (10) currently references ORS 215.213(1)(u) and 215.283(1)(t); these are proposed to be changed to ORS 215.213(1)(q) and 215.283(p).

OAR 660-033-0130(26). Owners of sites for the takeoff and landing of model aircraft will now, by statute, be able to charge rent or a fee for the use of the property. The same language is proposed to be included at OAR 660-033-0130(26).

OAR 660-033-0130(18). HB 3099 includes language that would allow, subject to criteria, schools that were established on or before January 1, 2009 to be expanded onto the existing or an adjacent tax lot in the same ownership. The bill did not affect the existing rule provision that allows the expansion of several types of uses on high-value farmland in the EFU zone, including schools, under slightly different circumstances. OAR 660-033-0130(18) is proposed to allow the expansion of schools on high-value farmland if they are "on the same tract" without a date reference, whereas the new standard is to allow expansion on the existing or adjacent tax lot as of January 1, 2009. Thus, while existing schools on high-value farmland that serve primarily urban populations would be subject to the new standard, those that serve primarily rural populations would be subject to the existing standard.

V. LCDC RULEMAKING AUTHORITY AND REQUIREMENTS

The commission is authorized to adopt administrative rules under ORS 197.040, which indicates certain requirements for rulemaking. These assessments were completed as part of the notices submitted for publication in the Secretary of State Bulletin on September 8 (See Attachment B). ORS 197.040 states that

> (1) The Land Conservation and Development Commission shall:
>
> * * * * *
>
> (b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. * * * [I]n designing its administrative requirements, the commission shall:
>
> (A) Allow for the diverse administrative and planning capabilities of local governments;
>
> (B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
>
> (C) Assess the likely degree of economic impact on identified property and economic interests; and
>
> (D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

Additional sources of authority for the proposed rule amendments are ORS 197.045 (LCDC authorized to "perform other functions required to carry out ORS chapters 195, 196 and 197"); 197.090 (coordinating land conservation and development functions with other government entities); 197.175 (comprehensive planning responsibilities of cities and counties); and 197.180 (land use planning responsibilities of state agencies).

ORS 183.335 Provides requirements for notice of such rule adoption:

> (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:
>
> (a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action[.]

The department has issued rulemaking notice for publication in the October 2009 Secretary of State's Bulletin, and has provided notice to legislators (Sept. 23, 200) (Attachment B).

In 2004, the commission approved "Citizen Involvement Guidelines for Policy Development" intended to guide the commission and the department in promoting public involvement in the development of commission policy on land use, including new or amended administrative rules. With regard to this rulemaking, the guidelines provide that:

> the commission and the department shall adhere to the following guidelines to the extent practicable:
>
> 1. Consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy;
>
> 2. Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;
>
> 3. Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the department's website, and provide copies via paper mail upon request;
>
> 4. Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; and
>
> 5. Provide background information on the policy issues under discussion via posting on the department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.

The department has followed the above guidelines with respect to the housekeeping rulemaking. The department sent broad public notice about this rulemaking (October 21, 2009), and has

maintained a website describing the rulemaking and listing the notices and other pertinent information.

We note that the CIG authorizes LCDC to "choose to not establish an advisory committee or workgroup, provided LCDC and the department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes." In this case (and in all previous LCDC "housekeeping" rulemaking), a workgroup was not appointed because the rulemaking is "policy neutral" and involves rule amendments that are already required by statute.

VI. RECOMMENDATION

The department recommends that the commission receive testimony on the proposed rule amendments. Following testimony, the department recommends that the commission close the public hearing, consider the testimony and other information provided and adopt the proposed rule amendments, to be effective January 1, 2010.

ATTACHMENTS

A. Proposed amended administrative rules: OAR 660-033-0120, Table 1 and OAR 660-033-0130 (10), (18) and (26)
B. Rulemaking notices

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 33
AGRICULTURAL LAND

660-033-0120

Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are permitted 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 schedule shall have the following meanings:

(1) A -- Use may be 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. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(2) R -- Use may be approved, 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 as authorized by law.

(3) * -- Use not permitted.

(4) # -- Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 197.040, 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

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

(2) The use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.

(3)(a) A dwelling may be approved if:

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

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

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

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

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;
(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;
(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule;
(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.
(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;
(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:
(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;
(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a); and
(C) A hearings officer of a county determines that:
(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.
(ii) The dwelling will comply with the provisions of ORS 215.296(1);
(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule.
(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.
(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:
(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;
(B) The tract on which the dwelling will be sited is:
(i)Identified in OAR 660-033-0020(8)(c) or (d); and
(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and
(iii) Twenty-one acres or less in size; and

(C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or
(ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or
(D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:
(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.
(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.
(e) If land is in a zone that allows both farm and forest uses is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;
(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:
(A) Exceed the facilities and service capabilities of the area;
(B) Materially alter the stability of the overall land use pattern of the area; or
(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.
(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;
(h) The county assessor shall be notified that the governing body intends to allow the dwelling.
(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.
(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:
(a) In the Willamette Valley, the use may be approved if:
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;
(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;
(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:
(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;
(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;
(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;
(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.
(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this rule, the use may be approved if:
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards setforth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.
(c) In counties located outside the Willamette Valley require findings that:
(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and
(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or
(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;
(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards setforth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards setforth in paragraph (4)(a)(D) of this rule; and
(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.
(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) -- (8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.
(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:
(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.
(6) Such facility shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period which is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.
(7) A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.
(8)(a) A lawfully established dwelling is a single family dwelling which:
(A) Has intact exterior walls and roof structure;
(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
(C) Has interior wiring for interior lights; and
(D) Has a heating system.
(b) In the case of replacement, the dwelling to be replaced shall be:
(i) Removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and
(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred

replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

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

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

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

(13) Such uses may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the

facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

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

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

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

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

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

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

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR chapter 660, division 4.
(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.
(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be expanded subject to:
(A) The requirements of subsection (c) of this section; and
(B) Conditional approval of the county in the manner provided in ORS 215.296.
(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:
(A) The use was established on or before January 1, 2009; and
(B) The expansion occurs on:
(i) The tax lot on which the use was established on or before January 1, 2009; or
(ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.
(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.
(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.
(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.
(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green,

and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:
(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;
(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;
(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;
(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:
(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.
(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.
(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.
(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.
(23) A farm stand may be approved if:
(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and
(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.
(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.
(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.
(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:
(a) Each accessory farm dwelling meets all the following requirements:
(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and
(B) The accessory farm dwelling will be located:
(i) On the same lot or parcel as the primary farm dwelling; or
(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or
(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or
(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi- unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and
(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.
(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:
(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:
(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or
(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and
(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and
(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and
(iii) A Producer License for the sale of dairy products under ORS 621.072.
(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100;
(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.
(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."
(25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

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

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

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (29)(a) of this rule or that require a permit from the Department of Environmental Quality under OAR 340-093-0050 . Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

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

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

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:
(a) A public right of way;
(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or
(c) The property to be served by the utility.
(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this Division.
(34) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings and any part of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period.
(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and
(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).
(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.
(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:
(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:
(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:
(i) Technical and engineering feasibility;
(ii) Availability of existing rights of way; and
(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils.
(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.
(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.
(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:
(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and
(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and
(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and
(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.
(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.
(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.
[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040 & 215.213

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 033, RULE 0120, TABLE 1

Uses Authorized on Agricultural Lands

OAR 660-33-120 The specific development and uses listed in the following table are permitted 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 schedule shall have the following meanings:

A Use may be 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 660-33-130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

R Use may be approved, 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 660-33-130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

***** Use not permitted.

Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-33-130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

HV Farm	All Other	USES
		Farm/Forest Resource
A	A	Farm use as defined in ORS 215.203.
A	A	Other buildings customarily provided in conjunction with farm use.
A	A	Propagation or harvesting of a forest product.
R6	R6	A facility for the primary processing of forest products.
R28	R28	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.
		Natural Resource
A	A	Creation of, restoration of, or enhancement of wetlands.
R5,27	R5,27	The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species.
		Residential
A1,30	A1,30	Dwelling customarily provided in conjunction with farm use.
R9,30	R9,30	A dwelling 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.
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 or facility 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.
R5,	R5	A wildlife habitat conservation and management plan pursuant to ORS 215.800 to 215.808.
		Commercial
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)(x) and 215.283(1)(u).
~~*18~~	~~A~~	~~The breeding, kenneling and training of greyhounds for racing.~~
R5,14	R5,14	Home occupations as provided in ORS 215.448.
*18**(a)**	R5	Dog kennels.
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.

A23	A23	Farm stands.
R5	R5	A landscaping 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.
		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 including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
R5	R5	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
R5	R5	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
R13	R13	Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule.
R	R	Transportation improvements on rural lands allowed by OAR 660-012-0065.
		Utility/Solid Waste Disposal Facilities
R16	R16	Utility facilities necessary for public service, including 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 in height.
R5	R5	Transmission towers over 200 feet in height.
~~*18~~	~~R~~	~~A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.~~
A	A	Fire service facilities providing rural file protection services.
A	A	Irrigation canals, delivery lines and those structures and accessory operational 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.
R5, 37	R5, 37	Wind 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
A29(a) 18**(a)**,	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.

		Parks/Public/Quasi-Public
*18**(a)**	R2**,5,**	~~Public or private schools, including all buildings essential to the operation of a school.~~
or **(b-c)**	**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.**
*18**(a)**	R2	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
*18**(a)**	R5,19	Private parks, playgrounds, hunting and fishing preserves and campgrounds.
R5, 31	R5, 31	Parks, and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
R5, 36	R5, 36	Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
*18**(a)**	R5,20	Golf courses.
R5,21	R5,21	Living history museum
R	R	Firearms training facility as provided in ORS 197.770.
R25	R25	Armed forces reserve center as provided for in ORS 215.213(1).
A	A	Onsite filming and activities accessory to onsite filming for 45 days or less as provided for in ORS 215.306.
R5	R5	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.
A26	A26	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.
R5	R5	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
R5	R5	Operations for the extraction and bottling of water.
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(2).
		Outdoor Gatherings
A33	A33	An outdoor gathering described in ORS 197.015(10)(d).
R34	R34	Any 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 660-33-130)

Secretary of State

NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Land Conservation and Development			OAR Chapter 660
Agency and Division			Administrative Rules Chapter Number
Casaria Tuttle	635 Capitol Street NE, Suite 150, Salem, Oregon 97301		503-373-0050 ext. 322
Rules Coordinator	Address		Telephone

RULE CAPTION

Permanent Rules amending OAR 660 division 33, modifying uses on agricultural lands

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

November 5, 2009	9:00 a.m.	xxxxx Springfield, Oregon	LCDC
Hearing Date	Time	Location	Hearings Officer

Auxillary aids for persons with disabilities are available upon advanced request

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND: OAR 660-033-0120 and 660-033-0130

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 197.040

Other Auth.: Statewide Planning Goals 3 and 4

Stats. Implemented: ORS 215

RULE SUMMARY

The proposed permanent rules amend OAR Chapter 660 division 33. The purpose of amending the rules is for consistency with House Bill 3099, enacted by the 2009 legislature. HB 3099 amended ORS 215 modifying certain conditional and outright permitted uses or criteria for such uses, on land zoned for exclusive farm use, including golf courses, schools, solid waste disposal sites, model airplane sites, and breeding and kenneling of greyhounds.

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

November 5, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signature	Printed name	Date

*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. ARC 923-2005

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Land Conservation and Development 660

Agency and Division Administrative Rules Chapter Number

Permanent Rules amending OAR 660 division 33, modifying uses on agricultural lands

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Housekeeping rulemaking conforming amendments due to statutes amended in the 2009 legislative session

Statutory Authority: ORS 197.040

Other Authority:

Stats. Implemented: ORS

Need for the Rule(s): There is a need to conform OAR 660 division 33 rules to amended statutes at ORS 215.213 to 215.283 (resulting from House Bill 3099). HB 3099 amended ORS 215 modifying certain conditional and outright permitted uses or criteria for such uses, on land zoned for exclusive farm use, including golf courses, schools, solid waste disposal sites, model airplane sites, and breeding and kenneling of greyhounds.

Documents Relied Upon, and where they are available: ORS 215. Administrative rules regarding uses authorized on agricultural lands (OAR chapter 660, division 33), House Bill 3099. All these documents are available at the Department of Land Conservation and Development's website, and at 635 Capitol St. NE, Suite 150, Salem. Oregon 97301-2540.

Fiscal and Economic Impact: The statutory changes in HB 3099 and resulting proposed rules are for the purpose of "cleaning up" only a few of the many uses allowed on agricultural lands, and should have a minimal or no impact on businesses. Two uses which become disallowed based on the proposed rules: breeding, kenneling and training of greyhounds for racing, and sites for disposal for solid waste ordered established by the Environmental Quality Commission (EQC) have reportedly only been used once (greyhound related), or not used at all (solid waste disposal sites ordered sited by the EQC). If there is an existing greyhound related use, it would be allowed to continue.

Authorized operators of model airplane sites will henceforth be allowed to charge a fee for the use of the site, and therefore will be receiving from the rule, as specified in legislation.

School uses on land zoned for exclusive farm use may have a variable impact depending on the situation. In some cases, existing schools located outside urban growth boundaries and serving urban populations may have new opportunities to expand their operations on-site. In other cases, school districts will no longer be able to site schools outside UGB's without going through a conditional use process (i.e. such siting will no longer be an outright use), and new schools outside urban growth boundaries will be required to serve primarily residents of the rural area in which the school is located.

Administrative Rule Advisory Committee consulted?: No

If not, why?: These rules are housekeeping amendments conforming to House Bill 3099

Signature Printed name Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND. (ORS 183.534) *FOR ADMINISTRATIVE RULES*

AGENCY NAME: Department of Land Conservation and Development
ADDRESS: 635 Capitol Street NE, Suite 150
CITY/STATE: Salem, Oregon 97301
PHONE: (503) 373-0050, ext 320

HEARING DATES: November 5, 2009

PERMANENT: ☒ **TEMPORARY**: ☐ **EFFECTIVE DATE:**

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)
The proposed permanent rules amend OAR Chapter 660 division 33. The rule changes are house keeping to conform to statutory changes resulting from 2009 legislatively enacted HB 3009.

Description of the need for, and objectives of the rule:
The purpose of amending the rules is for consistency with House Bill 3099, enacted by the 2009 legislature. HB 3099 amends ORS 215, modifying certain conditional and outright permitted uses, or criteria for such uses, on land zoned for exclusive farm use, including golf courses, schools, solid waste disposal sites, model airplane sites, and breeding and kenneling of greyhounds.

List of rules adopted or amended: Amend: OAR 660-033-0120 and 660-033-0130

Materials and labor costs increase or savings: The proposed rules are not intended to or expected to result in increases in materials or labor costs or in savings.

Estimated administrative, construction or other costs increase or savings: Administrative savings will apply to the department and to counties in that HB 3099 exempts them from possible Measure 56 notice and reduces requirements to counties to hold public hearings and adopt findings when amending their code to comply with requirements of HB 3099.

No construction costs or savings are expected to result from these rule changes

Land costs increase or savings: With regard to school siting outside urban growth boundaries, it is unclear what effects the proposed rules might have. Urban school districts have reportedly been purchasing future school outside UGBs in some cases because land is less expensive outside UGBs, than inside. To the extent that the district did not intend to develop the site until it was brought into the UGB, these rules should not affect land costs.

Other costs increase or savings: None expected based on available information.

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

PREPARERS NAME: EMAIL ADDRESS:

Standards Applicable to New and Expansion of Existing Schools in EFU in OAR 660-033-0130

New rural schools not on HV farmland[1]	**Expansion** of existing urban schools on HV farmland	**Expansion** of existing rural schools on HV farmland.	**Expansion** of existing rural schools non-HV farmland	**Expansion** of existing urban schools non-HV farmland
MCC .6010 CS approval criteria[2], design review, parking, signs	MCC .6010 CS approval criteria, design review, parking, signs	MCC .6010 CS approval criteria, design review, parking, signs	MCC .6010 CS approval criteria, design review, parking, signs	MCC .6010 CS approval criteria, design review, parking, signs
	(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. (b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be expanded subject to: (A) The requirements of subsection (c) of this section; and (B) Conditional approval of the county in the manner provided in ORS 215.296. (c) A nonconforming use described in subsection (b) of	(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.		(18) (b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be expanded subject to: (A) The requirements of subsection (c) of this section; and (B) Conditional approval of the county in the manner provided in ORS 215.296. (c) A nonconforming use

New rural schools not on HV farmland[1]	**Expansion** of existing urban schools on HV farmland	**Expansion** of existing rural schools on HV farmland.	**Expansion** of existing rural schools non-HV farmland	**Expansion** of existing urban schools non-HV farmland
	this section may be expanded under this section if: (A) The use was established on or before January 1, 2009; and (B) The expansion occurs on: (i) The tax lot on which the use was established on or before January 1, 2009; or (ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.			described in subsection (b) of this section may be expanded under this section if: (A) The use was established on or before January 1, 2009; and (B) The expansion occurs on: (i) The tax lot on which the use was established on or before January 1, 2009; or (ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.
OAR (2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.	OAR (2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.	OAR (2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.	OAR (2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.	OAR (2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

New rural schools not on HV farmland[1]	**Expansion** of existing urban schools on HV farmland	**Expansion** of existing rural schools on HV farmland.	**Expansion** of existing rural schools non-HV farmland	**Expansion** of existing urban schools non-HV farmland
(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.	(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.	(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.	(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.	(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.

Notes:

1. New schools, either urban or rural, are not allowed on HV farmland.
2. Required standards include the farm compatibility test in 215.296, that is incorporated in MCC 33.6315(3)(a),(b). These criteria need to be added to the CS criteria in 33.6010(C)).

BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. PC 10-006 and PC 2011-1395

Recommend to the Board of County Commissioners the adoption of an ordinance amending MCC Chapters 33, 34, 35 and 36 by updating the Exclusive Farm Use zoning districts to reflect changes made in State Statute and State Administrative Rules together with related amendments.

The Planning Commission Finds:

a. The Planning Commission is authorized by Multnomah County Code under MCC 34.0140, 35.0140, 36.0140 and by ORS 215.110 to recommend to the Board of County Commissioners the adoption of Ordinances to implement the Multnomah County Comprehensive Plan.

b. Under the State of Oregon Land Use Planning Program, regulation of land uses on farm land is based in State Statute and Administrative Rules, which Counties then administer. The State Legislature and the Land Conservation and Development Commission (LCDC) amended those statutes and rules to implement HB 3099(2009). LCDC further amended Administrative Rules to bring them into conformance with the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

c. The amendments related to HB 3099 in PC 10-006 are needed to make the respective Multnomah County zoning code chapters consistent with implementing state statutes and rules by removing certain uses as allowed in EFU zones, by amending other uses, and by adding schools to the uses subject to community service use provisions. The amendments also incorporate alternative expansion authority for nonconforming uses and revise the conditional use and community service use approval criteria to more closely incorporate farm compatibility standards in state statutes.

d. The amendments in PC 2011-1395 needed to conform the Multnomah County zoning code to the RLUIPA provisions make all nonfarm uses in the EFU district that involve assembly of persons subject to the same standards. Standards in the state rule that limit design capacity of these uses within 3 miles of the Urban Growth Boundary are incorporated into a new section of the zone district.

d. These amendments further limit some uses that either exist or are allowable in the EFU district, therefore mailed notice to individual property owners (“Ballot Measure 56” notice) is required. A conforming notice was mailed to all property owners in the EFU district on February 15, 2011. In addition, notice of the Planning Commission hearing was published in the “Oregonian” newspaper and on the Land Use Program web site.

e. The Planning Commission held public hearings on March 7, April 4, and June 6, 2011 where all interested persons were given an opportunity to appear and be heard.

The Planning Commission Resolves:

The proposed Ordinance, amending MCC Chapters 33, 34, 35 and 36 is hereby recommended for adoption by the Board of County Commissioners.

ADOPTED this 6th day of June, 2011.

PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON

_____
John Ingle, Chair

OFFICE OF MULTNOMAH COUNTY ATTORNEY

MEMORANDUM

To: Multnomah County Planning Commission

From: Jed Tomkins, Assistant Multnomah County Attorney

Date: April 29, 2011

Re: Case Files #s PC 2011-1395 & PC 10-006:

Proposed Amendments to the EFU Zone Related to Consistency with the Religious Land Use and Institutionalized Persons Act (RLUIPA) and Implementation of HB 3099 (2009)

INTRODUCTION

County planning staff propose the two matters before the Planning Commission, PC 2011-1395 and PC 10-006 ("PC Matters"), in response to new statutory requirements as well as new rules adopted by LCDC. In relevant part, the PC Matters address changes in state regulation of exclusive farm use zones (EFU) with respect to schools as well as development within three miles of an urban growth boundary (UGB).

The new statutory and rule requirements impact land within three miles of the UGB owned by the Open Door Baptist Church (Church), the use of which includes a nonconforming church and a nonconforming school. The Church has raised concerns over the PC Matters and recommends a different approach than that proposed by county planning staff. Specifically, the Church is concerned that certain provisions in the PC Matters impermissibly limit the Church's right to expand its nonconforming uses under ORS 215.130.

The purpose of this memorandum is to clarify the issues before the Planning Commission and to recommend that the Planning Commission support the PC Matters as proposed by county planning staff.

DISCUSSION

Recommendation of Open Door Baptist Church

The Church is concerned that certain provisions in the PC Matters impermissibly conflict with its right to expand its nonconforming uses under ORS 215.130. The Church begins its analysis with LCDC's recently adopted administrative rule, OAR 660-033-0130 (2)(c), because that rule is interpreted in the PC Matters as establishing limits on the expansion of all enclosed structures within the EFU that are located within three miles of the UGB. The rule provides:

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

(Emphasis added).

To understand the conflict asserted by the Church between the provisions governing nonconforming uses in ORS 215.130 and county planning staff's proposed implementation of the rule, one must first understand the meaning of the end-phrase in the language quoted above, "the requirements of this rule."

In relevant part, the rule establishes three potentially-applicable requirements that limit the expansion of uses in the EFU:

1) schools previously allowed outright in the EFU may be expanded subject to conditional review standards;[1]

2) enclosed structures within three miles of a UGB may not be expanded to a design capacity greater than 100 people, unless the enclosed structures are separated by at least one-half mile;[2] and

3) expansion may only occur on the same tract or, for nonconforming school uses, same tax lot or contiguous tax lot under the same ownership.[3]

The Church asserts that the proposal by county staff to impose the foregoing limitations on nonconforming uses is unlawful because those limitations exceed the requirements of the statute that controls nonconforming uses, ORS 215.130.

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[1] OAR 660-033-0130 (18)(b–c).
[2] OAR 660-033-0130 (2)(a–b)
[3] OAR 660-033-0130 (2)(c) and (18). The analysis of the applicability of this limitation is the same as the analysis of the three-mile limitations. Because the Church focused on the three-mile limitations, there is no further reference to this limitation in this memorandum.

The Church offers an interpretation of the rule that would avoid this conflict. The Church notes that county planning staff interpret the opening term in the rule, "[e]xisting facilities," as encompassing *all* existing uses, meaning permitted uses as well as nonconforming uses. The Church suggests, however, that there would be no conflict if the term is understood as encompassing permitted uses only. In other words, if the term "existing facilities" does not apply to nonconforming uses, then none of the limitations listed above would apply to the Church's nonconforming uses and there would be no conflict with the nonconforming use provisions in ORS 215.130. Thus, the Church concludes that its interpretation of the term "existing facilities" is necessarily required in order to avoid the impermissible conflict of law that arises from the PC Matters as proposed.

Recommendation of County Counsel

For two reasons, county counsel respectfully recommends the approach proposed in the PC Matters.

First, the recommendation of the Church does not appear to be consistent with the intent underlying LCDC's regulation of development within three miles of the UGB. As explained by the Oregon Department of Land Conservation and Development (DLCD), "[t]he genesis of the three-mile limitation was to protect the integrity of UGBs in preventing urban-level use on rural agricultural lands near UGBs."[4] Under the recommendation of the Church, only some development (i.e., permitted development, but not expansion of nonconforming uses) would be subject to the three-mile limitations. Accordingly, the recommendation of the Church appears to contravene LCDC's intent to protect the integrity of the UGB.

Second, as explained below, county counsel does not find a conflict with the nonconforming use provisions in ORS 215.130.

Due to differing regulatory standards, the following discussion addresses the Church's nonconforming school separately from the nonconforming church.

School

Whatever rights the Church might have under the nonconforming use statute, the Oregon Legislative Assembly specifically addressed the expansion of EFU schools in ORS 215.135, which, in relevant part, provides:

> "(1) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant

[4] DLCD Staff Rpt. to LCDC, *Public Hearing and possible Adoption of Proposed Permanent Rules Amending OAR Chapter 660, Division 33, Agricultural Lands, For Purpose of Consistency with the Religious Land Use and Institutionalized Persons Act (RLUIPA)*, 2 (May 24, 2010).

> to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before January 1, 2010, may be expanded subject to:
>
> "* * *
>
> "(b) **Conditional approval** of the county in the manner provided in **ORS 215.296**."

(Emphasis added). This specific act by the legislature is of great import because "a particular intent shall control a general one." ORS 174.020. In other words, to the extent that ORS 215.130 and ORS 215.135 both address the expansion of nonconforming uses, the more specific provisions of ORS 215.135 control.

In addition, the provisions of ORS 215.135 are significant because the references to "conditional approval" and "ORS 215.296" expressly subject the expansion of EFU Schools to conditional review standards. Consistent with this statutory conditional review requirement, the PC Matters subject EFU School expansion requests to the Community Services review standards in the Multnomah County Code.[5] Further, because the three-mile limitations constitute conditional review standards mandated by LCDC, the PC Matters appropriately subject EFU School expansion requests to the three-mile limitations.[6]

Thus, because the legislature has made a specific determination to subject the expansion of EFU Schools to conditional review, the provisions of the PC Matters do not conflict with the provisions governing nonconforming uses in ORS 215.130.

Church

The analysis of nonconforming uses in the EFU that are not schools is a bit different because there is no specific statute expressly subjecting such uses to conditional review or to the three-mile limitations. In fact, there is no authority to subject the expansion of these nonconforming uses to conditional review standards and, consequently, no such action is proposed in the PC Matters.

However, the PC Matters do impose the three-mile limitations on the expansion of nonconforming enclosed structures.[7] The authority for this proposal derives most directly from LCDC's administrative rule quoted at the beginning of this memorandum. Yet, as explained above, the Church questions this authority in two respects. First, the Church questions the county's interpretation of the rule. Second, the Church questions LCDC's authority to limit nonconforming uses in excess of the limitations in the nonconforming use statute, ORS 215.130.

County staff offers the better interpretation of the rule. To reiterate, in relevant part, the administrative rule provides that "existing facilities" in the EFU may be expanded, except that

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[5] Staff Rpt., Part III, H.
[6] Staff Rpt., Part III, H, and Part IV, J.
[7] Staff Rpt., Part II, C.

enclosed structures within three miles of the UGB "may not be expanded beyond the requirements of this rule." Contrary to the Church's assertions, the term "existing facilities" is best understood as encompassing all existing uses, whether permitted or nonconforming, for at least two reasons. First, the term is not expressly or impliedly limited to something less than all existing uses by any other term in the rule. Second, as explained above, interpreting the term as encompassing something less than all existing uses would contravene LCDC's intent to protect the integrity of the UGB. Thus, the rule is best interpreted as subjecting all uses within three miles of the UGB to the three-mile limitations. The PC Matters are consistent with such interpretation.

Turning to the remaining question, county counsel does not represent LCDC and, therefore, can only suggest the possible authority pursuant to which LCDC adopted the three-mile limitation. LCDC appears to have acted under its authority to implement statewide planning goals 3 (Agricultural Lands) and 14 (Urbanization).[8] Perhaps that authority alone is sufficient, despite any conflict with the nonconforming use statute.

Alternatively, perhaps the three-mile limitations complement, rather than conflict with, the nonconforming use statute. Presumably, the Church believes its expansion right lie within the statutory authority to "alter" nonconforming uses. The term "alteration" is defined in the nonconforming use statute to include any change in use or physical structure "of no greater adverse impact to the neighborhood." Given this definition, it may be that LCDC has determined as a matter of law that, given the heightened threat to agricultural land within three miles of the UGB, development on such agricultural land in excess of the three-mile limitations constitutes a "greater adverse impact to the neighborhood." In other words, perhaps the rule simply prescribes the outer bounds of "alteration."

Lastly, perhaps LCDC perceived no conflict with the nonconforming use statute because the rule addresses expansion, while the statute addresses alteration. County counsel acknowledges, however, that although the rules of statutory interpretation might support this distinction, the case law seems less certain.

Ultimately, county counsel recognizes the county's statutory obligation to amend its land use regulations to comply with new rules adopted by LCDC. ORS 197.646 (1). While county counsel would not recommend blindly adhering to patently unreasonable mandates, county counsel is not aware of a sufficient basis from which to conclude that LCDC has acted beyond its authority in this instance.

CONCLUSION

The PC Matters accurately implement new statutory and rule requirements that are permissible at law.

[8] DLCD Staff Rpt., *supra* n. 4, 2–3.

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Charles BEASLEY <charles.beasley@multco.us>

Request for Assistance re RLUIPA OAR

Daniels, Katherine <katherine.daniels@state.or.us> **Mon, Apr 25, 2011 at 4:47 PM**
To: Charles BEASLEY <charles.beasley@multco.us>
Cc: "jennifer.donnelly@state.or.us" <jennifer.donnelly@state.or.us>, "michael.morrissey@state.or.us" <michael.morrissey@state.or.us>

Hi Chuck,

This letter is to confirm that Multnomah County's proposed zoning amendments intended to provide consistency with HB 3099 and LCDC's adopted rule amendments on RLUIPA at OAR 660-033-0130(2)(a-c), are consistent with statute and rule requirements. The County's zoning properly identifies the types of assembly venues allowed in the EFU zone that are subject to the new RLUIPA requirements. The new language properly limits expansions of existing, nonconforming places of assembly when they are within three miles of a UGB. The more restrictive and specific expansion standards of OAR 660-033-0130(2)(c) now take precedence over the more general historic nonconforming use "alteration" provisions of ORS 215.130(5) and (9).

I hope this helps. Let me know if you need anything more.

Katherine

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From: Charles BEASLEY [mailto:charles.beasley@multco.us]
Sent: Friday, April 22, 2011 1:27 PM
To: Katherine Daniels

Subject: Request for Assistance re RLUIPA OAR

Katherine,

[Quoted text hidden]