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DIVISION 1

PROCEDURAL RULES

660-001-0000
Notice of Proposed Rule

(1) Except as provided in OAR 660-001-0000(2) and ORS 183.335(7), prior to the adoption, amendment, or repeal of any permanent rule, the Department of Land Conservation and Development shall give notice of the proposed adoption, amendment, or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the rule;

(b) By mailing a copy of the notice and proposed rule(s) to persons on the Department of Land Conservation and Development's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule, including electronic notices if allowed by law;

(c) By mailing a copy of the notice, including electronic mailing and also publication on the department website, of notices to the persons, groups of persons, organizations, and associations who the department considers to be interested in such adoption;

(d) By mailing or furnishing a copy of the notice to the Associated Press and Capitol Press Room;

(e) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(f) The department, at its discretion, may purchase a display ad in a newspaper of statewide circulation to publicize the rulemaking; and

(g) In instances where the rulemaking adopts, amends or repeals a statewide planning goal, the department shall provide additional notice as required by statute.

(2) The Commission may adopt, amend or suspend any rule by temporary rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable pursuant to ORS 183.335(5). At the time the Commission adopts, amends or suspends any rule under this section, it shall:

(a) Prepare and adopt the statements and rule documents required by ORS 183.335(5)(a) to (e) which includes the Commission's statement of its findings "that its failure to act promptly will result in serious prejudice to the public interest or the parties concerned and the specific reasons for its findings of prejudice;" and

(b) Include in the notice of adoption of any temporary rule a statement explaining the opportunity for judicial review of the validity of the rule as provided in ORS 183.400.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 183
Hist.: LCD 7-1976, f. & ef. 6-4-76; LCDC 1-1995, f. & cert. ef. 1-4-95; LCCD 2-2004, f. & cert. ef. 5-7-04; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0005
Model Rules of Procedure

(1) Pursuant to the provisions of ORS 183.341, the Land Conservation and Development Commission adopts the Attorney General's Model Rules and Uniform Rules of Procedure under the Administrative Procedure Act, effective January 1, 2008, except for that portion of OAR 137-003-0092(2) regarding the number of calendar days allowed to act on a stay request. The number of calendar days allowed to act on a stay request shall be 75 days rather than 30 days.

(2) Pursuant to the provisions of ORS 183.457 and OAR 137-003-0008, the Land Conservation and Development Commission authorizes parties and limited parties to contested case proceedings to be represented by an authorized representative, subject to the other requirements of ORS 183.457 and OAR 137-003-0008.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Land Conservation and Development Department.]
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 183.341 & 183.457
Hist.: LCD 3, f. 1-9-75, ef. 2-11-75; Renumbered from 660-010-0005; LCD 5-1978, f. & ef. 3-24-78; LCD 11-1981, f. & ef. 12-15-81; LCDC 8-1983, f. & ef. 11-23-83; LCDC 2-1986, f. & ef. 4-25-86; LCDC 4-1988, f. & cert. ef. 9-29-88; LCDC 4-1990, f. & cert. ef. 8-14-90; LCDC 4-1992, f. & cert. ef. 7-30-92; LCDC 1-1995, f. & cert. ef. 1-4-95; LCDC 1-1996, f. & cert. ef. 4-3-96; LCDD 1-1999, f. & cert. ef. 1-6-99; LCDD 2-2002, f. & cert. ef. 9-23-02; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0007
Request for Stay — Agency Determination

Except as provided in OAR 660-001-0005(1) with regard to the number of calendar days allowed to act on a stay request, agency determinations concerning a request for a stay will be processed under OAR 137-003-0090 to 137-003-0092.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 183, 195, 196, 197 & OAR Ch. 137
Hist.: LCDC 2-1985, f. & ef. 3-13-85; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0201
Definitions

The following definition, and the definitions in ORS 197.015 and 197.090(2)(e), apply to rules 660-001-0210 through 660-001-0220: "Affected local government" means the local government, as defined in ORS 197.015, that made or adopted the land use decision, expedited land division or limited land use decision at issue in the director's request under these rules.

Stat. Auth.: ORS 197.040(1)(c)
Stats. Implemented: ORS 197.090
Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0210
Timing of Director's Request

(1) If a meeting of the commission is scheduled to occur six or fewer days before the close of the applicable appeal period, or the period for intervention in an appeal, the director shall seek commission approval before appealing, or intervening in, a land use decision, expedited land division or limited land use decision to the

Land Use Board of Appeals. If the next scheduled meeting of the commission does not occur or a quorum of the commission is unavailable at the scheduled meeting, the department shall proceed as provided in section (2) of this rule.

(2) If there is no commission meeting scheduled to occur six or fewer days before the close of the applicable appeal period, or the period for intervention in an appeal, the director may file, or intervene in, the appeal and report the action to the commission and request permission to pursue the appeal, or intervention, at the commission's next scheduled meeting.

Stat. Auth.: ORS 197.040(1)(c)
Stats. Implemented: ORS 197.090
Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0220
Notice

(1) When the director seeks commission approval to file or pursue an appeal, or an intervention in an appeal, of a land use decision, expedited land division or limited land use decision, the department shall provide written notice to the applicant and the affected local government. The notice shall:

(a) Identify the land use decision, expedited land division or limited land use decision at issue;

(b) Give the date and location of the commission meeting at which the director will seek commission approval to file or pursue an appeal, or an intervention in an appeal, of the identified action;

(c) Inform the applicant and affected local government that each may provide written and oral testimony to the commission concerning whether to approve the director's request; and

(d) Include a list of the factors in OAR 660-001-0230(3), on which all testimony and the commission's decision must be based.

(2) The notice shall be mailed or sent by some other means such as fax or e-mail as soon as practicable after the department receives notice of the land use decision, expedited land division or limited land use decision at issue.

Stat. Auth.: ORS 197.040(1)(c)
Stats. Implemented: ORS 197.090
Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0230
Commission Hearing

(1) Only the director, or department staff on the director's behalf, the applicant and the affected local government may submit written or oral testimony concerning whether the commission should approve the director's request to file or pursue an appeal, or an intervention in an appeal, of a land use decision, expedited land division or limited land use decision.

(2) Unless the director allows a closer deadline, written testimony must be submitted at least five days before the commission meeting to be provided to commission members in advance of the meeting. Written testimony shall be no more than five pages, including any attachments, and must be received in the Department's Salem office to be "submitted" by the deadline. If the time to submit written testimony under these rules falls on a Saturday, Sunday, or state legal holiday, the time to perform the obligation shall be shortened to the next day preceding that is not a Saturday, Sunday, or state legal holiday.

(3) Written and oral testimony and the commission's decision to approve or deny the director's request shall be based on one, or more, of the following factors:

(a) Whether the case will require interpretation of a statewide planning statute, goal, or rule;

(b) Whether a ruling in the case will serve to clarify state planning law;

(c) Whether the case has important enforcement value;

(d) Whether the case concerns a significant natural, cultural, or economic resource;

(e) Whether the case advances the objectives of the agency's Strategic Plan; or

(f) Whether there is a better way to accomplish the objective of the appeal, such as dispute resolution, enforcement proceedings, or technical assistance.

(4) The Chair shall limit the amount of time each speaker may testify, and shall exclude written or oral testimony not relevant to the factors in OAR 660-001-0230(3).

(5) Unless the Chair establishes a different order, oral testimony will be presented in the following sequence:

(a) Director, and/or department staff;

(b) Applicant;

(c) Affected local government; and

(d) Director, and/or department staff.

(6) No rebuttal or response is permitted, although the commissioners may question the director, department staff, the applicant, and the affected local government regarding the factors during the commission's deliberations.

Stat. Auth.: ORS 197.040(1)(c)
Stats. Implemented: ORS 197.090
Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00; LCDD 12-2010, f. & cert. ef. 12-8-10

660-001-0400
Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or, a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters; or

(c) Mediation in which the only parties are public bodies; or

(d) Mediation involving two or more public bodies and a private party if the laws, rule, or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose, or be compelled to disclose, mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial, or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l), or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial, or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator, or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person;

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law, or court rule, is not confidential and may be disclosed to the extent necessary to make such a report;

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged, or otherwise prohibited from disclosure under state or federal law;

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation;

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;

(i) In any proceeding to enforce, modify, or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial, or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director of the Department of Land Conservation and Development determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law;

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential;

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential medi-

ation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: LCDD 1-1999, f. & cert. ef. 1-6-99

660-001-0410

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials, or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose, or be compelled to disclose, mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial, or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial, or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents, and other materials otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person;

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged, or otherwise prohibited from disclosure under state or federal law;

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;

(g) In any proceeding to enforce, modify, or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of $1,000 or less for employee training, employee counseling, or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4)

Hist.: LCDD 1-1999, f. & cert. ef. 1-6-99

DIVISION 2

DELEGATION OF AUTHORITY TO DIRECTOR

660-002-0005

Purpose

This rule delegates to the Director of the Department of Land Conservation and Development (Director) certain duties and responsibilities in addition to those conferred upon the Director by ORS Chapter 197 and other administrative rules adopted by the Land Conservation and Development Commission (Commission). This rule further provides for review by the Commission of any action taken by the Director pursuant to this delegation of authority, except that all actions of the Director under OAR 660-002-0010(8) are final and will not be reviewed by the Commission unless legislation is enacted that appropriates funds for the payment of claims under Chapter 1, Oregon Laws 2005.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.040, 197.045 & 197.090

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05

660-002-0010
Authority to Director

In addition to the other duties and responsibilities conferred on the Director by ORS Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

(1) Assent to a modification of a planning extension or a compliance schedule of a city or county in accordance with ORS 197.251(2);

(2) Condition a compliance schedule in accordance with ORS 197.252;

(3) Approve a planning assistance grant agreement with a city or county, including modifications thereto; and

(4) Request that the Commission schedule a hearing to consider an enforcement order if the Director has good cause to believe that any of the conditions exist as set forth in ORS 197.320(1) through (10);

(5) Execute any written order, on behalf of the Commission, which has been consented to in writing by the parties adversely affected thereby;

(6) Prepare and execute written orders, on behalf of the Commission, implementing any action taken by the Commission on any matter;

(7) Establish procedures by which the Director shall periodically review and report to the Commission the status of comprehensive plans within each city and county;

(8) Carry out the responsibilities and exercise the authorities of the Commission and DLCD in responding to claims under ORS 197.352 (2004 Ballot Measure 37) and Chapter 424, Oregon Laws 2007 (2007 Ballot Measure 49), including:

(a) Review of claims made under ORS 197.352 and Chapter 424, Oregon Laws 2007;

(b) Denial of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007; and

(c) Approval of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007, except that the Director may approve a claim only by not applying the land use regulations that are the basis of the claim unless legislation is enacted that appropriates funds for the payment of claims under ORS 197.352 or Chapter 424, Oregon Laws 2007.

Stat. Auth.: ORS 183, 195, 197 & 2007 OL Ch. 424

Stats. Implemented: ORS 195.300 - 195.336, 197.040, 197.045, 197.090, 197.353 & 2007 OL Ch. 424

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCD 3-1979, f. & ef. 3-27-79; LCDC 7-1980(Temp), f. & ef. 12-17-80; LCD 1-1981, f. & ef. 2-23-81; LCD 4-1981, f. & ef. 4-3-81; LCDC 2-1983(Temp), f. & ef. 2-9-83; LCDC 3-1983, f. & ef. 5-5-83; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-002-0015
Notice of Director's Actions

(1) The Director shall establish procedures which shall be reasonably calculated to provide notice to interested member of the public and other units of government of the Director's actions taken pursuant to OAR 660-002-0010.

(2) The Director shall provide the Commission with a monthly report summarizing actions taken by the Director during the preceding month pursuant to this rule and any written public comments received by the Department which pertain to those actions.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.040, 197.045 & 197.090

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-002-0020
Commission Review of Director's Action Under Rule 660-002-0005

(1) Any action of the Director pursuant to the authority vested in the Director pursuant to OAR 660-002-0010 shall be reviewed

by the Commission upon petition filed by any "party" as defined in ORS 183.310(6) or upon its own motion, except that all actions of the Director under OAR 660-002-0010(8) are final and will not be reviewed by the Commission unless legislation is enacted that appropriates funds for the payment of claims under Chapter 1, Oregon Laws 2005.

(2) Any petition filed pursuant to this section shall:

(a) Contain the name, address, and telephone number of the petitioner and, if the petitioner is other than the governmental body directly affected by the action, a brief statement of the petitioner's interest in the outcome of the action sought to be reviewed or of the public interest represented by the petitioner;

(b) Specify the action of the Director to be reviewed, when that action was taken, the Commission action sought by the petitioner, and the reason why the Commission should so act in the matter;

(c) Be filed with the Director or the Director's designee within fifteen days of the date of the taking of the action sought to be reviewed.

(3) The Commission shall, by order within 60 days of the filing of the request, or within a period of time not to exceed 120 days if good cause therefore is shown, either affirm, reverse, or modify the action of the Director. The Director shall provide reasonable notice to all parties of the date, time, and place that the Commission will take action on the petition, and the manner in which such parties may express their views.

(4) Any petition under this rule which is a contested case as defined in ORS 183.310 shall be governed by the Attorney General's Model Rule of Procedure, OAR 660-001-0005.

Stat. Auth.: ORS 183, 196 & 197
Stats. Implemented: ORS 197.040, 197.045 & 197.090
Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 1-1985(Temp), f. & ef. 3-13-85; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05

DIVISION 3

PROCEDURE FOR REVIEW AND APPROVAL OF COMPLIANCE ACKNOWLEDGMENT REQUEST

660-003-0005
Definitions

For purposes of this rule, the definitions contained in ORS 197.015 apply. In addition, the following definitions apply:

(1) "Acknowledgment of Compliance" is an order of the commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan and land use regulation, land use regulations or plan or regulation amendment complies with the goals.

(2) "Affected Agencies and Districts" are state and federal agencies, special districts and other local governments having programs affecting land use.

(3) "Comments" are opinions, beliefs, or other information which a person, local coordinating body or local government wants the commission to consider in reviewing an acknowledgment request.

(4) "Objections" are statements or positions by persons (including the local coordinating body, affected agencies or districts) opposing the granting of an Acknowledgment of Compliance.

(5) "Compliance Schedule" is a listing of the tasks which a local government must complete in order to bring its comprehensive plan, land use regulations and land use decisions into initial compliance with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or land use regulations which comply with the goals are estimated to be adopted.

(6) "Urban Planning Area" is a geographical area within an urban growth boundary.

(7) "Continuance" is an order of the commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan, land use regulations or both do not comply with one or more goals and certifies that section(s) of the plan or regulation or both comply with one or more of the goals. The order specifies amendments or other action that the local government must complete within a specified time period for acknowledgment to occur. The order is final for purposes of judicial review of the comprehensive plan, land use regulation or both as to the goals with which the plan, regulation or both the plan and regulation are in compliance.

(8) "Denial" is an order of the commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan, land use regulations or both do not comply with one or more goals. The order specifies amendments or other actions that the local government must complete for acknowledgment to occur. The order is used when the amendments or other changes required in the comprehensive plan, land use regulation or both affect many goals and are likely to take a substantial period of time to complete.

(9) "Record of Proceedings Before the Local Government", as used in ORS 197.251, means the materials submitted to the director as part of an acknowledgment request in accordance with OAR 660-003-0010(2)(a), (b) and (c), supporting evidence and documents and any official minutes or tapes of meetings leading to the adoption of a comprehensive plan, land use regulations or amendments thereto. Supporting evidence and documents listed, but not submitted with the acknowledgment request as provided in OAR 660-003-0010(2)(b) shall be considered part of the record of proceedings before the local government and part of the record of proceedings before the local government and part of the record before the commission. Notwithstanding the requirements of 660-003-0010(2)(b) the director may require that such evidence or documents, or a copy, be provided to the department for convenience or if required for judicial review. This definition applies to all acknowledgment requests, corrections submitted pursuant to a commission's continuance order and new acknowledgement requests subsequent to a commission's denial order submitted to the director after the effective date of this rule.

(10) "Filing" or "Submitted" for purposes of these rules shall mean that the required documents have been received by the department at its Salem, Oregon office.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.015 & 197.251
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0010
Acknowledgment Procedures

(1) When a local government has adopted a comprehensive plan and land use regulations, as provided by ORS 197.175 and 197.250, prepared corrections pursuant to a commission's continuance order, or prepares a new acknowledgment request subsequent to a commission's denial order, it may request the commission to grant an acknowledgment of compliance. An acknowledgment request shall be sent to the director of the department.

(2) The acknowledgment request shall include:

(a) A list by ordinance number and adoption date and six copies of the plans and implementing ordinances or land use regulations, inventories and other factual information to be reviewed, provided that two additional copies shall be required by the director for counties and coastal jurisdictions;

(b) Six copies of a list of all supporting documents, including minutes and tapes which comprise the "record of proceedings" provided that two (2) additional copies shall be required by the director for counties and coastal jurisdictions. The list of all supporting evidence and documents shall identify any items not included with each plan copy, briefly describe the contents of the items not included and identify where those items may be examined by the commission, department, affected agencies and districts and interested persons. The local government shall make such supporting evidence and documents available at the hearing before the commission held pursuant to OAR 660-003-0025;

(c) Six copies of a written statement setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be completed and by which the urban

growth boundary may be modified (unless the same information is incorporated in other documents submitted in the acknowledgment request), provided that two additional copies shall be required by the director for counties and coastal jurisdictions;

(d) The name and address of the person representing the local government to receive notice of commission consideration of the acknowledgment request and to receive a copy of the director's report required under OAR 660-003-0025;

(e) A list of all affected agencies and districts, including addresses, identified in the local government's agency involvement program; and

(f) A list of the names and addresses of the chairperson of the Committee for Citizen Involvement and other citizen advisory committees, if any.

(3) The local government requesting acknowledgment shall send a single copy of the materials described in section (2) of this rule to the appropriate local coordination body as defined in ORS 195.025.

(4) Upon receipt of a compliance acknowledgment request, the department shall review the request to determine whether the request for acknowledgment contains each of the documents and information required by section (2) of this rule. The department may decline to accept an acknowledgment request submitted for only a portion of the area of a local government.

(5) If the request is complete, the department shall commence its review of the request as required by OAR 660-003-0025 and shall provide the public notice required by 660-003-0015.

(6) If the request is not complete, the department, within 14 days of receipt of the acknowledgment request, shall in writing, notify the local government what specific requirements of section (2) of this rule have not been met. If, after 30 days from receipt of an acknowledgment request a city or county has not provided the department with the required documents or information, the department shall advise the local government that the request is not complete and shall in writing inform the local government and local coordinating body of such determination.

(7) For purposes of the 90 day period as used in ORS 197.251(1), "request" means an acknowledgment request determined by the department to include all the necessary materials required by subsections (2)(a) through (f) of this rule, and thus be complete.

(8) Notwithstanding any of the provisions of section (1) of this rule, when the director determines that a modification of any of the above rules is consistent with the applicable laws and in the best interests of the public, he may make exceptions to the application of section (2) of this rule. However, in waiving or modifying the above rules, the director must assure a reasonable opportunity to review documents and prepare and submit comments and objections.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 6-1979(Temp), f. & ef. 9-6-79; LCD 1-1980, f. & ef. 1-14-80; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0015
Notice

The department shall, in writing, provide notice of the procedures and time limits for making comments or objections and of the locations where the acknowledgment request documents can be inspected by the general public and specifically to the following (except as provided in OAR 660-003-0032 through 660-003-0050):

(1) Affected agencies and districts identified by the local government or the department;

(2) The Local Officials Advisory Committee (LOAC) and the State Citizen Involvement Advisory Committee (CIAC);

(3) The county or regional planning agency acting as the local coordination body pursuant to ORS 195.025;

(4) The chairpersons of the local Committee(s) for Citizen Involvement and other citizen advisory committees identified in the acknowledgment request pursuant to OAR 660-003-0010(2)(f);

(5) Any other person(s) who have in writing to the department requested notice.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0020
Comments and Objections

(1) After notice of receipt of the acknowledgment request has been mailed there shall be a 45 day period to submit written comments or objections together with any additional evidence to the department. However, after notice of receipt of the acknowledgment request resubmitted subsequent to a continuance order has been mailed there shall be a time period determined by the director of at least 20 days to submit written comments or objections together with any additional evidence to the department.

(2) Any person(s) commenting or objecting to an acknowledgment request are urged to send written copy of their comments or objection(s) to the local government which has requested acknowledgment. When an objection is based upon site-specific goal requirements as applied to particular properties, the person objecting is urged to send a written copy of the objection to those persons owning the property which is the subject of the objection. State agency and special district comments or objections shall be subject to the requirements of ORS 197.254.

(3) The commission shall consider only those comments and objections to an acknowledgment request that allege that the local government's plan, ordinances or land use regulations do or do not comply with one or more of the goals.

(4) Any comments and objections or additional evidence which is not received by the department within the time required by section (1) of this rule shall not be considered by the commission unless the commission determines that such evidence could not have been presented as required by section (1) of this rule.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251 & 197.254
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0025
Acknowledgment Review

(1) When an acknowledgment request, corrections submitted pursuant to a commission's continuance order or a new acknowledgement request subsequent to a commission's denial order has been received by the director, the department shall conduct an evaluation of the submitted plan, ordinances or land use regulations in order to advise the commission whether or not they comply with the Statewide Planning Goals. The department may investigate and resolve issues raised in the comments and objections or upon the department's own review of the comprehensive plan and land use regulations. The department may collect or develop evidence which rebuts any supporting documents, comments, objections or evidence submitted pursuant to OAR 660-003-0010(2) or 660-003-0020(1). The results of this evaluation including response to all objections timely submitted shall be set forth in a written report. However, the failure to respond to an objection which was timely filed shall not be grounds for invalidation of a commission order issued under this rule. Copies of the department's report shall be sent to the local government requesting acknowledgment, the local coordination body, any person who has in writing commented or objected to the acknowledgment request, within the time period required by 660-003-0020(1), and any other person requesting a copy in writing. The department shall send out copies of the report on an acknowledgment request at least 21 days before commission review of the acknowledgment request. However, the department shall send out copies of the report on corrections submitted pursuant to a commission's continuance order at least 14 days before commission review of such request.

(2) The local government, persons who have submitted written comments or objections under OAR 660-003-0020(1) or

persons who own property which is the subject of site specific objections received under 660-003-0020(1) shall have ten calendar days from the date of mailing of the department's report to file written exceptions to that report. Except as provided in section (3) of this rule, written exceptions shall not include additional evidence. Persons or local governments submitting exceptions are urged to file a copy with the affected local government and persons who submitted comments or objections. The department shall promptly submit exceptions to the commission.

(3) Written exceptions to the department's report filed pursuant to section (2) of this rule may include evidence to rebut any additional evidence submitted pursuant to OAR 660-003-0020(1) or developed by the department pursuant to section (1) of this rule. Written exceptions which include rebuttal evidence pursuant to this section, shall clearly identify the additional evidence being rebutted and shall be limited to rebuttal evidence. Final rebuttal evidence allowed under this section shall not create a right to submit additional evidence to the commission under section (5) of this rule.

(4) The department may submit a written or oral opinion to the commission regarding any evidence, comments, objections, or exceptions submitted to the commission concerning an acknowledgment request. Persons submitting comments, objections, or exceptions within the time periods set forth in OAR 660-003-0020(1) or section (2) of this rule shall be permitted to submit evidence to rebut any new evidence submitted for the first time pursuant to section (3) of this rule.

(5) The commission may allow any person who filed written comments or objections within the time period set forth in OAR 660-003-0020(1) to appear before the commission to present oral argument on their written comments, objections or exceptions. The commission shall not allow any additional evidence and testimony that could have been presented to the local government or to the director in accordance with 660-003-0020(1) or section (3) of this rule, but was not. Any new evidence submitted during, or as part of, oral argument shall not be considered by the commission unless the commission determines that such evidence could not have been presented to the local government or to the director in accordance with 660-003-0020(1) or section (3) of this rule.

(6) The commission may allow any interested person who has not filed written comments or objections pursuant to OAR 660-003-0020 to comment on evidence, testimony or the director's report that has already been presented to the commission. Such comments shall not be part of the record before the commission and shall not be considered comments or objections submitted pursuant to ORS 197.251(2).

(7) At the time of consideration of the acknowledgment request, the commission shall either grant, continue, postpone for extenuating circumstances or deny the acknowledgment request, or any combination of these actions including partial acknowledgment, pursuant to ORS 197.251(1).

(8) Commission orders for acknowledgment, continuance or denial shall be provided to the local government requesting acknowledgment, and persons who filed comments or objections.

(9) When the commission resumes its consideration of the acknowledgment request, submitted subsequent to a continuance order, it shall limit its review to a determination of whether the corrections submitted bring the acknowledgment submission into compliance with the Statewide Planning Goals found not to be complied with in the previous review, unless compliance with other goals is affected by the corrections.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251, 197.254, 197.340, 197.747 & 197.757
Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0032
Expedited Review Upon Reconsideration or Consideration of a Subsequent Request for Acknowledgment

(1) When the commission reconsiders an acknowledgment request pursuant to a continuance order, the commission may expedite the acknowledgment procedure by waiving, reducing or otherwise modifying the requirements of OAR 660-003-0010, 660-003-0015, and 660-003-0020; provided, however, that notice will be provided to the local government, the coordination body, those persons who have submitted comments or objections on this portion of the acknowledgment request in accordance with the requirement of 660-003-0020(1) and (2), those persons who request notice in writing, and a general newspaper notice. Upon resubmittal such notice shall state that there is at least a 20 day period to be determined by the director for submission of written comments or objections from the mailing of the notice of the receipt of the acknowledgment request. However, in the judgment of the director, where continuances involve relatively complex issues, the notice shall provide the maximum notice possible, up to 45 days.

(2) When the commission reconsiders an acknowledgment request subsequent to a continuance order; the commission shall expedite the acknowledgment procedure by relying on the previous record and limiting additional comments and objections, affected agency comments, and the department's review to only those aspects of a city's or county's comprehensive plan or implementing ordinances previously identified by the commission as not being in compliance.

(3) Upon receipt of corrections made pursuant to a continuance order submitted by a local government the department shall notify all persons who are entitled to notice of the local government's acknowledgment request under section (1) of this rule, of the time and place where the corrections may be inspected and the time within which objections or comments to the corrections must be submitted.

(4) Written comments or objections to the corrections made pursuant to a continuance order by the commission shall be submitted to the department in accordance with OAR 660-003-0020.

(5) The commission's review of corrections made pursuant to a continuance order or the commission's review of a new acknowledgment request made subsequent to a denial by the commission will be conducted in accordance with the requirements of OAR 660-003-0025.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCD 9-1981(Temp), f. & ef.10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0033
Expedited Notice Procedure for Acknowledgment

(1) When during an acknowledgment review, a city or county changes its plan or land use regulations after the comment period provided for in either OAR 660-003-0020(1) or 660-003-0032(1), the director may determine that additional notice to the public or persons who have submitted comments or objections is not necessary prior to consideration of the jurisdiction's acknowledgment request by the commission. In making this determination, the director shall carefully consider the complexity of the goal compliance issues involved, the nature and number of comments and objections previously received, the opportunities provided by the jurisdiction for public review and comment on recent amendments and the length of time between the adoption of the recent amendments and the date of commission action on the jurisdiction's acknowledgment request. The department shall work closely with persons who have previously submitted comments and objections and the jurisdiction to resolve any conflicts concerning the additional amendments prior to commission action on the acknowledgment request.

(2) The director may forego additional notice to the public and persons who have submitted comments or objections only if the jurisdiction provides general notice to the public and notifies persons who submitted comments or objections in writing of an opportunity to participate in the local hearing(s) regarding the adoption of the additional amendments. The jurisdiction shall send a copy of the written notice to all persons who submitted comments or objections and to the department in Salem.

(3) When the commission considers the jurisdiction's request for acknowledgment, the commission shall allow testimony from

the public or persons who have submitted comments or objections which allege inadequate opportunity for review of the jurisdiction's amendment adopted after the comment deadline. If the commission determines that further notice and opportunity for comment is needed, or if additional opportunity to file exceptions to the director's report under ORS 197.251(3) is required, it shall instruct the director to provide such notice and opportunity for comment before the commission acts on the jurisdiction's acknowledgment request.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCDC 6-1983, f. & ef. 7-20-83; LCDD 12-2010, f. & cert. ef. 12-8-10

660-003-0050
Review Upon Remand or Reversal from Oregon Court of Appeals or Oregon Supreme Court

(1) The commission shall reconsider an acknowledgment request as a result of a remand or reversal from the Oregon Court of Appeals or Oregon Supreme Court within 90 days of the date the decision becomes final. The director shall review the Court's decision and make written recommendations to the commission regarding any additional planning work that is required for acknowledgment of compliance with the goals as a result of the Court's decision.

(2) The director's recommendations shall be sent out at least 14 days before the commission's reconsideration of the acknowledgment request subject to the Court's remand or reversal. The director's recommendations shall be sent to the applicable local government, local coordination body, parties on appeal and those persons who, according to the department's records, were mailed a copy of the commission's acknowledgment or continuance order subject to the Court's remand or reversal.

(3) The persons mailed a copy of the director's recommendations under section (2) of this rule shall have ten calendar days from the date of mailing of the director's recommendations to file with the director written exceptions to those recommendations.

(4) The director may submit a written or oral opinion to the commission regarding exceptions submitted to the commission concerning the remand or reversal.

(5) The commission may allow any person who received a copy of the director's recommendation under section (1) of this rule or who filed written exceptions within the time period set forth in section (3) of this rule to appear before the commission to present oral comments on the director's recommendation or their written exceptions. The commission shall not allow additional evidence to be presented which was not part of the record of the commission's initial acknowledgment review subject to the Court's remand or reversal.

(6) The commission may allow any interested person who was not mailed a copy of the director's recommendation or did not file a written exception pursuant to sections (1) and (3) of this rule to comment on the director's recommendation or submitted written exceptions.

(7) Following review of the director's recommendation and any exceptions, the commission shall enter a continuance order for those parts of the comprehensive plan or land use regulations for which the court determined that goal compliance had not been demonstrated. The commission may also enter a limited acknowledgment order for parts of the comprehensive plan and land use regulations not affected by the continuance order.

(8) The commission's review of corrections made pursuant to an order issued pursuant to section (7) of this rule will be conducted in accordance with the requirements of OAR 660-003-0025 or 660-003-0033.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251
Hist.: LCDC 6-1985, f. & ef. 11-15-85; LCDD 12-2010, f. & cert. ef. 12-8-10

DIVISION 4

INTERPRETATION OF GOAL 2 EXCEPTION PROCESS

660-004-0000
Purpose

(1) The purpose of this division is to interpret the requirements of Goal 2 and ORS 197.732 regarding exceptions. This division explains the three types of exceptions set forth in Goal 2 "Land Use Planning, Part II, Exceptions." Rules in other divisions of OAR 660 provide substantive standards for some specific types of goal exceptions. Where this is the case, the specific substantive standards in the other divisions control over the more general standards of this division. However, the definitions, notice, and planning and zoning requirements of this division apply to all types of exceptions. The types of exceptions that are subject to specific standards in other divisions are:

(a) Standards for a demonstration of reasons for sanitary sewer service to rural lands are provided in OAR 660-011-0060(9);

(b) Standards for a demonstration of reasons for urban transportation improvements on rural land are provided in OAR 660-012-0070;

(c) Standards to determine irrevocably committed exceptions pertaining to urban development on rural land are provided in OAR 660-014-0030, and standards for demonstration of reasons for urban development on rural land are provided in OAR 660-014-0040.

(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons that explains why the proposed use not allowed by the applicable goal, or a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use, should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:

(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and

(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide goal.

(4) When taking an exception, a local government may rely on information and documentation prepared by other groups or agencies for the purpose of the exception or for other purposes, as substantial evidence to support its findings of fact. Such information must be either included or properly incorporated by reference into the record of the local exceptions proceeding. Information included by reference must be made available to interested persons for their review prior to the last evidentiary hearing on the exception.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040, 197.712,197.717, 197.732, & 197.736
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0005
Definitions

For the purpose of this division, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply. In addition, the following definitions shall apply:

(1) An "Exception" is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with ORS 197.732(2), the provisions of this division and, if applicable, the provisions of OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040.

(2) "Resource Land" is land subject to one or more of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).

(3) "Nonresource Land" is land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land.

Stat. Auth.: ORS 197.040
Stats. Implemented ORS 197.015, 197.732, & 197.736
Hist.: LCDC 5-1982, f. & ef 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0010
Application of the Goal 2 Exception Process to Certain Goals

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

(b) Goal 4 "Forest Lands"; however, an exception to Goal 4 "Forest Lands" is not required for any of the forest or nonforest uses allowed in a forest or mixed farm/forest zone under OAR chapter 660, division 6, "Forest Lands";

(c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9);

(d) Goal 14 "Urbanization" as provided for in the applicable paragraph (l)(c)(A), (B), (C) or (D) of this rule:

(A) An exception is not required for the establishment of an urban growth boundary around or including portions of an incorporated city;

(B) When a local government changes an established urban growth boundary applying Goal 14 as it existed prior to the amendments adopted April 28, 2005, it shall follow the procedures and requirements set forth in Goal 2 "Land Use Planning," Part II, Exceptions. An established urban growth boundary is one that has been acknowledged under ORS 197.251, 197.625 or 197.626. Findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

(ii) Areas that do not require a new exception cannot reasonably accommodate the use;

(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(C) When a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals;

(D) For an exception to Goal 14 to allow urban development on rural lands, a local government must follow the applicable requirements of OAR 660-014-0030 or 660-014-0040, in conjunction with applicable requirements of this division;

(e) Goal 16 "Estuarine Resources";

(f) Goal 17 "Coastal Shorelands"; and

(g) Goal 18 "Beaches and Dunes."

(2) The exceptions process is generally not applicable to those statewide goals that provide general planning guidance or that include their own procedures for resolving conflicts between competing uses. However, exceptions to these goals, although not required, are possible and exceptions taken to these goals will be reviewed when submitted by a local jurisdiction. These statewide goals are:

(a) Goal 5 "Natural Resources, Scenic and Historic Areas, and Open Spaces";

(b) Goal 6 "Air, Water, and Land Resources Quality";

(c) Goal 7 "Areas Subject to Natural Hazards";

(d) Goal 8 "Recreational Needs":

(e) Goal 9 "Economic Development";

(f) Goal 10 "Housing" except as provided for in OAR 660-008-0035, "Substantive Standards for Taking a Goal 2, Part II, Exception Pursuant to ORS 197.303(3)";

(g) Goal 12 "Transportation" except as provided for by OAR 660-012-0070, "Exceptions for Transportation Improvements on Rural Land";

(h) Goal 13 "Energy Conservation";

(i) Goal 15 "Willamette River Greenway" except as provided for in OAR 660-004-0022(6); and

(j) Goal 19 "Ocean Resources."

(3) An exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 2-1987, f. & ef. 11-10-87; LCDC 3-1988(Temp), f. & cert. ef. 8-5-88; LCDC 6-1988, f. & cert. ef. 9-29-88; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2005, f. & cert. ef. 6-28-05; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0015
Inclusion as Part of the Plan

(1) A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met. The reasons and facts shall be supported by substantial evidence that the standard has been met.

(2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons that demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

Stat. Auth.: ORS 197.040
Stats. Implemented ORS 197.732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0018
Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

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

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

(b) That meet the following requirements:

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

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

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

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

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

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.

(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.

(c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197. 732 - 197.734
Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1986, f. & ef. 3-20-86; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 8-2005, f. & cert. ef. 12-13-05; LCDD 7-2006, f. 10-13-06, cert. ef. 10-23-06; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11; LCDD 1-2016, f. & cert. ef. 2-10-16

660-004-0020
Goal 2, Part II(c), Exception Requirements

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.

(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

(C) The "alternative areas" standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

(c) "The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site." The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A

detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.

(4) For the expansion of an unincorporated community described under OAR 660-022-0010, including an urban unincorporated community pursuant to OAR 660-022-0040(2), the reasons exception requirements necessary to address standards 2 through 4 of Goal 2, Part II(c), as described in of subsections (2)(b), (c) and (d) of this rule, are modified to also include the following:

(a) Prioritize land for expansion: First priority goes to exceptions lands in proximity to an unincorporated community boundary. Second priority goes to land designated as marginal land. Third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority is given to land of lower capability site class for agricultural land, or lower cubic foot site class for forest land; and

(b) Land of lower priority described in subsection (a) of this section may be included if land of higher priority is inadequate to accommodate the use for any one of the following reasons:

(A) Specific types of identified land needs cannot be reasonably accommodated on higher priority land;

(B) Public facilities and services cannot reasonably be provided to the higher priority area due to topographic or other physical constraints; or

(C) Maximum efficiency of land uses with the unincorporated community requires inclusion of lower priority land in order to provide public facilities and services to higher priority land.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.732
Hist.: LCDC 5-1982, f. & ef 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0022
Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule. Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060. Reasons that may allow transportation facilities and improvements that do not meet the requirements of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify the establishment of new urban development on undeveloped rural land are provided in OAR 660-014-0040.

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned that require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.

(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.

(4) Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community defined under OAR 660-022-0010(10) the requirements of subsections (a) through (c) of this section apply:

(a) Appropriate reasons and facts may include findings that there is a demonstrated need for additional land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration that either:

(A) The use requires a location near a resource located on rural land; or

(B) The use has special features necessitating its location in an expanded area of an existing unincorporated community, including:

(i) For industrial use, it would have a significant comparative advantage due to its location such as, for example, that it must be near a rural energy facility, or near products available from other activities only in the surrounding area, or that it is reliant on an existing work force in an existing unincorporated community;

(ii) For residential use, the additional land is necessary to satisfy the need for additional housing in the community generated by existing industrial, commercial, or other economic activity in the surrounding area. The plan must include an economic analysis showing why the type and density of planned housing cannot be accommodated in an existing exception area or urban growth boundary, and is most appropriate at the particular proposed location. The reasons cannot be based on market demand for housing, nor on a projected continuation of past rural population distributions.

(b) The findings of need must be coordinated and consistent with the comprehensive plan for other exception areas, unincorporated communities, and urban growth boundaries in the area. For purposes of this subsection, "area" includes those communities, exception areas, and urban growth boundaries that may be affected by an expansion of a community boundary, taking into account market, economic, and other relevant factors.

(c) Expansion of the unincorporated community boundary requires a demonstrated ability to serve both the expanded area and any remaining infill development potential in the community, at the time of development, with the level of facilities determined to be appropriate for the existing unincorporated community.

(5) Expansion of Urban Unincorporated Communities: In addition to the requirements of section (4) of this rule, the expansion of an urban unincorporated community defined under OAR 660-022-0010(9) shall comply with OAR 660-022-0040.

(6) Willamette Greenway: Within an urban area designated on the approved Willamette Greenway Boundary maps, the siting of uses that are neither water-dependent nor water-related within the setback line required by section C.3.k of Goal 15 may be approved where reasons demonstrate the following:

(a) The use will not have a significant adverse effect on the greenway values of the site under consideration or on adjacent land or water areas;

(b) The use will not significantly reduce the sites available for water-dependent or water-related uses within the jurisdiction;

(c) The use will provide a significant public benefit; and

(d) The use is consistent with the legislative findings and policy in ORS 390.314 and the Willamette Greenway Plan approved by the commission under ORS 390.322.

(7) Goal 16 — Water-Dependent Development: To allow water-dependent industrial, commercial, or recreational uses that require an exception in development and conservation estuaries, an economic analysis must show that there is a reasonable probability that the proposed use will locate in the planning area during the planning period, considering the following:

(a) Goal 9 or, for recreational uses, the Goal 8 Recreation Planning provisions;

(b) The generally predicted level of market demand for the proposed use;

(c) The siting and operational requirements of the proposed use including land needs, and as applicable, moorage, water frontage, draft, or similar requirements;

(d) Whether the site and surrounding area are able to provide for the siting and operational requirements of the proposed use; and

(e) The economic analysis must be based on the Goal 9 element of the County Comprehensive Plan and must consider and respond to all economic needs information available or supplied to the jurisdiction. The scope of this analysis will depend on the type of use proposed, the regional extent of the market and the ability of other areas to provide for the proposed use.

(8) Goal 16 – Other Alterations or Uses: An exception to the requirement limiting dredge and fill or other reductions or degradations of natural values to water-dependent uses or to the natural and conservation management unit requirements limiting alterations and uses is justified, where consistent with ORS chapter 196, in any of the circumstances specified in subsections (a) through (e) of this section:

(a) Dredging to obtain fill for maintenance of an existing functioning dike where an analysis of alternatives demonstrates that other sources of fill material, including adjacent upland soils or stockpiling of material from approved dredging projects, cannot reasonably be utilized for the proposed project or that land access by necessary construction machinery is not feasible;

(b) Dredging to maintain adequate depth to permit continuation of the present level of navigation in the area to be dredged;

(c) Fill or other alteration for a new navigational structure where both the structure and the alteration are shown to be necessary for the continued functioning of an existing federally authorized navigation project such as a jetty or a channel;

(d) An exception to allow minor fill, dredging, or other minor alteration of a natural management unit for a boat ramp or to allow piling and shoreline stabilization for a public fishing pier;

(e) Dredge or fill or other alteration for expansion of an existing public non-water-dependent use or a nonsubstantial fill for a private non-water-dependent use (as provided for in ORS 196.825) where:

(A) A Countywide Economic Analysis based on Goal 9 demonstrates that additional land is required to accommodate the proposed use;

(B) An analysis of the operational characteristics of the existing use and proposed expansion demonstrates that the entire operation or the proposed expansion cannot be reasonably relocated; and

(C) The size and design of the proposed use and the extent of the proposed activity are the minimum amount necessary to provide for the use.

(f) In each of the situations set forth in subsections (7)(a) to (e) of this rule, the exception must demonstrate that the proposed use and alteration (including, where applicable, disposal of dredged materials) will be carried out in a manner that minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats.

(9) Goal 17 — Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to allow certain uses in Coastal Shoreland areas consistent with subsections (a) through (e) of this section, where applicable:

(a) For purposes of this section, "Coastal Shoreland Areas" include:

(A) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources and historic and archaeological sites;

(B) Shorelands in urban and urbanizable areas, in rural areas built upon or irrevocably committed to non-resource use and shorelands in unincorporated communities pursuant to OAR chapter 660, division 22 (Unincorporated Communities) that are suitable for water-dependent uses;

(C) Designated dredged material disposal sites; and

(D) Designated mitigation sites.

(b) To allow a use that is incompatible with Goal 17 requirements for coastal shoreland areas listed in subsection (9)(a) of this rule, the exception must demonstrate:

(A) A need, based on Goal 9, for additional land to accommodate the proposed use;

(B) Why the proposed use or activity needs to be located on the protected site, considering the unique characteristics of the use or the site that require use of the protected site; and

(C) That the project cannot be reduced in size or redesigned to be consistent with protection of the site and, where applicable, consistent with protection of natural values.

(c) Exceptions to convert a dredged material disposal site or mitigation site to another use must also either not reduce the inventory of designated and protected sites in the affected area below the level identified in the estuary plan or be replaced through designation and protection of a site with comparable capacity in the same area.

(d) Uses that would convert a portion of a major marsh, coastal headland, significant wildlife habitat, exceptional aesthetic

resource, or historic or archaeological site must use as little of the site as possible and be designed and located and, where appropriate, buffered to protect natural values of the remainder of the site.

(e) Exceptions to designate and protect, for water-dependent uses, an amount of shorelands less than that amount required by Goal 17 Coastal Shoreland Uses Requirement 2 must demonstrate that:

(A) Based on the Recreation Planning requirements of Goal 8 and the requirements of Goal 9, there is no need during the next 20-year period for the amount of water-dependent shorelands required by Goal 17 Coastal Shoreland Uses Requirement 2 for all cities and the county in the estuary. The Goal 8 and Goal 9 analyses must be conducted for the entire estuary and its shorelands, and must consider the water-dependent use needs of all local government jurisdictions along the estuary, including the port authority, if any, and be consistent with the Goal 8 Recreation Planning elements and Goal 9 elements of the comprehensive plans of those jurisdictions; and

(B) There is a demonstrated need for additional land to accommodate the proposed use(s), based on one or more of the requirements of Goals 3 to 18.

(10) Goal 18 — Foredune Breaching: A foredune may be breached when the exception demonstrates that an existing dwelling located on the foredune is experiencing sand inundation and the sand grading or removal:

(a) Does not remove any sand below the grade of the dwelling;

(b) Is limited to the immediate area in which the dwelling is located;

(c) Retains all graded or removed sand within the dune system by placing it on the beach in front of the dwelling; and

(d) Is consistent with the requirements of Goal 18 "Beaches and Dunes" Implementation Requirement 1.

(11) Goal 18 — Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", Implementation Requirement. Reasons that justify why this state policy embodied in Goal 18 should not apply shall demonstrate that:

(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or the use is of minimal value;

(b) The use is designed to minimize adverse environmental effects; and

(c) The exceptions requirements of OAR 660-004-0020 are met.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.012, 197.040, 197.712,197.717, 197.732
Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 4-1985, f. & ef. 8-8-85; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 7-1999, f. & cert. ef. 8-20-99; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 9-2006, f. & cert. ef. 11-15-06; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0023
Reasons Necessary to Justify an Exception for a Substantially Developed Subdivision to Receive Transferred Development Credits Under Goal 2, Part II(c)

Notwithstanding OAR 660-004-0022(2), an exception under Goal 2, Part II(c) may be taken to Goal 3 or Goal 4, or both, to designate a receiving area as provided in OAR chapter 660, division 29 to accommodate dwellings authorized by ORS 195.300 to 195.336 (Measure 49) in a substantially developed subdivision in a farm or forest zone.

(1) For the purposes of this rule, "substantially developed subdivision" has the meaning provided in OAR 660-029-0010.

(2) A county may find that the need for a receiving area that is satisfied by designating a substantially developed subdivision under OAR chapter 660, division 29 is a reason that the state policy embodied in Goal 3 or Goal 4, or both, should not apply to the substantially developed subdivision.

(3) Notwithstanding OAR 660-004-0020(2)(b)(B)(i)-(iv), a county may limit its consideration of areas that do not require a new exception under OAR 660-004-0020(2)(b) to areas that qualify as potential receiving areas under OAR 660-029-0080(1), (4) and (5).

(4) A county may limit its analysis of long-term environmental, economic, social and energy consequences under OAR 660-004-0020(2)(c) to substantially developed subdivisions under OAR 660-029-0080(2).

(5) A county may determine that a substantially developed subdivision that meets the requirements of OAR 660-029-0080 is compatible with other adjacent uses as required by OAR 660-004-0020(2)(d).

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336 & 197.732; 2007 Oregon Laws, chapter 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-004-0025
Exception Requirements for Land Physically Developed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1).

(2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0028
Exception Requirements for Land Irrevocably Committed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.

(c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

(b) The characteristics of the adjacent lands;

(c) The relationship between the exception area and the lands adjacent to it; and

(d) The other relevant factors set forth in OAR 660-004-0028(6).

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through con-

sideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

(a) Farm use as defined in ORS 215.203;

(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.

(6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses;

(b) Existing public facilities and services (water and sewer lines, etc.);

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.732 & 197.736
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 5-1985, f. & ef. 11-15-85; LCDC 4-1996, f. & cert. ef. 12-23-96; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0030
Notice and Adoption of an Exception

(1) Goal 2 requires that each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(2) A planning exception takes effect when the comprehensive plan or plan amendment is adopted by the city or county governing body. Adopted exceptions will be reviewed by the Commission when the comprehensive plan is reviewed for compliance with the goals through the acknowledgment or periodic review processes under OAR chapter 660, divisions 3 or 25, and by the Board when a plan amendment is reviewed as a post-acknowledgment plan amendment pursuant to OAR chapter 660, division 18.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625, 197.628 - 197.646 & 197.732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0035
Appeal of an Exception

(l) Prior to acknowledgment, an exception, or the failure to take a required exception, may be appealed to the Board pursuant to ORS 197.830, or to the Commission as an objection to the local government's request for acknowledgment, pursuant to ORS 197.251 and OAR chapter 660, division 3.

(2) After acknowledgment, an exception taken as part of a plan amendment, or the failure to take a required exception when amending a plan, may be appealed to the Board pursuant to ORS 197.620 and OAR chapter 660, division 18.

(3) After acknowledgment, an exception taken as part of a periodic review work task submitted under OAR 660-025-0130, or failure to take a required exception when amending a plan under periodic review, may be appealed to the Commission pursuant to ORS 197.633 and OAR 660-025-0150.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625, 197.732 & 197.830
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0040
Application of Goal 14 to Rural Residential Areas

(1) The purpose of this rule is to specify how Goal 14 "Urbanization" applies to rural lands in acknowledged exception areas planned for residential uses.

(2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 "Agricultural Lands", Goal 4 "Forest Lands", or both has been taken. Such lands are referred to in this rule as "rural residential areas".

(b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before October 4, 2000, the effective date of sections (1) to (8) of this rule.

(c) This rule does not apply to types of land listed in (A) through (H) of this subsection:

(A) Land inside an acknowledged urban growth boundary;

(B) Land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 22;

(C) Land in an acknowledged urban reserve area established pursuant to OAR chapter 660, divisions 21 or 27;

(D) Land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;

(E) Resource land, as defined in OAR 660-004-0005(2);

(F) Nonresource land, as defined in OAR 660-004-0005(3);

(G) Marginal land, as defined in former ORS 197.247 (1991 Edition); or

(H) Land planned and zoned primarily for rural industrial, commercial, or public use.

(3)(a) This rule took effect on October 4, 2000.

(b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County), and before October 4, 2000. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.

(4) The rural residential areas described in subsection (2)(a) of this rule are "rural lands". Division and development of such lands are subject to Goal 14, which prohibits urban use of rural lands.

(5)(a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (7) of this rule.

(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.

(c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.

(6) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

(7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

(b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as "the minimum lot size."

(c) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect.

(d) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.

(e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:

(A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10;

(B) The number of new lots or parcels to be created does not exceed 10;

(C) None of the new lots or parcels will be smaller than two acres;

(D) The development is not to be served by a new community sewer system;

(E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community;

(F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on October 4, 2000 as the minimum lot size for the area;

(G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there; and

(H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

(f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.

(g) In rural residential areas, the establishment of a new "mobile home park" or "manufactured dwelling park" as defined in ORS 446.003(23) and (30) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule's requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.

(h) A local government may allow the creation of a new parcel or parcels smaller than a minimum lot size required under subsections (a) through (d) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of this subsection exist:

(A) The parcel to be divided has two or more permanent habitable dwellings on it;

(B) The permanent habitable dwellings on the parcel to be divided were established there before October 4, 2000;

(C) Each new parcel created by the partition would have at least one of those permanent habitable dwellings on it; and

(D) The partition would not create any vacant parcels on which a new dwelling could be established.

(E) For purposes of this rule, "habitable dwelling" means a dwelling that meets the criteria set forth in ORS 215.283(1)(p)(A)–(D).

(i) For rural residential areas designated after October 4, 2000, the affected county shall either:

(A) Require that any new lot or parcel have an area of at least ten acres, or

(B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the applicable requirements for an exception to Goal 14 in OAR chapter 660, division 14. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."

(8)(a) Notwithstanding the provisions of section (7) of this rule, divisions of rural residential land within one mile of an urban growth boundary for any city or urban area listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions of subsections (8)(b) and (8)(c).

(A) Ashland;

(B) Central Point;

(C) Medford;

(D) Newberg;

(E) Sandy.

(b) Any division of rural residential land in an urban reserve area shall be done in accordance with the acknowledged urban reserve ordinance or acknowledged regional growth plan of a city or urban area listed in subsection (8)(a) that:

(A) Has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR chapter 660, division 21; or

(B) Is part of a regional growth plan that contains at least a twenty-year regional urban reserve of land beyond the land contained within the collective urban growth boundaries of the participating cities, and that has been acknowledged through the process prescribed for Regional Problem Solving in ORS 197.652 through 197.658.

(c) Notwithstanding the provisions of section (7) of this rule, if any part of a lot or parcel to be divided is less than one mile from an urban growth boundary for a city or urban area listed in subsection (8)(a), and if that city or urban area does not have an urban reserve area acknowledged to comply with OAR chapter 660, division 21, or is not part of an acknowledged regional growth plan as described in subsection (b), paragraph (B), of this section, the minimum area of any new lot or parcel there shall be ten acres.

(d) Notwithstanding the provisions of section (7), if Metro has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR chapter 660, division 21 or division 27, any land division of rural residential land in that urban reserve shall be done in accordance with the applicable acknowledged comprehensive plan and zoning provisions adopted to implement the urban reserve.

(e) Notwithstanding the provisions of section (7), if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if Metro has not designated an urban reserve that contains at least a twenty-year reserve of land acknowledged to comply with either OAR chapter 660, division 21 or division 27, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.

(f) Notwithstanding the provisions of section (7) and subsection (8)(e), a local government may establish minimum area requirements smaller than twenty acres for some of the lands described in subsection (8)(e). The selection of those lands and the minimum established for them shall be based on an analysis of the likelihood that such lands will urbanize, of their current parcel and lot sizes, and of the capacity of local governments to serve such lands efficiently with urban services at densities of at least 10 units per net developable acre. In no case shall the minimum parcel area requirement set for such lands be smaller than 10 acres.

(g) A local government may allow the creation of a new parcel, or parcels, smaller than a minimum lot size required under subsections (a) through (f) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (G) of this subsection exist:

(A) The parcel to be divided has two or more permanent, habitable dwellings on it;

(B) The permanent, habitable dwellings on the parcel to be divided were established there before October 4, 2000;

(C) Each new parcel created by the partition would have at least one of those permanent, habitable dwellings on it;

(D) The partition would not create any vacant parcels on which new dwellings could be established;

(E) The resulting parcels shall be sized to promote efficient future urban development by ensuring that one of the parcels is the minimum size necessary to accommodate the residential use of the parcel;

(F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria set forth in ORS 215.213(1)(q)(A)–(D) or 215.283(1)(p)(A)–(D), whichever is applicable; and

(G) The parcel is not in an area designated as rural reserve under OAR chapter 660, division 27, except as provided under OAR 660-027-0070.

(h) Notwithstanding the provisions of subsection (g), a county may allow the creation of lots or parcels as small as two acres without an exception to Goal 14 in an existing rural residential exception area as a designated receiving area for the transfer of Measure 49 development interests, as provided in OAR 660-029-0080 and 660-029-0090.

(9) The development, placement, or use of one single-family dwelling on a lot or parcel lawfully created in an acknowledged rural residential area is allowed under this rule and Goal 14, subject to all other applicable laws.

Stat. Auth.: ORS 197.040, 195.141

Stats. Implemented: ORS 195.141, 195.145, 195.300-195.336, 197.175 & 197.732; 2007 OL, ch. 424

Hist.: LCDD 7-2000, f. 6-30-00, cert. ef. 10-4-00; LCDD 3-2001, f. & cert. ef. 4-3-01; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11; LCDD 3-2015, f. & cert. ef. 4-27-15

DIVISION 6

GOAL 4 FOREST LANDS

660-006-0000
Purpose

(1) The purpose of this division is to conserve forest lands as defined by Goal 4 and to define standards for compliance with implementing statutes at ORS 215.700 through 215.799.

(2) To accomplish the purpose of conserving forest lands, the governing body shall:

(a) Designate forest lands on the comprehensive plan map as forest lands consistent with Goal 4 and OAR chapter 660, division 6;

(b) Zone forest lands for uses allowed pursuant to OAR chapter 660, division 6 on designated forest lands; and

(c) Adopt plan policies consistent with OAR chapter 660, division 6.

(3) This rule provides for a balance between the application of Goal 3 "Agricultural Lands" and Goal 4 "Forest Lands," because of the extent of lands that may be designated as either agricultural or forest land.

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0003
Applicability

(1) This division applies to all forest lands as defined by Goal 4.

(2) Governing bodies shall amend their comprehensive plan and land use regulations to comply with requirements of OAR 660-006-0035(2) and 660-006-0040 by September 6, 1994.

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0004
Notice of Decision in Forest Zones

Governing bodies shall provide the following types of notice:

(1) Notice of all applications for dwellings and land divisions in forest and agriculture/forest zones shall be provided to the Department of Land Conservation and Development at the Salem office. Notice shall be in accordance with the governing body's acknowledged comprehensive plan and land use regulations, and shall be mailed at least 10 calendar days prior to the hearing or decision being made.

(2) Notice of proposed actions described in section (1) of this rule shall be provided as required by procedures for notice contained in ORS 197.763 and 215.402 to 215.438.

(3) The provisions of sections (1) and (2) of this rule are repealed on September 6, 1995.

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0005
Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) "Primary processing of forest products" means the initial treatments of logs or other forest plant or fungi materials to prepare them for shipment for further processing or to market, including, but not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion, or other similar methods of initial treatments.

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

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

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

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.311, 215.457, 215.459, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & 1993 OL Ch. 792
Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 1-2013, f. 1-29-13, cert. ef. 2-1-13; LCDD 4-2015, f. & cert. ef. 6-10-15; LCDD 3-2016, f. & cert. ef. 2-10-16

660-006-0010
Identifying Forest Land

(1) Governing bodies shall identify "forest lands" as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands, lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken, and lands inside urban growth boundaries are not required to planned and zoned as forest lands.

(2) Where a plan amendment is proposed:

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

(A) Oregon Department of Revenue western Oregon site class maps;

(B) USDA Forest Service plant association guides; or

(C) Other information determined by the State Forester to be of comparable quality.

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

(c) Counties shall identify forest lands that maintain soil air, water and fish and wildlife resources.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040, ORS 197.230, ORS 197.245, ORS 215.700, ORS 215.705, ORS 215.720, ORS 215.740, ORS 215.750, ORS 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 3-2016, f. & cert. ef. 2-10-16

660-006-0015
Plan Designation Outside an Urban Growth Boundary

(1) Lands inventoried as forest lands must be designated in the comprehensive plan and implemented with a zone that conserves forest lands consistent with OAR chapter 660, division 6, unless an exception to Goal 4 is taken pursuant to ORS 197.732, the forest lands are marginal lands pursuant to ORS 197.247 (1991 Edition), the land is zoned with an Exclusive Farm Use Zone pursuant to ORS chapter 215 provided the zone qualifies for special assessment

under ORS 308.370, or is an "abandoned mill site" zoned for industrial use as provided for by ORS 197.719. In areas of intermingled agricultural and forest lands, an agricultural/forest lands designation may also be appropriate if it provides protection for forest lands consistent with the requirements of OAR chapter 660, division 6. The plan shall describe the zoning designation(s) applied to forest lands and its purpose and shall contain criteria that clearly indicate where the zone(s) will be applied.

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

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0020
Plan Designation Within an Urban Growth Boundary

Goal 4 does not apply within urban growth boundaries and therefore, the designation of forest lands is not required.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040, 197.230, 197.245 & Ch. 792, 1993 OL
Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0025
Uses Authorized in Forest Zones

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

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

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

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

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

(e) Other dwellings under prescribed conditions.

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

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

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

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

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

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

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

(b) Farm use as defined in ORS 215.203;

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

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

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

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

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

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

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

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

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

(l) Temporary forest labor camps;

(m) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head;

(n) Destination resorts reviewed and approved pursuant to ORS 197.435 to 197.467 and Goal 8;

(o) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structures;

(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;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling;

(p) 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;

(q) Dump truck parking as provided in ORS 215.311; and

(r) An agricultural building, as defined in ORS 455.315, customarily provided in conjunction with farm use or forest use. A person may not convert an agricultural building authorized by this section to another use.

(4) The following uses may be allowed on forest lands subject to the review standards in section (5) of this rule:

(a) Permanent facility for the primary processing of forest products that is:

(A) Located in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or a proportionate combination of indoor and outdoor areas; and

(B) Adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the governing body;

(b) Permanent logging equipment repair and storage;

(c) Log scaling and weigh stations;

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

(e)(A) Private parks and campgrounds. Campgrounds in private parks shall only be those allowed by this subsection. Except on a lot or parcel contiguous to a lake or reservoir, 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. Campsites may be occupied by a tent, travel trailer or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

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

(C) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this 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.

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

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

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

(i) Fire stations for rural fire protection;

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

(k) Aids to navigation and aviation;

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

(m) Reservoirs and water impoundments;

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

(o) Cemeteries;

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

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

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations are occupied temporarily for the purpose of hunting during either or both game bird or big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and

(D) A governing body may impose other appropriate conditions.

(q) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width;

(r) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects;

(s) Home occupations as defined in ORS 215.448;

(t) A 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 as defined in ORS 215.213 and 215.283. 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 dwelling will use a public sanitary sewer system, such condition will not be required. 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 subsection is not eligible for replacement under subsection (3)(o) of this rule. Governing bodies every two years shall review the permit authorizing such mobile homes. When the hardships end, governing bodies or their designate shall require the removal of such mobile homes. Oregon Department of Environmental Quality review and removal requirements also apply to such mobile homes. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons;

(u) Expansion of existing airports;

(v) Public road and highway projects as described in ORS 215.213(2)(p) through (r) and (10) and 215.283(2)(q) through (s) and (3);

(w) Private accommodations for fishing occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 600-060-0029 and 660-006-0035 and the following requirements:

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

(B) Only minor incidental and accessory retail sales are permitted;

(C) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;

(D) Accommodations must be located within 1/4 mile of fish-bearing Class I waters; and

(E) A governing body may impose other appropriate conditions.

(x) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations; and

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

(z) Storage structures for emergency supplies to serve communities and households that are located in tsunami inundation zones, if:

(A) Areas within an urban growth boundary cannot reasonably accommodate the structures;

(B) The structures are located outside tsunami inundation zones and consistent with evacuation maps prepared by Department of Geology and Mineral Industries (DOGAMI) or the local jurisdiction;

(C) Sites where the structures could be co-located with an existing use approved under this section are given preference for consideration;

(D) The structures are of a number and size no greater than necessary to accommodate the anticipated emergency needs of the population to be served;

(E) The structures are managed by a local government entity for the single purpose of providing for the temporary emergency support needs of the public; and

(F) Written notification has been provided to the County Office of Emergency Management of the application for the storage structures.

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

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

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

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

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

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

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & 1993 OL Ch. 792

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 1-2013, f. 1-29-13, cert. ef. 2-1-13; LCDD 5-2013, f. 12-20-13, cert. ef. 1-1-14; LCDD 3-2016, f. & cert. ef. 2-10-16

660-006-0026
New Land Division Requirements in Forest Zones

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that

the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forest land.

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780, 215.783 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7 1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 5-2013, f. 12-20-13, cert. ef. 1-1-14; LCDD 3-2016, f. & cert. ef. 2-10-16

660-006-0027
Dwellings in Forest Zones

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

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

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

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

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

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

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

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

(e) The dwelling must be located:

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

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

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

(B) On a tract in eastern Oregon that is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) A proposed "template" dwelling under this rule is not allowed:

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

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

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

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

(7)(a) The applicant for a dwelling authorized by paragraph (A) or (B) below shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located.

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 2-1990, f. & cert. ef. 3-9-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 6-2000, f. & cert. ef. 6-14-00; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 3-2016, f. & cert. ef. 2-10-16

660-006-0029

Siting Standards for Dwellings and Structures in Forest Zones

The following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agriculture/forest zones. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. A governing body shall consider the criteria in this rule together with the requirements OAR 660-0060-0035 to identify the building site:

(1) Dwellings and structures shall be sited on the parcel so that:

(a) They have the least impact on nearby or adjoining forest or agricultural lands;

(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and

(d) The risks associated with wildfire are minimized.

(2) Siting criteria satisfying section (1) of this rule may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

(3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR chapter 629). For purposes of this section, evidence of a domestic water supply means:

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(b) A water use permit issued by the Water Resources Department for the use described in the application; or

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(5) Approval of a dwelling shall be subject to the following requirements:

(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules;

(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;

(c) If the lot or parcel is more than 10 acres in western Oregon or more than 30 acres in eastern Oregon, the property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules;

(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If that department determines that the tract does not meet those requirements, that department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax; and

(e) The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.383 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.

Stat. Auth.: ORS 197.040, 197.245 & 215.730
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 7-1994, f. & cert. ef. 9-21-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0031
Youth Camps

(1) A youth camp may be established in compliance with the provisions of this rule. The purpose of this rule is to provide for the establishment of a youth camp that is generally self-contained and located on a parcel suitable to limit potential impacts on nearby and adjacent land and to be compatible with the forest environment.

(2) Changes to or expansions of youth camps established prior to the effective date of this rule shall be subject to the provisions of ORS 215.130.

(3) A "youth camp" is a facility either owned or leased, and operated by a state or local government, or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience primarily for the benefit of persons 21 years of age and younger. Youth camps do not include any manner of juvenile detention center or juvenile detention facility.

(4) An application for a proposed youth camp shall comply with the following:

(a) The number of overnight camp participants that may be accommodated shall be determined by the governing body, or its designate, based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. Except as provided by subsection (4)(b) of this rule a youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff.

(b) The governing body, or its designated may allow up to eight (8) nights during the calendar year when the number of overnight participants may exceed the total number of overnight participants allowed under subsection (4)(a) of this rule.

(c) Overnight stays for adult programs primarily for individuals over 21 years of age, not including staff, shall not exceed 10 percent of the total camper nights offered by the youth camp.

(d) The provisions of OAR 660-006-0025(5)(a).

(e) A campground as described in ORS 215.283(2)(c), 215.213(2)(e) and OAR 660-006-0025(4)(e) shall not be established in conjunction with a youth camp.

(f) A youth camp shall not be allowed in conjunction with an existing golf course.

(g) A youth camp shall not interfere with the exercise of legally established water rights on adjacent properties.

(5) The youth camp shall be located on a lawful parcel that is:

(a) Suitable to provide a forested setting needed to ensure a primarily outdoor experience without depending upon the use or natural characteristics of adjacent and nearby public and private land. This determination shall be based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp, as well as, the number of overnight participants and type and number of proposed facilities. A youth camp shall be located on a parcel of at least:

(A) 80-acres if located in eastern Oregon.

(B) 40-acres if located in western Oregon.

(b) Suitable to provide a protective buffer to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural setback from roads and adjacent public and private property shall be 250 feet unless the governing body, or its designate sets a different setback based upon the following criteria that may be applied on a case-by-case basis:

(A) The proposed setback will prevent conflicts with commercial resource management practices;

(B) The proposed setback will prevent a significant increase in safety hazards associated with vehicular traffic; and

(C) The proposed setback will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.

(c) Suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1)(f). Prior to granting final approval, the governing body or its designate shall verify that a proposed youth camp will not result in the need for a sewer system.

(d) Predominantly forestland if within a mixed agricultural/forest zone as provided for under OAR 660-006-0050.

(6) A youth camp may provide for the following facilities:

(a) Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horse

back riding or swimming that can be provided in conjunction with the site's natural environment. Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use.

(b) Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the governing body, or its designate, may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants.

(c) Bathing and laundry facilities except that they shall not be provided in the same building as sleeping quarters.

(d) Up to three camp activity buildings, not including primary cooking and eating facilities.

(e) Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals.

(f) Covered areas that are not fully enclosed.

(g) Administrative, maintenance and storage buildings; permanent structure for administrative services, first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the applicant.

(h) An infirmary may provide sleeping quarters for the medical care provider (e.g. Doctor, Registered Nurse, Emergency Medical Technician, etc.).

(i) A caretaker's residence may be established in conjunction with a youth camp prior to or after June 14, 2000, if no other dwelling exists on the subject property.

(7) A proposed youth camp shall comply with the following fire safety requirements:

(a) The fire siting standards in OAR 660-006-0035;

(b) A fire safety protection plan shall be developed for each youth camp that includes the following:

(A) Fire prevention measures;

(B) On site pre-suppression and suppression measures; and

(C) The establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.

(c) Except as determined under subsection (7)(d) of this rule, a youth camp's on-site fire suppression capability shall at least include:

(A) A 1000 gallon mobile water supply that can access all areas of the camp;

(B) A 30 gallon-per-minute water pump and an adequate amount of hose and nozzles;

(C) A sufficient number of fire fighting hand tools; and

(D) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

(d) An equivalent level of fire suppression facilities may be determined by the governing body, or its designate. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by ODF and not served by a local structural fire protection provider.

(e) The provisions of OAR 660-006-0031(7)(d) may be waived by the governing body, or its designate, if the youth camp is located in an area served by a structural fire protection provider and that provider informs the governing body in writing that on-site fire suppression at the camp is not needed.

(8) The governing body, or its designate, shall require as a condition of approval of a youth camp, that the land owner of the youth camp sign and record in the deed records for the county a document binding the land owner, or operator of the youth camp if different from the owner, and the land owner's or operator'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.

(9) Nothing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing land use regulations such as the requirements addressing other resource values (e.g. Goal 5) that exist on forest lands.

(10) The provisions of this rule shall apply directly to any land use decision pursuant to ORS 197.646 and 215.427(3) commencing October 12, 2000. A county may adopt provisions in its comprehensive plan or land use regulations that establish standards and criteria in addition to those set forth in this rule, or to ensure compliance with any standards or criteria.

Stat. Auth.: ORS 197.040 & 215

Stats. Implemented: ORS 184.618, 195.025, 197.040 - 197.717 & 215.750 - 215.755

Hist.: LCDD 6-2000, f. & cert. ef. 6-14-00; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0035
Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent shall apply to all new dwelling or structures in a forest or agriculture/forest zone:

(1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the governing body determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fires season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(2) Road access to the dwelling shall meet road design standards described in OAR 660-006-0040.

(3) The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by the Oregon Department of Forestry.

(4) The dwelling shall have a fire retardant roof.

(5) The dwelling shall not be sited on a slope of greater than 40 percent.

(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

Stat. Auth.: ORS 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0040
Fire Safety Design Standards for Roads

The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0050
Uses Authorized in Agriculture/Forest Zones

(1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR chapter 660, divisions 6 and 33.

(2) Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominant use of the tract on January 1, 1993.

(3) Dwellings and related structures authorized under section (2), where the predominant use is forestry, shall be subject to the requirements of OAR 660-006-0029 and 660-006-0035.

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.213, 215.283, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0055
New Land Division Requirements in Agriculture/Forest Zones

(1) A governing body shall apply the standards of OAR 660-006-0026 and 660-033-0100 to determine the proper minimum lot or parcel size for a mixed agriculture/forest zone. These standards are designed: To make new land divisions compatible with forest operations; to maintain the opportunity for economically efficient forest and agriculture practices; and to conserve values found on forest lands.

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

(a) For the uses listed in OAR 660-006-0025(3)(m) through (o) and (4)(a) through (o) provided that such uses have been approved pursuant to OAR 660-060-0025(5) and the land division created is the minimum size necessary for the use.

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

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

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

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

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

(C) The minimum tract eligible under subsection (b) of this section is 40 acres;

(D) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321; and

(E) The remainder of the tract does not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(c) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of section (1). Parcels created pursuant to this subsection:

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

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

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

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

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

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

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

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

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

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

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

(E) The landowner of a lot or parcel created under this section provides evidence that a restriction prohibiting the landowner and the land owner's successors in interest from further dividing the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel is located. A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county in which the lot or parcel is located indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide goal 4 (Forest Lands) or unless the land division is subsequently authorized by law or by a change in statewide goal 4 (Forest Land);

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

(3) A county planning director shall maintain a record of lots and parcels that do not qualify for division under the restrictions imposed by OAR 660-006-0055(2)(d) and (4). The record shall be readily available to the public.

(4) A lot or parcel may not be divided under OAR 660-006-0055(2)(d) if an existing dwelling on the lot or parcel was approved under:

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

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

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

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

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

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

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.213. 215.283. 215.700, 215.705, 215.720, 215.740, 215.750, 215.780, 215.783 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDC 3-1996, f. & cert. ef. 12-23-96; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2011, f. & cert. ef. 2-2-11; LCDD 5-2013, f. 12-20-13, cert. ef. 1-1-14

660-006-0057
Rezoning Land to an Agriculture/Forest Zone

Any rezoning or plan map amendment of lands from an acknowledged zone or plan designation to an agriculture/forest zone requires a demonstration that each area being rezoned or replanned contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone.

Stat. Auth.: ORS 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.213, 215.283, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDC 1-1994, f. & cert. ef. 3-1-94; LCDD 2-2011, f. & cert. ef. 2-2-11

660-006-0060
Regulation of Forest Operations

The Forest Practices Act (ORS 527.620 to 527.992) as implemented through Oregon Board of Forestry rules regulates forest operations on forest lands. The relationship between the Forest Practices Act and land use planning is described in ORS 527.722 to 527.726. OAR 660-006-0025 does not authorize county governing bodies to regulate forest operations or other uses allowed by ORS 527.620 to 527.990 and Oregon Board of Forestry rules.

Stat. Auth.: ORS 197.040 & 215
Stats. Implemented: ORS 197.040, 197.230, 197.245, 215.700, 215.705, 215.720, 215.740, 215.750, 215.780 & Ch. 792, 1993 OL
Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; Renumbered from 660-006-0030; LCDC 7-1992, f. & cert. ef. 12-10-92; LCDD 2-2011, f. & cert. ef. 2-2-11

DIVISION 7

METROPOLITAN HOUSING

660-007-0000
Statement of Purpose

The purpose of this division is to ensure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the Metropolitan Portland (Metro) urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs. OAR 660-007-0030 through 660-007-0037 are intended to establish by rule regional residential density and mix standards to measure Goal 10 Housing compliance for cities and counties within the Metro urban growth boundary, and to ensure the efficient use of residential land within the regional UGB consistent with Goal 14 Urbanization. OAR 660-007-0035 implements the Commission's determination in the Metro UGB acknowledgment proceedings that region wide, planned residential densities must be considerably in excess of the residential density assumed in Metro's "UGB Findings". The new construction density and mix standards and the criteria for varying from them in this rule take into consideration and also satisfy the price range and rent level criteria for needed housing as set forth in ORS 197.303.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0005
Definitions

For the purposes of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions apply:

(1) A "Net Buildable Acre" consists of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas.

(2) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

(3) "Buildable Land" means residentially designated land within the Metro urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6 or 15;

(c) Has slopes of 25 percent or greater;

(d) Is within the 100-year flood plain; or

(e) Cannot be provided with public facilities.

(4) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.

(5) "Housing Needs Projection" refers to a local determination, justified in the plan, as to the housing types, amounts and densities that will be:

(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;

(b) Consistent with OAR 660-007-0010 through 660-007-0037 and any other adopted regional housing standards; and

(c) Consistent with Goal 14 requirements for the efficient provision of public facilities and services, and efficiency of land use.

(6) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.

(7) "Needed Housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(8) "Redevelopable Land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the likelihood that existing development will be converted to more intensive residential uses during the planning period.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0015
Clear and Objective Approval Standards Required

(1) Except as provided in section (2) of this rule, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(2) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in section (1) of this rule, a local government may adopt and apply an optional alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of section (1);

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in section (1) of this rule.

(3) Subject to section (1), this rule does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0018
Specific Plan Designations Required

(1) Plan designations that allow or require residential uses shall be assigned to all buildable land. Such designations may allow nonresidential uses as well as residential uses. Such designations may be considered to be "residential plan designations" for the purposes of this division. The plan designations assigned to buildable land shall be specific so as to accommodate the varying housing types and densities identified in OAR 660-007-0030 through 660-007-0037.

(2) A local government may defer the assignment of specific residential plan designations only when the following conditions have been met:

(a) Uncertainties concerning the funding, location and timing of public facilities have been identified in the local comprehensive plan;

(b) The decision not to assign specific residential plan designations is specifically related to identified public facilities constraints and is so justified in the plan; and

(c) The plan includes a time-specific strategy for resolution of identified public facilities uncertainties and a policy commitment to assign specific residential plan designations when identified public facilities uncertainties are resolved.

Stat. Auth.: ORS 197.040
Stats. Implemented:ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 4-1999, f. & cert. ef. 7-2-99; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0020
The Rezoning Process

A local government may defer rezoning of land within the urban growth boundary to maximum planned residential density provided that the process for future rezoning is reasonably justified:

(1) The plan must contain a justification for the rezoning process and policies which explain how this process will be used to provide for needed housing.

(2) Standards and procedures governing the process for future rezoning shall be based on the rezoning justification and policy statement, and must be clear and objective.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0022
Restrictions on Housing Tenure

Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall either justify such restriction by an analysis of housing need according to tenure or otherwise demonstrate that such restrictions comply with ORS 197.303(1)(a) and 197.307(3).

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0030
New Construction Mix

(1) Jurisdictions other than small developed cities must either designate sufficient buildable land to provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing or justify an alternative percentage based on changing circumstances. Factors to be considered in justifying an alternate percentage shall include, but need not be limited to:

(a) Metro forecasts of dwelling units by type;

(b) Changes in household structure, size, or composition by age;

(c) Changes in economic factors impacting demand for single family versus multiple family units; and

(d) Changes in price ranges and rent levels relative to income levels.

(2) The considerations listed in section (1) of this rule refer to county-level data within the UGB and data on the specific jurisdiction.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0033
Consideration of Other Housing Types

Each local government shall consider the needs for manufactured housing and government assisted housing within the Portland Metropolitan UGB in arriving at an allocation of housing types.

Stat. Auth.: ORS 183 & 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0035
Minimum Residential Density Allocation for New Construction

The following standards shall apply to those jurisdictions which provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing:

(1) The Cities of Cornelius, Durham, Fairview, Happy Valley and Sherwood must provide for an overall density of six or more dwelling units per net buildable acre. These are relatively small cities with some growth potential (i.e. with a regionally coordinated population projection of less than 8,000 persons for the active planning area).

(2) Clackamas and Washington Counties, and the cities of Forest Grove, Gladstone, Milwaukie, Oregon City, Troutdale, Tualatin, West Linn and Wilsonville must provide for an overall density of eight or more dwelling units per net buildable acre.

(3) Multnomah County and the cities of Portland, Gresham, Beaverton, Hillsboro, Lake Oswego and Tigard must provide for an overall density of ten or more dwelling units per net buildable acre. These are larger urbanized jurisdictions with regionally coordinated population projections of 50,000 or more for their active planning areas, which encompass or are near major employment centers, and which are situated along regional transportation corridors.

(4) Regional housing density and mix standards as stated in OAR 660-007-0030 and sections (1), (2), and (3) of this rule do not apply to small developed cities which had less than 50 acres of buildable land in 1977 as determined by criteria used in Metro's

UGB Findings. These cities include King City, Rivergrove, Maywood Park, Johnson City and Wood Village.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0037
Alternate Minimum Residential Density Allocation for New Construction

The density standards in OAR 660-007-0035 shall not apply to a jurisdiction which justifies an alternative new construction mix under the provisions of OAR 660-007-0030. The following standards shall apply to these jurisdictions:

(1) The jurisdiction must provide for the average density of detached single family housing to be equal to or greater than the density of detached single family housing provided for in the plan at the time of original LCDC acknowledgment.

(2) The jurisdiction must provide for the average density of multiple family housing to be equal to or greater than the density of multiple family housing provided for in the plan at the time of original LCDC acknowledgment.

(3) A jurisdiction which justifies an alternative new construction mix must also evaluate whether the factors in OAR 660-007-0030 support increases in the density of either detached single family or multiple family housing or both. If the evaluation supports increases in density, then necessary amendments to residential plan and zone designations must be made.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0045
Computation of Buildable Lands

(1) The local buildable lands inventory must document the amount of buildable land in each residential plan designation.

(2) The Buildable Land Inventory (BLI): The mix and density standards of OAR 660-007-0030, 660-007-0035 and 660-007-0037 apply to land in a buildable land inventory required by OAR 660-007-0010, as modified herein. Except as provided below, the buildable land inventory at each jurisdiction's choice shall either be based on land in a residential plan/zone designation within the jurisdiction at the time of periodic review or based on the jurisdiction BLI at the time of acknowledgment as updated. Each jurisdiction must include in its computations all plan and/or zone changes involving residential land which that jurisdiction made since acknowledgment. A jurisdiction need not include plan and/or zone changes made by another jurisdiction before annexation to a city. The adjustment of the BLI at the time of acknowledgment shall:

(a) Include changes in zoning ordinances or zoning designations on residential planned land if allowed densities are changed;

(b) Include changes in planning or zoning designations either to or from residential use. A city shall include changes to annexed or incorporated land if the city changed type or density or the plan/zone designation after annexation or incorporation;

(c) The county and one or more cities affected by annexations or incorporations may consolidate buildable land inventories. A single calculation of mix and density may be prepared. Jurisdictions which consolidate their buildable lands inventories shall conduct their periodic review simultaneously;

(d) A new density standard shall be calculated when annexation, incorporation or consolidation results in mixing two or more density standards (OAR 660-007-0035). The calculation shall be made as follows:

(A)(i) BLI Acres x 6 Units/Acre = Num. of Units;

(ii) BLI Acres x 8 Units/Acre = Num. of Units;

(iii) BLI Acres x 10 Units/Acre = Num. of Units;

(iv) Total Acres (TA) — Total Units (TU).

(B) Total units divided by Total Acres = New Density Standard;

(C) Example:

(i) Cities A and B have 100 acres and a 6-unit-per-acre standard: (100 x 6 = 600 units); City B has 300 acres and a 10-unit-per-acre standard: (300 x 10 = 3000 units); County has 200 acres and an 8-unit-per-acre standard: (200 x 08 = 1600 units); Total acres = 600 — Total Units = 5200.

(ii) 5200 units divided by 600 acres = 8.66 units per acre standard.

(3) Mix and Density Calculation: The housing units allowed by the plan/zone designations at periodic review, except as modified by section (2) of this rule, shall be used to calculate the mix and density. The number of units allowed by the plan/zone designations at the time of development shall be used for developed residential land.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0050
Regional Coordination

(1) At each periodic review of the Metro UGB, Metro shall review the findings for the UGB. They shall determine whether the buildable land within the UGB satisfies housing needs by type and density for the region's long-range population and housing projections.

(2) Metro shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

660-007-0060
Applicability

(1) The new construction mix and minimum residential density standards of OAR 660-007-0030 through 660-007-0037 shall be applicable at each periodic review. During each periodic review local government shall prepare findings regarding the cumulative effects of all plan and zone changes affecting residential use. The jurisdiction's buildable lands inventory (updated pursuant to 660-007-0045) shall be a supporting document to the local jurisdiction's periodic review order.

(2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:

(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or

(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 1-1987, f. & ef. 2-18-87; LCDD 1-2012, f. & cert. ef. 2-14-12

DIVISION 8

INTERPRETATION OF GOAL 10 HOUSING

660-008-0000
Purpose

(1) The purpose of this division is to ensure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process so as to reduce housing costs. This division is intended to provide standards for compliance with Goal 10 "Housing" and to implement ORS 197.303 through 197.307.

(2) OAR chapter 660, division 7, Metropolitan Housing, is intended to complement and be consistent with OAR chapter 660, division 8 and Statewide Planning Goal 10 Housing (OAR 660-015-0000(10). Should differences in interpretation between division 8 and division 7 arise, the provisions of division 7 shall prevail for cities and counties within the Metro urban growth boundary.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490

Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0005
Definitions

For the purpose of this division, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:

(1) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

(2) "Buildable Land" means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 18;

(c) Has slopes of 25 percent or greater;

(d) Is within the 100-year flood plain; or

(e) Cannot be provided with public facilities.

(3) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.

(4) "Housing Needs Projection" refers to a local determination, justified in the plan, of the mix of housing types, amounts and densities that will be:

(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;

(b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and

(c) Consistent with Goal 14 requirements.

(5) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.

(6) "Needed Housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels, including at least the following housing types:

(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Housing for farmworkers.

(7) "Redevelopable Land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0010
Allocation of Buildable Land

The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0015
Clear and Objective Approval Standards Required

(1) Except as provided in section (2) of this rule, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(2) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in section (1) of this rule, a local government may adopt and apply an optional alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of section (1);

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in section (1) of this rule.

(3) Subject to section (1), this rule does not infringe on a local government's prerogative to:(a) Set approval standards under which a particular housing type is permitted outright;(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0020
Specific Plan Designations Required

(1) Plan designations that allow or require residential uses shall be assigned to all buildable land. Such designations may allow nonresidential uses as well as residential uses. Such designations may be considered to be "residential plan designations" for the purposes of this division. The plan designations assigned to buildable land shall be specific so as to accommodate the varying housing types and densities identified in the local housing needs projection.

(2) A local government may defer the assignment of specific residential plan designations only when the following conditions have been met:

(a) Uncertainties concerning the funding, location and timing of public facilities have been identified in the local comprehensive plan;

(b) The decision not to assign specific residential plan designations is specifically related to identified public facilities constraints and is so justified in the plan; and

(c) The plan includes a time-specific strategy for resolution of identified public facilities uncertainties and a policy commitment to assign specific residential plan designations when identified public facilities uncertainties are resolved.

Stat. Auth.: ORS 197.040
Stats. Implemented:ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 5-1999, f. & cert. ef. 7-2-99; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0025
The Rezoning Process

A local government may defer rezoning of land within an urban growth boundary to maximum planned residential density provided that the process for future rezoning is reasonably justified. If such is the case, then:

(1) The plan shall contain a justification for the rezoning process and policies which explain how this process will be used to provide for needed housing.

(2) Standards and procedures governing the process for future rezoning shall be based on the rezoning justification and policy statement, and must be clear and objective and meet other requirements in OAR 660-008-0015.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0030
Regional Coordination

(1) Each local government shall consider the needs of the relevant region in arriving at a fair allocation of housing types and densities.

(2) The local coordination body shall be responsible for ensuring that the regional housing impacts of restrictive or expansive local government programs are considered. The local coordination body shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0035
Substantive Standards for Taking a Goal 2, Part II Exception Pursuant to ORS 197.303(3)

(1) A local government may satisfy the substantive standards for exceptions contained in Goal 2, Part II, upon a demonstration in the local housing needs projection, supported by compelling reasons and facts, that:

(a) The needed housing type is being provided for elsewhere in the region in sufficient numbers to meet regional needs;

(b) Sufficient buildable land has been allocated within the local jurisdiction for other types of housing which can meet the need for shelter at the particular price ranges and rent levels that would have been met by the excluded housing type; and

(c) The decision to substitute other housing types for the excluded needed housing type furthers the policies and objectives of the local comprehensive plan, and has been coordinated with other affected units of government.

(2) The substantive standards listed in section (1) of this rule shall apply to the ORS 197.303(3) exceptions process in lieu of the substantive standards in Goal 2, Part II.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

660-008-0040
Restrictions on Housing Tenure

Any local government that restricts the construction of either rental or owner occupied housing shall include a determination of housing need according to tenure as part of the local housing needs projection.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.295 - 197.314 & 197.475 - 197.490
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDD 2-2012, f. & cert. ef. 2-14-12

DIVISION 9

ECONOMIC DEVELOPMENT

660-009-0000
Intent and Purpose

The intent of the Land Conservation and Development Commission is to provide an adequate land supply for economic development and employment growth in Oregon. The intent of this division is to link planning for an adequate land supply to infrastructure planning, community involvement and coordination among local governments and the state. The purpose of this division is to implement Goal 9, Economy of the State (OAR 660-015-0000(9)), and ORS 197.712(2)(a) to (d). This division responds to legislative direction to assure that comprehensive plans and land use regulations are updated to provide adequate opportunities for a variety of economic activities throughout the state (ORS 197.712(1)) and to assure that comprehensive plans are based on information about state and national economic trends (ORS 197.717(2)).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0005
Definitions

For purposes of this division, the definitions in ORS chapter 197 and the statewide planning goals apply, unless the context requires otherwise. In addition, the following definitions apply:

(1) "Developed Land" means non-vacant land that is likely to be redeveloped during the planning period.

(2) "Development Constraints" means factors that temporarily or permanently limit or prevent the use of land for economic development. Development constraints include, but are not limited to, wetlands, environmentally sensitive areas such as habitat, environmental contamination, slope, topography, cultural and archeological resources, infrastructure deficiencies, parcel fragmentation, or natural hazard areas.

(3) "Industrial Use" means employment activities generating income from the production, handling or distribution of goods. Industrial uses include, but are not limited to: manufacturing; assembly; fabrication; processing; storage; logistics; warehousing; importation; distribution and transshipment; and research and development. Industrial uses may have unique land, infrastructure, energy, and transportation requirements. Industrial uses may have external impacts on surrounding uses and may cluster in traditional or new industrial areas where they are segregated from other non-industrial activities.

(4) "Locational Factors" means market factors that affect where a particular type of industrial or other employment use will locate. Locational factors include, but are not limited to, proximity to raw materials, supplies, labor, services, markets, or educational institutions; access to transportation and freight facilities such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes; and workforce factors (e.g., skill level, education, age distribution).

(5) "Metropolitan Planning Organization (MPO)" means an organization designated by the Governor to coordinate transportation planning on urban land of the state including such designations made subsequent to the adoption of this division. The Longview-Kelso-Rainier MPO is not considered an MPO for the purposes of this division. Cities with less than 2,500 population are not considered part of an MPO for purposes of this division.

(6) "Other Employment Use" means all non-industrial employment activities including the widest range of retail, wholesale, service, non-profit, business headquarters, administrative and governmental employment activities that are accommodated in retail, office and flexible building types. Other employment uses also include employment activities of an entity or organization that serves the medical, educational, social service, recreation and security needs of the community typically in large buildings or multi-building campuses.

(7) "Planning Area" means the area within an existing or proposed urban growth boundary. Cities and counties with urban growth management agreements must address the urban land governed by their respective plans as specified in the urban growth management agreement for the affected area.

(8) "Prime Industrial Land" means land suited for traded-sector industries as well as other industrial uses providing support to traded-sector industries. Prime industrial lands possess site characteristics that are difficult or impossible to replicate in the planning area or region. Prime industrial lands have necessary access to transportation and freight infrastructure, including, but not limited to, rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes. Traded-sector has the meaning provided in ORS 285B.280.

(9) "Serviceable" means the city or county has determined that public facilities and transportation facilities, as defined by OAR 660, divisions 011 and 012, currently have adequate capacity for development planned in the service area where the site is located or can be upgraded to have adequate capacity within the 20-year planning period.

(10) "Short-term Supply of Land" means suitable land that is ready for construction within one year of an application for a building permit or request for service extension. Engineering feasibility is sufficient to qualify land for the short-term supply of land. Funding availability is not required. "Competitive Short-term Supply" means the short-term supply of land provides a range of site sizes and locations to accommodate the market needs of a variety of industrial and other employment uses.

(11) "Site Characteristics" means the attributes of a site necessary for a particular industrial or other employment use to operate. Site characteristics include, but are not limited to, a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes.

(12) "Suitable" means serviceable land designated for industrial or other employment use that provides, or can be expected to provide the appropriate site characteristics for the proposed use.

(13) "Total Land Supply" means the supply of land estimated to be adequate to accommodate industrial and other employment uses for a 20-year planning period. Total land supply includes the short-term supply of land as well as the remaining supply of lands considered suitable and serviceable for the industrial or other employment uses identified in a comprehensive plan. Total land supply includes both vacant and developed land.

(14) "Vacant Land" means a lot or parcel:

(a) Equal to or larger than one half-acre not currently containing permanent buildings or improvements; or

(b) Equal to or larger than five acres where less than one half-acre is occupied by permanent buildings or improvements.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0010
Application

(1) This division applies to comprehensive plans for areas within urban growth boundaries. This division does not require or restrict planning for industrial and other employment uses outside urban growth boundaries. Cities and counties subject to this division must adopt plan and ordinance amendments necessary to comply with this division.

(2) Comprehensive plans and land use regulations must be reviewed and amended as necessary to comply with this division as amended at the time of each periodic review of the plan pursuant to ORS 197.712(3). Jurisdictions that have received a periodic review notice from the Department (pursuant to OAR 660-025-0050) prior to the effective date of amendments to this division must comply with such amendments at their next periodic review unless otherwise directed by the Commission.

(3) Cities and counties may rely on their existing plans to meet the requirements of this division if they conclude:

(a) There are not significant changes in economic development opportunities (e.g., a need for sites not presently provided for in the plan) based on a review of new information about national, state, regional, county and local trends; and

(b) That existing inventories, policies, and implementing measures meet the requirements in OAR 660-009-0015 to 660-009-0030.

(4) For a post-acknowledgement plan amendment under OAR chapter 660, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and:

(a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or

(b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or

(c) Adopt a combination of the above, consistent with the requirements of this division.

(5) The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.

(6) The amendments to this division are effective January 1, 2007. A city or county may voluntarily follow adopted amendments to this division prior to the effective date of the adopted amendments.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 4-2001, f. & cert. ef. 10-2-01; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0015
Economic Opportunities Analysis

Cities and counties must review and, as necessary, amend their comprehensive plans to provide economic opportunities analyses containing the information described in sections (1) to (4) of this rule. This analysis will compare the demand for land for industrial and other employment uses to the existing supply of such land.

(1) Review of National, State, Regional, County and Local Trends. The economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends. This review of trends is the principal basis for estimating future industrial and other employment uses as described in section (4) of this rule. A use or category of use could reasonably be expected to expand or locate in the planning area if the area possesses the appropriate locational factors for the use or category of use. Cities and counties are strongly encouraged to analyze trends and establish employment projections in a geographic area larger than the planning area and to determine the percentage of employment growth reasonably expected to be captured for the planning area based on the assessment of community economic development potential pursuant to section (4) of this rule.

(2) Identification of Required Site Types. The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. Cities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for expansion. Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.

(3) Inventory of Industrial and Other Employment Lands. Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use.

(a) For sites inventoried under this section, plans must provide the following information:

(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;

(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory; and

(C) For cities and counties within a Metropolitan Planning Organization, the inventory must also include the approximate total acreage and percentage of sites within each plan or zoning district that comprise the short-term supply of land.

(b) When comparing current land supply to the projected demand, cities and counties may inventory contiguous lots or parcels together that are within a discrete plan or zoning district.

(c) Cities and counties that adopt objectives or policies providing for prime industrial land pursuant to OAR 660-009-0020(6) and 660-009-0025(8) must identify and inventory any vacant or developed prime industrial land according to section (3)(a) of this rule.

(4) Assessment of Community Economic Development Potential. The economic opportunities analysis must estimate the types and amounts of industrial and other employment uses likely to occur in the planning area. The estimate must be based on information generated in response to sections (1) to (3) of this rule and must consider the planning area's economic advantages and disadvantages. Relevant economic advantages and disadvantages to be considered may include but are not limited to:

(a) Location, size and buying power of markets;

(b) Availability of transportation facilities for access and freight mobility;

(c) Public facilities and public services;

(d) Labor market factors;

(e) Access to suppliers and utilities;

(f) Necessary support services;

(g) Limits on development due to federal and state environmental protection laws; and

(h) Educational and technical training programs.

(5) Cities and counties are strongly encouraged to assess community economic development potential through a visioning or some other public input based process in conjunction with state agencies. Cities and counties are strongly encouraged to use the assessment of community economic development potential to form the community economic development objectives pursuant to OAR 660-009-0020(1)(a).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0020
Industrial and Other Employment Development Policies

(1) Comprehensive plans subject to this division must include policies stating the economic development objectives for the planning area. These policies must be based on the community economic opportunities analysis prepared pursuant to OAR 660-009-0015 and must provide the following:

(a) Community Economic Development Objectives. The plan must state the overall objectives for economic development in the planning area and identify categories or particular types of industrial and other employment uses desired by the community. Policy objectives may identify the level of short-term supply of land the planning area needs. Cities and counties are strongly encouraged to select a competitive short-term supply of land as a policy objective.

(b) Commitment to Provide a Competitive Short-Term Supply. Cities and counties within a Metropolitan Planning Organization must adopt a policy stating that a competitive short-term supply of land as a community economic development objective for the industrial and other employment uses selected through the economic opportunities analysis pursuant to OAR 660-009-0015.

(c) Commitment to Provide Adequate Sites and Facilities. The plan must include policies committing the city or county to designate an adequate number of sites of suitable sizes, types and locations. The plan must also include policies, through public facilities planning and transportation system planning, to provide necessary public facilities and transportation facilities for the planning area.

(2) Plans for cities and counties within a Metropolitan Planning Organization or that adopt policies relating to the short-term supply of land, must include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed. These policies must describe dates, events or both, that trigger local review of the short-term supply of land.

(3) Plans may include policies to maintain existing categories or levels of industrial and other employment uses including maintaining downtowns or central business districts.

(4) Plan policies may emphasize the expansion of and increased productivity from existing industries and firms as a means to facilitate local economic development.

(5) Cities and counties are strongly encouraged to adopt plan policies that include brownfield redevelopment strategies for retaining land in industrial use and for qualifying them as part of the local short-term supply of land.

(6) Cities and counties are strongly encouraged to adopt plan policies pertaining to prime industrial land pursuant to OAR 660-009-0025(8).

(7) Cities and counties are strongly encouraged to adopt plan policies that include additional approaches to implement this division including, but not limited to:

(a) Tax incentives and disincentives;

(b) Land use controls and ordinances;

(c) Preferential tax assessments;

(d) Capital improvement programming;

(e) Property acquisition techniques;

(f) Public/private partnerships; and

(g) Intergovernmental agreements.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.712

Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0025

Designation of Lands for Industrial and Other Employment Uses

Cities and counties must adopt measures adequate to implement policies adopted pursuant to OAR 660-009-0020. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, public facility plans, and transportation system plans.

(1) Identification of Needed Sites. The plan must identify the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies. Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. Cities and counties may also designate mixed-use zones to meet multiple needs in a given location.

(2) Total Land Supply. Plans must designate serviceable land suitable to meet the site needs identified in section (1) of this rule. Except as provided for in section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.

(3) Short-Term Supply of Land. Plans for cities and counties within a Metropolitan Planning Organization or cities and counties that adopt policies relating to the short-term supply of land must designate suitable land to respond to economic development opportunities as they arise. Cities and counties may maintain the short-term supply of land according to the strategies adopted pursuant to OAR 660-009-0020(2).

(a) Except as provided for in subsections (b) and (c), cities and counties subject to this section must provide at least 25 percent of the total land supply within the urban growth boundary designated for industrial and other employment uses as short-term supply.

(b) Affected cities and counties that are unable to achieve the target in subsection (a) above may set an alternative target based on their economic opportunities analysis.

(c) A planning area with 10 percent or more of the total land supply enrolled in Oregon's industrial site certification program pursuant to ORS 284.565 satisfies the requirements of this section.

(4) If cities and counties are required to prepare a public facility plan or transportation system plan by OAR chapter 660, division 011 or division 012, the city or county must complete subsections (a) to (c) of this section at the time of periodic review. Requirements of this rule apply only to city and county decisions made at the time of periodic review. Subsequent implementation of or amendments to the comprehensive plan or the public facility plan that change the supply of serviceable land are not subject to the requirements of this section. Cities and counties must:

(a) Identify serviceable industrial and other employment sites. The affected city or county in consultation with the local service provider, if applicable, must make decisions about whether a site is serviceable. Cities and counties are encouraged to develop specific criteria for deciding whether or not a site is serviceable. Cities and counties are strongly encouraged to also consider whether or not extension of facilities is reasonably likely to occur considering the size and type of uses likely to occur and the cost or distance of facility extension;

(b) Estimate the amount of serviceable industrial and other employment land likely to be needed during the planning period for the public facilities plan. Appropriate techniques for estimating land needs include but are not limited to the following:

(A) Projections or forecasts based on development trends in the area over previous years; and

(B) Deriving a proportionate share of the anticipated 20-year need specified in the comprehensive plan.

(c) Review and, if necessary, amend the comprehensive plan and the public facilities plan to maintain a short-term supply of land. Amendments to implement this requirement include but are not limited to the following:

(A) Changes to the public facilities plan to add or reschedule projects to make more land serviceable;

(B) Amendments to the comprehensive plan that redesignate additional serviceable land for industrial or other employment use; and

(C) Reconsideration of the planning area's economic development objectives and amendment of plan objectives and policies based on public facility limitations.

(d) If a city or county is unable to meet the requirements of this section, it must identify the specific steps needed to provide expanded public facilities at the earliest possible time.

(5) Institutional Uses. Cities and counties are not required to designate institutional uses on privately owned land when implementing section (2) of this rule. Cities and counties may designate land in an industrial or other employment land category to compensate for any institutional land demand that is not designated under this section.

(6) Compatibility. Cities and counties are strongly encouraged to manage encroachment and intrusion of uses incompatible with industrial and other employment uses. Strategies for managing encroachment and intrusion of incompatible uses include, but are not limited to, transition areas around uses having negative impacts on surrounding areas, design criteria, district designation, and limiting non-essential uses within districts.

(7) Availability. Cities and counties may consider land availability when designating the short-term supply of land. Available land is vacant or developed land likely to be on the market for sale or lease at prices consistent with the local real estate market. Methods for determining lack of availability include, but are not limited to:

(a) Bona fide offers for purchase or purchase options in excess of real market value have been rejected in the last 24 months;

(b) A site is listed for sale at more than 150 percent of real market values;

(c) An owner has not made timely response to inquiries from local or state economic development officials; or

(d) Sites in an industrial or other employment land category lack diversity of ownership within a planning area when a single owner or entity controls more than 51 percent of those sites.

(8) Uses with Special Siting Characteristics. Cities and counties that adopt objectives or policies providing for uses with special site needs must adopt policies and land use regulations providing for those special site needs. Special site needs include, but are not limited to large acreage sites, special site configurations, direct access to transportation facilities, prime industrial lands, sensitivity to adjacent land uses, or coastal shoreland sites

designated as suited for water-dependent use under Goal 17. Policies and land use regulations for these uses must:

(a) Identify sites suitable for the proposed use;

(b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities that interfere with development of the site for the intended use; and

(c) Where necessary, protect a site for the intended use by including measures that either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0030
Multi-Jurisdiction Coordination

(1) Cities and counties are strongly encouraged to coordinate when implementing OAR 660-009-0015 to 660-009-0025.

(2) Jurisdictions that coordinate under this rule may:

(a) Conduct a single coordinated economic opportunities analysis; and

(b) Designate lands among the coordinating jurisdictions in a mutually agreed proportion.

Stat. Auth.: ORS 183 & 197, OL 2003 Ch. 800
Stats. Implemented: ORS 197.712
Hist.: LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

DIVISION 11

PUBLIC FACILITIES PLANNING

660-011-0000
Purpose

The purpose of this division is to aid in achieving the requirements of Goal 11, Public Facilities and Services, OAR 660-015-0000(11), interpret Goal 11 requirements regarding public facilities and services on rural lands, and implement ORS 197.712(2)(e), which requires that a city or county shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. The purpose of the plan is to help assure that urban development in such urban growth boundaries is guided and supported by types and levels of urban facilities and services appropriate for the needs and requirements of the urban areas to be serviced, and that those facilities and services are provided in a timely, orderly and efficient arrangement, as required by Goal 11. The division contains definitions relating to a public facility plan, procedures and standards for developing, adopting, and amending such a plan, the date for submittal of the plan to the Commission and standards for Department review of the plan.

[ED. NOTE: Goals referenced are available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84; LCDD 4-1998, f. & cert. ef. 7-28-98

660-011-0005
Definitions

(1) "Public Facilities Plan": A public facility plan is a support document or documents to a comprehensive plan. The facility plan describes the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plans within an urban growth boundary containing a population greater than 2,500. Certain elements of the public facility plan also shall be adopted as part of the comprehensive plan, as specified in OAR 660-011-0045.

(2) "Rough Cost Estimates": Rough cost estimates are approximate costs expressed in current-year (year closest to the period of public facility plan development) dollars. It is not intended that project cost estimates be as exact as is required for budgeting purposes.

(3) "Short Term": The short term is the period from year one through year five of the facility plan.

(4) "Long Term": The long term is the period from year six through the remainder of the planning period.

(5) "Public Facility": A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities.

(6) "Public Facility Project": A public facility project is the construction or reconstruction of a water, sewer, or transportation facility within a public facility system that is funded or utilized by members of the general public.

(7) "Public Facility Systems": Public facility systems are those facilities of a particular type that combine to provide water, sewer or transportation services. For purposes of this division, public facility systems are limited to the following:

(a) Water:

(A) Sources of water;

(B) Treatment system;

(C) Storage system;

(D) Pumping system;

(E) Primary distribution system.

(b) Sanitary sewer:

(A) Treatment facilities system;

(B) Primary collection system.

(c) Storm sewer:

(A) Major drainageways (major trunk lines, streams, ditches, pump stations and retention basins);

(B) Outfall locations.

(d) Transportation:

(A) Freeway system, if planned for in the acknowledged comprehensive plan;

(B) Arterial system;

(C) Significant collector system;

(D) Bridge system (those on the Federal Bridge Inventory);

(E) Mass transit facilities if planned for in the acknowledged comprehensive plan, including purchase of new buses if total fleet is less than 200 buses, rail lines or transit stations associated with providing transit service to major transportation corridors and park and ride station;

(F) Airport facilities as identified in the current airport master plans;

(G) Bicycle paths if planned for in the acknowledged comprehensive plan.

(8) "Land Use Decisions": In accordance with ORS 197.712(2)(e), project timing and financing provisions of public facility plans shall not be considered land use decisions as specified under ORS 197.015(10).

(9) "Urban Growth Management Agreement": In accordance with OAR 660-003-0010(2)(c), and urban growth management agreement is a written statement, agreement or set of agreements setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be completed and by which the urban growth boundary may be modified (unless the same information is incorporated in other acknowledged documents).

(10) Other Definitions: For the purposes of this division, the definitions in ORS 197.015 shall apply except as provided for in section (8) of this rule regarding the definition in ORS 197.015(10).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0010
The Public Facility Plan

(1) The public facility plan shall contain the following items:

(a) An inventory and general assessment of the condition of all the significant public facility systems which support the land uses designated in the acknowledged comprehensive plan;

(b) A list of the significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. Public facility project descriptions or specifications of these projects as necessary;

(c) Rough cost estimates of each public facility project;

(d) A map or written description of each public facility project's general location or service area;

(e) Policy statement(s) or urban growth management agreement identifying the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated;

(f) An estimate of when each facility project will be needed; and

(g) A discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system.

(2) Those public facilities to be addressed in the plan shall include, but need not be limited to those specified in OAR 660-011-0005(5). Facilities included in the public facility plan other than those included in OAR 660-011-0005(5) will not be reviewed for compliance with this rule.

(3) It is not the purpose of this division to cause duplication of or to supplant existing applicable facility plans and programs. Where all or part of an acknowledged comprehensive plan, facility master plan either of the local jurisdiction or appropriate special district, capital improvement program, regional functional plan, similar plan or any combination of such plans meets all or some of the requirements of this division, those plans, or programs may be incorporated by reference into the public facility plan required by this division. Only those referenced portions of such documents shall be considered to be a part of the public facility plan and shall be subject to the administrative procedures of this division and ORS Chapter 197.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0015
Responsibility for Public Facility Plan Preparation

(1) Responsibility for the preparation, adoption and amendment of the public facility plan shall be specified within the urban growth management agreement. If the urban growth management agreement does not make provision for this responsibility, the agreement shall be amended to do so prior to the preparation of the public facility plan. In the case where an unincorporated area exists within the Portland Metropolitan Urban Growth Boundary which is not contained within the boundary of an approved urban planning area agreement with the County, the County shall be the responsible agency for preparation of the facility plan for that unincorporated area. The urban growth management agreement shall be submitted with the public facility plan as specified in OAR 660-011-0040.

(2) The jurisdiction responsible for the preparation of the public facility plan shall provide for the coordination of such preparation with the city, county, special districts and, as necessary, state and federal agencies and private providers of public facilities. The Metropolitan Service District is responsible for public facility plans coordination within the District consistent with ORS 197.190 and 268.390.

(3) Special districts, including port districts, shall assist in the development of the public facility plan for those facilities they provide. Special districts may object to that portion of the facilities plan adopted as part of the comprehensive plan during review by the Commission only if they have completed a special district agreement as specified under ORS 197.185 and 197.254(3) and (4) and participated in the development of such portion of the public facility plan.

(4) Those state agencies providing funding for or making expenditures on public facility systems shall participate in the development of the public facility plan in accordance with their state agency coordination agreement under ORS 197.180 and 197.712(2)(f).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0020
Public Facility Inventory and Determination of Future Facility Projects

(1) The public facility plan shall include an inventory of significant public facility systems. Where the acknowledged comprehensive plan, background document or one or more of the plans or programs listed in OAR 660-011-0010(3) contains such an inventory, that inventory may be incorporated by reference. The inventory shall include:

(a) Mapped location of the facility or service area;

(b) Facility capacity or size; and

(c) General assessment of condition of the facility (e.g., very good, good, fair, poor, very poor).

(2) The public facility plan shall identify significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. The public facility plan shall list the title of the project and describe each public facility project in terms of the type of facility, service area, and facility capacity.

(3) Project descriptions within the facility plan may require modifications based on subsequent environmental impact studies, design studies, facility master plans, capital improvement programs, or site availability. The public facility plan should anticipate these changes as specified in OAR 660-011-0045.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0025
Timing of Required Public Facilities

(1) The public facilities plan shall include a general estimate of the timing for the planned public facility projects. This timing component of the public facilities plan can be met in several ways depending on whether the project is anticipated in the short term or long term. The timing of projects may be related directly to population growth, e.g., the expansion or new construction of water treatment facilities. Other facility projects can be related to a measure of the facility's service level being met or exceeded, e.g., a major arterial or intersection reaching a maximum vehicle-per-day standard. Development of other projects may be more long term and tied neither to specific population levels nor measures of service levels, e.g., sewer projects to correct infiltration and inflow problems. These projects can take place over a long period of time and may be tied to the availability of long-term funding. The timing of projects may also be tied to specific years.

(2) Given the different methods used to estimate the timing of public facilities, the public facility plan shall identify projects as occurring in either the short term or long term, based on those factors which are related to project development. For those projects designated for development in the short term, the public facility plan shall identify an approximate year for development. For those projects designated for development over the long term, the public facility plan shall provide a general estimate as to when the need for project development would exist, e.g., population level, service level standards, etc. Timing provisions for public facility projects shall be consistent with the acknowledged comprehensive plan's projected growth estimates. The public facility plan shall consider the relationships between facilities in providing for development.

(3) Anticipated timing provisions for public facilities are not considered land use decisions as specified in ORS 197.712(2)(e), and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or 197.835(4).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0030
Location of Public Facility Projects

(1) The public facility plan shall identify the general location of the public facility project in specificity appropriate for the facility. Locations of projects anticipated to be carried out in the short term can be specified more precisely than the locations of projects anticipated for development in the long term.

(2) Anticipated locations for public facilities may require modifications based on subsequent environmental impact studies, design studies, facility master plans, capital improvement programs, or land availability. The public facility plan should anticipate those changes as specified in OAR 660-011-0045.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0035
Determination of Rough Cost Estimates for Public Facility Projects and Local Review of Funding Mechanisms for Public Facility Systems

(1) The public facility plan shall include rough cost estimates for those sewer, water, and transportation public facility projects identified in the facility plan. The intent of these rough cost estimates is to:

(a) Provide an estimate of the fiscal requirements to support the land use designations in the acknowledged comprehensive plan; and

(b) For use by the facility provider in reviewing the provider's existing funding mechanisms (e.g., general funds, general obligation and revenue bonds, local improvement district, system development charges, etc.) and possible alternative funding mechanisms. In addition to including rough cost estimates for each project, the facility plan shall include a discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system. These funding mechanisms may also be described in terms of general guidelines or local policies.

(2) Anticipated financing provisions are not considered land use decisions as specified in ORS 197.712(2)(e) and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or 197.835(4).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0040
Date of Submittal of Public Facility Plans

The public facility plan shall be completed, adopted, and submitted by the time of the responsible jurisdiction's periodic review. The public facility plan shall be reviewed under OAR chapter 660, division 25, "Periodic Review" with the jurisdiction's comprehensive plan and land use regulations. Portions of public facility plans adopted as part of comprehensive plans prior to the responsible jurisdiction's periodic review will be reviewed pursuant to OAR chapter 660, division 18, "Post Acknowledgment Procedures."

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0045
Adoption and Amendment Procedures for Public Facility Plans

(1) The governing body of the city or county responsible for development of the public facility plan shall adopt the plan as a supporting document to the jurisdiction's comprehensive plan and shall also adopt as part of the comprehensive plan:

(a) The list of public facility project titles, excluding (if the jurisdiction so chooses) the descriptions or specifications of those projects;

(b) A map or written description of the public facility projects' locations or service areas as specified in sections (2) and (3) of this rule; and

(c) The policy(ies) or urban growth management agreement designating the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated.

(2) Certain public facility project descriptions, location or service area designations will necessarily change as a result of subsequent design studies, capital improvement programs, environmental impact studies, and changes in potential sources of funding. It is not the intent of this division to:

(a) Either prohibit projects not included in the public facility plans for which unanticipated funding has been obtained;

(b) Preclude project specification and location decisions made according to the National Environmental Policy Act; or

(c) Subject administrative and technical changes to the facility plan to ORS 197.610(1) and (2) or 197.835(4).

(3) The public facility plan may allow for the following modifications to projects without amendment to the public facility plan:

(a) Administrative changes are those modifications to a public facility project which are minor in nature and do not significantly impact the project's general description, location, sizing, capacity, or other general characteristic of the project;

(b) Technical and environmental changes are those modifications to a public facility project which are made pursuant to "final engineering" on a project or those that result from the findings of an Environmental Assessment or Environmental Impact Statement conducted under regulations implementing the procedural provisions of the National Environmental Policy Act of 1969 (**40 CFR Parts 1500–1508**) or any federal or State of Oregon agency project development regulations consistent with that Act and its regulations.

(c) Public facility project changes made pursuant to subsection (3)(b) of this rule are subject to the administrative procedures and review and appeal provisions of the regulations controlling the study (**40 CFR Parts 1500–1508** or similar regulations) and are not subject to the administrative procedures or review or appeal provisions of ORS Chapter 197, or OAR chapter 660 division 18.

(4) Land use amendments are those modifications or amendments to the list, location or provider of, public facility projects, which significantly impact a public facility project identified in the comprehensive plan and which do not qualify under subsection (3)(a) or (b) of this rule. Amendments made pursuant to this subsection are subject to the administrative procedures and review and appeal provisions accorded "land use decisions" in ORS Chapter 197 and those set forth in OAR chapter 660 division 18.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0050
Standards for Review by the Department

The Department of Land Conservation and Development shall evaluate the following, as further defined in this division, when reviewing public facility plans submitted under this division:

(1) Those items as specified in OAR 660-011-0010(1);

(2) Whether the plan contains a copy of all agreements required under OAR 660-011-0010 and 660-011-0015; and

(3) Whether the public facility plan is consistent with the acknowledged comprehensive plan.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDC 4-1984, f. & ef. 10-18-84

660-011-0060
Sewer Service to Rural Lands

(1) As used in this rule, unless the context requires otherwise:

(a) "Establishment of a sewer system" means the creation of a new sewage system, including systems provided by public or private entities;

(b) "Extension of a Sewer System" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer system in order to provide service to a use, regardless of whether the use is inside the service boundaries of the public or private service provider. The sewer service authorized in section (8) of this rule is not an extension of a sewer;

(c) "No practicable alternative to a sewer system" means a determination by the Department of Environmental Quality (DEQ) or the Oregon Health Division, pursuant to criteria in OAR chapter 340, division 71, and other applicable rules and laws, that an existing public health hazard cannot be adequately abated by the repair or maintenance of existing sewer systems or on-site systems

or by the installation of new on-site systems as defined in OAR 340-071-0100;

(d) "Public health hazard" means a condition whereby it is probable that the public is exposed to disease-caused physical suffering or illness due to the presence of inadequately treated sewage;

(e) "Sewage" means the water-carried human, animal, vegetable, or industrial waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present;

(f) "Sewer system" means a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal. The following are not considered a "sewer system" for purposes of this rule:

(A) A system provided solely for the collection, transfer and/or disposal of storm water runoff;

(B) A system provided solely for the collection, transfer and/or disposal of animal waste from a farm use as defined in ORS 215.303.

(2) Except as provided in sections (3), (4), (8), and (9) of this rule, and consistent with Goal 11, a local government shall not allow:

(a) The establishment of new sewer systems outside urban growth boundaries or unincorporated community boundaries;

(b) The extension of sewer lines from within urban growth boundaries or unincorporated community boundaries in order to serve uses on land outside those boundaries;

(c) The extension of sewer systems that currently serve land outside urban growth boundaries and unincorporated community boundaries in order to serve uses that are outside such boundaries and are not served by the system on July 28, 1998.

(3) Components of a sewer system that serve lands inside an urban growth boundary (UGB) may be placed on lands outside the boundary provided that the conditions in subsections (a) and (b) of this section are met, as follows:

(a) Such placement is necessary to:

(A) Serve lands inside the UGB more efficiently by traversing lands outside the boundary;

(B) Serve lands inside a nearby UGB or unincorporated community;

(C) Connect to components of the sewer system lawfully located on rural lands, such as outfall or treatment facilities; or

(D) Transport leachate from a landfill on rural land to a sewer system inside a UGB;

(b) The local government:

(A) Adopts land use regulations to ensure the sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries, except as authorized under section (4) of this rule; and

(B) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.

(4) A local government may allow the establishment of a new sewer system, or the extension of an existing sewer system, to serve land outside urban growth boundaries and unincorporated community boundaries in order to mitigate a public health hazard, provided that the conditions in subsections (a) and (b) of this section are met, as follows:

(a) The DEQ or the Oregon Health Division initially:

(A) Determines that a public health hazard exists in the area;

(B) Determines that the health hazard is caused by sewage from development that existed in the area on July 28, 1998;

(C) Describes the physical location of the identified sources of the sewage contributing to the health hazard; and

(D) Determines that there is no practicable alternative to a sewer system in order to abate the public health hazard; and

(b) The local government, in response to the determination in subsection (a) of this section, and based on recommendations by DEQ and the Oregon Health Division where appropriate:

(A) Determines the type of sewer system and service to be provided, pursuant to section (5) of this rule;

(B) Determines the boundaries of the sewer system service area, pursuant to section (6) of this rule;

(C) Adopts land use regulations that ensure the sewer system is designed and constructed so that its capacity does not exceed the minimum necessary to serve the area within the boundaries described under paragraph (B) of this subsection, except for urban reserve areas as provided under OAR 660-021-0040(6);

(D) Adopts land use regulations to prohibit the sewer system from serving any uses other than those existing or allowed in the identified service area on the date the sewer system is approved;

(E) Adopts plan and zone amendments to ensure that only rural land uses are allowed on rural lands in the area to be served by the sewer system, consistent with Goal 14 and OAR 660-004-0018, unless a Goal 14 exception has been acknowledged;

(F) Ensures that land use regulations do not authorize a higher density of residential development than would be authorized without the presence of the sewer system; and

(G) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.

(5) Where the DEQ determines that there is no practicable alternative to a sewer system, the local government, based on recommendations from DEQ, shall determine the most practicable sewer system to abate the health hazard considering the following:

(a) The system must be sufficient to abate the public health hazard pursuant to DEQ requirements applicable to such systems; and

(b) New or expanded sewer systems serving only the health hazard area shall be generally preferred over the extension of a sewer system from an urban growth boundary. However, if the health hazard area is within the service area of a sanitary authority or district, the sewer system operated by the authority or district, if available and sufficient, shall be preferred over other sewer system options.

(6) The local government, based on recommendations from DEQ and, where appropriate, the Oregon Health Division, shall determine the area to be served by a sewer system necessary to abate a health hazard. The area shall include only the following:

(a) Lots and parcels that contain the identified sources of the sewage contributing to the health hazard;

(b) Lots and parcels that are surrounded by or abut the parcels described in subsection (a) of this section, provided the local government demonstrates that, due to soils, insufficient lot size, or other conditions, there is a reasonably clear probability that onsite systems installed to serve uses on such lots or parcels will fail and further contribute to the health hazard.

(7) The local government or agency responsible for the determinations pursuant to sections (4) through (6) of this rule shall provide notice to all affected local governments and special districts regarding opportunities to participate in such determinations.

(8) A local government may allow a residential use to connect to an existing sewer line provided the conditions in subsections (a) through (h) of this section are met:

(a) The sewer service is to a residential use located on a parcel as defined by ORS 215.010(1), or a lot created by subdivision of land as defined in ORS 92.010;

(b) The parcel or lot is within a special district or sanitary authority sewer service boundary that existed on January 1, 2005, or the parcel is partially within such boundary and the sewer service provider is willing or obligated to provide service to the portion of the parcel or lot located outside that service boundary;

(c) The sewer service is to connect to a residential use located within a rural residential area, as described in OAR 660-004-0040, which existed on January 1, 2005;

(d) The nearest connection point from the residential parcel or lot to be served is within 300 feet of a sewer line that existed at that location on January 1, 2005;

(e) It is determined by the local government to be practical to connect the sewer service to the residential use considering geographic features or other natural or man-made constraints;

(f) The sewer service authorized by this section shall be available to only those parcels and lots specified in this section, unless service to other parcels or lots is authorized under sections (4) or (9) of this rule;

(g) The existing sewer line, from where the nearest connection point is determined under subsection (8)(d) of this rule, is not located within an urban growth boundary or unincorporated community boundary; and

(h) The connection of the sewer service shall not be relied upon to authorize a higher density of residential development than would be authorized without the presence of the sewer service, and shall not be used as a basis for an exception to Goal 14 as required by OAR 660-004-0040(6).

(9) A local government may allow the establishment of new sewer systems or the extension of sewer lines not otherwise provided for in section (4) of this rule, or allow a use to connect to an existing sewer line not otherwise provided for in section (8) of this rule, provided the standards for an exception to Goal 11 have been met, and provided the local government adopts land use regulations that prohibit the sewer system from serving any uses or areas other than those justified in the exception. Appropriate reasons and facts for an exception to Goal 11 include but are not limited to the following:

(a) The new system, or extension of an existing system, is necessary to avoid an imminent and significant public health hazard that would otherwise result if the sewer service is not provided; and, there is no practicable alternative to the sewer system in order to avoid the imminent public health hazard, or

(b) The extension of an existing sewer system will serve land that, by operation of federal law, is not subject to statewide planning Goal 11 and, if necessary, Goal 14.

[ED. NOTE: Goals referenced are available from the agency.]
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.712
Hist.: LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 3-2008, f. & cert. ef. 4-18-08

660-011-0065
Water Service to Rural Lands

(1) As used in this rule, unless the context requires otherwise:

(a) "Establishment" means the creation of a new water system and all associated physical components, including systems provided by public or private entities;

(b) "Extension of a water system" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing water system in order to provide service to a use that was not served by the system on the applicable date of this rule, regardless of whether the use is inside the service boundaries of the public or private service provider.

(c) "Water system" shall have the same meaning as provided in Goal 11, and includes all pipe, conduit, pipeline, mains, or other physical components of such a system.

(2) Consistent with Goal 11, local land use regulations applicable to lands that are outside urban growth boundaries and unincorporated community boundaries shall not:

(a) Allow an increase in a base density in a residential zone due to the availability of service from a water system;

(b) Allow a higher density for residential development served by a water system than would be authorized without such service; or

(c) Allow an increase in the allowable density of residential development due to the presence, establishment, or extension of a water system.

(3) Applicable provisions of this rule, rather than conflicting provisions of local acknowledged zoning ordinances, shall immediately apply to local land use decisions filed subsequent to the effective date of this rule.

[ED. NOTE: Goal referenced is available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.712
Hist.: LCDD 4-1998, f. & cert. ef. 7-28-98

DIVISION 12

TRANSPORTATION PLANNING

660-012-0000
Purpose

(1) This division implements Statewide Planning Goal 12 (Transportation) to provide and encourage a safe, convenient and economic transportation system. This division also implements provisions of other statewide planning goals related to transportation planning in order to plan and develop transportation facilities and services in close coordination with urban and rural development. The purpose of this division is to direct transportation planning in coordination with land use planning to:

(a) Promote the development of transportation systems adequate to serve statewide, regional and local transportation needs and the mobility needs of the transportation disadvantaged;

(b) Encourage and support the availability of a variety of transportation choices for moving people that balance vehicular use with other transportation modes, including walking, bicycling and transit in order to avoid principal reliance upon any one mode of transportation;

(c) Provide for safe and convenient vehicular, transit, pedestrian, and bicycle access and circulation;

(d) Facilitate the safe, efficient and economic flow of freight and other goods and services within regions and throughout the state through a variety of modes including road, air, rail and marine transportation;

(e) Protect existing and planned transportation facilities, corridors and sites for their identified functions;

(f) Provide for the construction and implementation of transportation facilities, improvements and services necessary to support acknowledged comprehensive plans;

(g) Identify how transportation facilities are provided on rural lands consistent with the goals;

(h) Ensure coordination among affected local governments and transportation service providers and consistency between state, regional and local transportation plans; and

(i) Ensure that changes to comprehensive plans are supported by adequate planned transportation facilities.

(2) In meeting the purposes described in section (1), coordinated land use and transportation plans should ensure that the planned transportation system supports a pattern of travel and land use in urban areas that will avoid the air pollution, traffic and livability problems faced by other large urban areas of the country through measures designed to increase transportation choices and make more efficient use of the existing transportation system.

(3) The extent of planning required by this division and the outcome of individual transportation plans will vary depending on community size, needs and circumstances. Generally, larger and faster growing communities and regions will need to prepare more comprehensive and detailed plans, while smaller communities and rural areas will have more general plans. For all communities, the mix of planned transportation facilities and services should be sufficient to ensure economic, sustainable and environmentally sound mobility and accessibility for all Oregonians. Coordinating land use and transportation planning will also complement efforts to meet other state and local objectives, including containing urban development, reducing the cost of public services, protecting farm and forest land, reducing air, water and noise pollution, conserving energy and reducing emissions of greenhouse gases that contribute to global climate change.

(a) In all urban areas, coordinated land use and transportation plans are intended to provide safe and convenient vehicular circulation and to enhance, promote and facilitate safe and convenient

pedestrian and bicycle travel by planning a well-connected network of streets and supporting improvements for all travel modes.

(b) In urban areas that contain a population greater than 25,000 persons, coordinated land use and transportation plans are intended to improve livability and accessibility by promoting the provision of transit service where feasible and more efficient performance of existing transportation facilities through transportation system management and demand management measures.

(c) Within metropolitan areas, coordinated land use and transportation plans are intended to improve livability and accessibility by promoting changes in the transportation system and land use patterns. A key outcome of this effort is a reduction in reliance on single occupant automobile use, particularly during peak periods. To accomplish this outcome, this division promotes increased planning for alternative modes and street connectivity and encourages land use patterns throughout urban areas that make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs. The result of applying these portions of the division will vary within metropolitan areas. Some parts of urban areas, such as downtowns, pedestrian districts, transit-oriented developments and other mixed-use, pedestrian-friendly centers, will be highly convenient for a variety of modes, including walking, bicycling and transit, while others will be auto-oriented and include more modest measures to accommodate access and circulation by other modes.

(4) This division sets requirements for coordination among affected levels of government and transportation service providers for preparation, adoption, refinement, implementation and amendment of transportation system plans. Transportation system plans adopted pursuant to this division fulfill the requirements for public facilities required under ORS 197.712(2)(e), Goal 11 and chapter 660, division 11, as they relate to transportation facilities. The rules in this division are not intended to make local government determinations "land use decisions" under ORS 197.015(10). The rules recognize, however, that under existing statutory and case law, many determinations relating to the adoption and implementation of transportation plans will be land use decisions.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.012, 197.040, 197.712,197.717, 197.732
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 6-1998 f. & cert. ef. 10-30-98; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06

660-012-0005
Definitions

(1) "Access Management" means measures regulating access to streets, roads and highways from public roads and private driveways. Measures may include but are not limited to restrictions on the siting of interchanges, restrictions on the type and amount of access to roadways, and use of physical controls, such as signals and channelization including raised medians, to reduce impacts of approach road traffic on the main facility.

(2) "Accessway" means a walkway that provides pedestrian and or bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often in the form of an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees and lighting. Where accessways cross driveways, they are generally raised, paved or marked in a manner which provides convenient access for pedestrians.

(3) "Affected Local Government" means a city, county or metropolitan service district that is directly impacted by a proposed transportation facility or improvement.

(4) "Approach Road" means a legally constructed, public or private connection that provides vehicular access either to or from or to and from a highway and an adjoining property.

(5) "At or near a major transit stop: "At" means a parcel or ownership which is adjacent to or includes a major transit stop generally including portions of such parcels or ownerships that are within 200 feet of a transit stop. "Near" generally means a parcel or ownership that is within 300 feet of a major transit stop. The term "generally" is intended to allow local governments through their plans and ordinances to adopt more specific definitions of these terms considering local needs and circumstances consistent with the overall objective and requirement to provide convenient pedestrian access to transit.

(6) "Committed Transportation Facilities" means those proposed transportation facilities and improvements which are consistent with the acknowledged comprehensive plan and have approved funding for construction in a public facilities plan or the Six-Year Highway or Transportation Improvement Program.

(7) "Demand Management" means actions which are designed to change travel behavior in order to improve performance of transportation facilities and to reduce need for additional road capacity. Methods may include, but are not limited to, the use of alternative modes, ride-sharing and vanpool programs, trip-reduction ordinances, shifting to off-peak periods, and reduced or paid parking.

(8) "Influence area of an interchange" means the area 1,320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(9) "Local streets" means streets that are functionally classified as local streets to serve primarily local access to property and circulation within neighborhoods or specific areas. Local streets do not include streets functionally classified as collector or arterials.

(10) "Local Street Standards" include but are not limited to standards for right-of-way, pavement width, travel lanes, parking lanes, curb turning radius, and accessways.

(11) "Major" means, in general, those facilities or developments which, considering the size of the urban or rural area and the range of size, capacity or service level of similar facilities or developments in the area, are either larger than average, serve more than neighborhood needs or have significant land use or traffic impacts on more than the immediate neighborhood:

(a) "Major" as it modifies transit corridors, stops, transfer stations and new transportation facilities means those facilities which are most important to the functioning of the system or which provide a high level, volume or frequency of service;

(b) "Major" as it modifies industrial, institutional and retail development means such developments which are larger than average, serve more than neighborhood needs or which have traffic impacts on more than the immediate neighborhood;

(c) Application of the term "major" will vary from area to area depending upon the scale of transportation improvements, transit facilities and development which occur in the area. A facility considered to be major in a smaller or less densely developed area may, because of the relative significance and impact of the facility or development, not be considered a major facility in a larger or more densely developed area with larger or more intense development or facilities.

(12) "Major transit stop" means:

(a) Existing and planned light rail stations and transit transfer stations, except for temporary facilities; Other planned stops designated as major transit stops in a transportation system plan and existing stops which:

(A) Have or are planned for an above average frequency of scheduled, fixed-route service when compared to region wide service. In urban areas of 1,000,000 or more population major transit stops are generally located along routes that have or are planned for 20 minute service during the peak hour; and

(B) Are located in a transit oriented development or within 1/4 mile of an area planned and zoned for:

(i) Medium or high density residential development; or

(ii) Intensive commercial or institutional uses within 1/4 mile of subsection (i); or

(iii) Uses likely to generate a relatively high level of transit ridership.

(13)"Metropolitan area" means the local governments that are responsible for adopting local or regional transportation system plans within a metropolitan planning organization (MPO) boundary.

This includes cities, counties, and, in the Portland Metropolitan area, Metro.

(14) "Metropolitan Planning Organization (MPO)" means an organization located within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state including such designations made subsequent to the adoption of this rule. The Longview-Kelso-Rainier and Walla Walla Valley MPOs are not considered MPOs for the purposes of this division.

(15) "Minor transportation improvements" include, but are not limited to, signalization, addition of turn lanes or merge/deceleration lanes on arterial or collector streets, provision of local streets, transportation system management measures, modification of existing interchange facilities within public right of way and design modifications located within an approved corridor. Minor transportation improvements may or may not be listed as planned projects in a TSP where the improvement is otherwise consistent with the TSP. Minor transportation improvements do not include new interchanges; new approach roads within the influence area of an interchange; new intersections on limited access roadways, highways or expressways; new collector or arterial streets, road realignments or addition of travel lanes.

(16) "ODOT" means the Oregon Department of Transportation.

(17) "Parking Spaces" means on and off street spaces designated for automobile parking in areas planned for industrial, commercial, institutional or public uses. The following are not considered parking spaces for the purposes of OAR 660-012-0045(5)(c): park and ride lots, handicapped parking, and parking spaces for carpools and vanpools.

(18) "Pedestrian connection" means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to sidewalks, walkways, accessways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connections may also include rights of way or easements for future pedestrian improvements.

(19) "Pedestrian district" means a comprehensive plan designation or implementing land use regulations, such as an overlay zone, that establish requirements to provide a safe and convenient pedestrian environment in an area planned for a mix of uses likely to support a relatively high level of pedestrian activity. Such areas include but are not limited to:

(a) Lands planned for a mix of commercial or institutional uses near lands planned for medium to high density housing; or

(b) Areas with a concentration of employment and retail activity; and

(c) Which have or could develop a network of streets and accessways which provide convenient pedestrian circulation.

(20) "Pedestrian plaza" means a small semi-enclosed area usually adjoining a sidewalk or a transit stop which provides a place for pedestrians to sit, stand or rest. They are usually paved with concrete, pavers, bricks or similar material and include seating, pedestrian scale lighting and similar pedestrian improvements. Low walls or planters and landscaping are usually provided to create a semi-enclosed space and to buffer and separate the plaza from adjoining parking lots and vehicle maneuvering areas. Plazas are generally located at a transit stop, building entrance or an intersection and connect directly to adjacent sidewalks, walkways, transit stops and buildings. A plaza including 150-250 square feet would be considered "small."

(21) "Pedestrian scale" means site and building design elements that are dimensionally less than those intended to accommodate automobile traffic, flow and buffering. Examples include ornamental lighting of limited height; bricks, pavers or other modules of paving with small dimensions; a variety of planting and landscaping materials; arcades or awnings that reduce the height of walls; and signage and signpost details that can only be perceived from a short distance.

(22) "Planning Period" means the twenty-year period beginning with the date of adoption of a TSP to meet the requirements of this rule.

(23) "Preliminary Design" means an engineering design which specifies in detail the location and alignment of a planned transportation facility or improvement.

(24) "Reasonably direct" means either a route that does not deviate unnecessarily from a straight line or a route that does not involve a significant amount of out-of-direction travel for likely users.

(25) "Refinement Plan" means an amendment to the transportation system plan, which resolves, at a systems level, determinations on function, mode or general location which were deferred during transportation system planning because detailed information needed to make those determinations could not reasonably be obtained during that process.

(26) "Regional Transportation Plan" or "RTP" means the long-range transportation plan prepared and adopted by a metropolitan planning organization for a metropolitan area as provided for in federal law.

(27) "Roads" means streets, roads and highways.

(28) "Rural community" means areas defined as resort communities and rural communities in accordance with OAR 660-022-0010(6) and (7). For the purposes of this division, the area need only meet the definitions contained in the Unincorporated Communities Rule although the area may not have been designated as an unincorporated community in accordance with OAR 660-022-0020.

(29) "Transit-Oriented Development (TOD)" means a mix of residential, retail and office uses and a supporting network of roads, bicycle and pedestrian ways focused on a major transit stop designed to support a high level of transit use. The key features of transit oriented development include:

(a) A mixed-use center at the transit stop, oriented principally to transit riders and pedestrian and bicycle travel from the surrounding area;

(b) High density of residential development proximate to the transit stop sufficient to support transit operation and neighborhood commercial uses within the TOD;

(c) A network of roads, and bicycle and pedestrian paths to support high levels of pedestrian access within the TOD and high levels of transit use.

(30) "Transportation Facilities" means any physical facility that moves or assist in the movement of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage and water systems.

(31) "Transportation System Management Measures" means techniques for increasing the efficiency, safety, capacity or level of service of a transportation facility without increasing its size. Examples include, but are not limited to, traffic signal improvements, traffic control devices including installing medians and parking removal, channelization, access management, ramp metering, and restriping of high occupancy vehicle (HOV) lanes.

(32) "Transportation Needs" means estimates of the movement of people and goods consistent with acknowledged comprehensive plan and the requirements of this rule. Needs are typically based on projections of future travel demand resulting from a continuation of current trends as modified by policy objectives, including those expressed in Goal 12 and this rule, especially those for avoiding principal reliance on any one mode of transportation.

(33) "Transportation Needs, Local" means needs for movement of people and goods within communities and portions of counties and the need to provide access to local destinations.

(34) "Transportation Needs, Regional" means needs for movement of people and goods between and through communities and accessibility to regional destinations within a metropolitan area, county or associated group of counties.

(35) "Transportation Needs, State" means needs for movement of people and goods between and through regions of the state and between the state and other states.

(36) "Transportation Project Development" means implementing the transportation system plan (TSP) by determining the precise location, alignment, and preliminary design of improvements included in the TSP based on site-specific engineering and environmental studies.

(37) "Transportation Service" means a service for moving people and goods, such as intercity bus service and passenger rail service.

(38) "Transportation System Plan (TSP)" means a plan for one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

(39) "Urban Area" means lands within an urban growth boundary, two or more contiguous urban growth boundaries, and urban unincorporated communities as defined by OAR 660-022-0010(9). For the purposes of this division, the area need only meet the definition contained in the Unincorporated Communities Rule although the area may not have been designated as an unincorporated community in accordance with 660-022-0020.

(40) "Urban Fringe" means:

(a) Areas outside the urban growth boundary that are within 5 miles of the urban growth boundary of an MPO area; and

(b) Areas outside the urban growth boundary within 2 miles of the urban growth boundary of an urban area containing a population greater than 25,000.

(41) Vehicle Miles of Travel (VMT): means automobile vehicle miles of travel. Automobiles, for purposes of this definition, include automobiles, light trucks, and other similar vehicles used for movement of people. The definition does not include buses, heavy trucks and trips that involve commercial movement of goods. VMT includes trips with an origin and a destination within the MPO boundary and excludes pass through trips (i.e., trips with a beginning and end point outside of the MPO) and external trips (i.e., trips with a beginning or end point outside of the MPO boundary). VMT is estimated prospectively through the use of metropolitan area transportation models.

(42) "Walkway" means a hard surfaced area intended and suitable for use by pedestrians, including sidewalks and surfaced portions of accessways.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.012, 197.040, 197.712,197.717 & 197.732
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 3-1995, f. & cert. ef. 3-31-95; LCDC 4-1995, f. & cert. ef. 5-8-95; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 3-2005, f. & cert. ef. 4-11-05; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 11-2011, f. 12-30-11, cert. ef. 1-1-12; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0010
Transportation Planning

(1) As described in this division, transportation planning shall be divided into two phases: transportation system planning and transportation project development. Transportation system planning establishes land use controls and a network of facilities and services to meet overall transportation needs. Transportation project development implements the TSP by determining the precise location, alignment, and preliminary design of improvements included in the TSP.

(2) It is not the purpose of this division to cause duplication of or to supplant existing applicable transportation plans and programs. Where all or part of an acknowledged comprehensive plan, TSP either of the local government or appropriate special district, capital improvement program, regional functional plan, or similar plan or combination of plans meets all or some of the requirements of this division, those plans or programs may be incorporated by reference into the TSP required by this division. Only those referenced portions of such documents shall be considered to be a part of the TSP and shall be subject to the administrative procedures of this division and ORS Chapter 197.

(3) It is not the purpose of this division to limit adoption or enforcement of measures to provide convenient bicycle and pedestrian circulation or convenient access to transit that are otherwise consistent with the requirements of this division.

Stat. Auth.: ORS 183, 197.040, 197.245
Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.712, 197.717
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 4-1995, f. & cert. ef. 5-8-95

660-012-0015
Preparation and Coordination of Transportation System Plans

(1) ODOT shall prepare, adopt and amend a state TSP in accordance with ORS 184.618, its program for state agency coordination certified under ORS 197.180, and OAR 660-012-0030, 660-012-0035, 660-012-0050, 660-012-0065 and 660-012-0070. The state TSP shall identify a system of transportation facilities and services adequate to meet identified state transportation needs:

(a) The state TSP shall include the state transportation policy plan, modal systems plans and transportation facility plans as set forth in OAR chapter 731, division 15;

(b) State transportation project plans shall be compatible with acknowledged comprehensive plans as provided for in OAR chapter 731, division 15. Disagreements between ODOT and affected local governments shall be resolved in the manner established in that division.

(2) MPOs and counties shall prepare and amend regional TSPs in compliance with this division. MPOs shall prepare regional TSPs for facilities of regional significance within their jurisdiction. Counties shall prepare regional TSPs for all other areas and facilities:

(a) Regional TSPs shall establish a system of transportation facilities and services adequate to meet identified regional transportation needs and shall be consistent with adopted elements of the state TSP;

(b) Where elements of the state TSP have not been adopted, the MPO or county shall coordinate the preparation of the regional TSP with ODOT to assure that state transportation needs are accommodated;

(c) Regional TSPs prepared by MPOs other than metropolitan service districts shall be adopted by the counties and cities within the jurisdiction of the MPO. Metropolitan service districts shall adopt a regional TSP for areas within their jurisdiction;

(d) Regional TSPs prepared by counties shall be adopted by the county.

(3) Cities and counties shall prepare, adopt and amend local TSPs for lands within their planning jurisdiction in compliance with this division:

(a) Local TSPs shall establish a system of transportation facilities and services adequate to meet identified local transportation needs and shall be consistent with regional TSPs and adopted elements of the state TSP;

(b) Where the regional TSP or elements of the state TSP have not been adopted, the city or county shall coordinate the preparation of the local TSP with the regional transportation planning body and ODOT to assure that regional and state transportation needs are accommodated.

(4) Cities and counties shall adopt regional and local TSPs required by this division as part of their comprehensive plans. Transportation financing programs required by OAR 660-012-0040 may be adopted as a supporting document to the comprehensive plan.

(5) The preparation of TSPs shall be coordinated with affected state and federal agencies, local governments, special districts, and private providers of transportation services.

(6) Mass transit, transportation, airport and port districts shall participate in the development of TSPs for those transportation facilities and services they provide. These districts shall prepare and adopt plans for transportation facilities and services they provide. Such plans shall be consistent with and adequate to carry out relevant portions of applicable regional and local TSPs. Cooperative agreements executed under ORS 197.185(2) shall include the requirement that mass transit, transportation, airport and port

districts adopt a plan consistent with the requirements of this section.

(7) Where conflicts are identified between proposed regional TSPs and acknowledged comprehensive plans, representatives of affected local governments shall meet to discuss means to resolve the conflicts. These may include:

(a) Changing the draft TSP to eliminate the conflicts; or

(b) Amending acknowledged comprehensive plan provision to eliminate the conflicts;

(c) For MPOs which are not metropolitan service districts, if conflicts persist between regional TSPs and acknowledged comprehensive plans after efforts to achieve compatibility, an affected local government may petition the Commission to resolve the dispute.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 184.618, 195.025, 197.040, 197.180, 197.230, 197.245, 197.712 & 197.717
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0016
Coordination with Federally-Required Regional Transportation Plans in Metropolitan Areas

(1) In metropolitan areas, local governments shall prepare, adopt, amend and update transportation system plans required by this division in coordination with regional transportation plans (RTPs) prepared by MPOs required by federal law. Insofar as possible, regional transportation system plans for metropolitan areas shall be accomplished through a single coordinated process that complies with the applicable requirements of federal law and this division. Nothing in this rule is intended to make adoption or amendment of a regional transportation plan by a metropolitan planning organization a land use decision under Oregon law.

(2) When an MPO adopts or amends a regional transportation plan that relates to compliance with this division, the affected local governments shall review the adopted plan or amendment and either:

(a) Make a finding that the proposed regional transportation plan amendment or update is consistent with the applicable provisions of adopted regional and local transportation system plan and comprehensive plan and compliant with applicable provisions of this division; or

(b) Adopt amendments to the relevant regional or local transportation system plan that make the regional transportation plan and the applicable transportation system plans consistent with one another and compliant with applicable provisions of this division. Necessary plan amendments or updates shall be prepared and adopted in coordination with the federally-required plan update or amendment. Such amendments shall be initiated no later than 30 days from the adoption of the RTP amendment or update and shall be adopted no later than one year from the adoption of the RTP amendment or update or according to a work plan approved by the commission. A plan amendment is "initiated" for purposes of this subsection where the affected local government files a post-acknowledgement plan amendment notice with the department as provided in OAR chapter 660, division 18.

(c) In the Portland Metropolitan area, compliance with this section shall be accomplished by Metro through adoption of required findings or an amendment to the regional transportation system plan.

(3) Adoption or amendment of a regional transportation plan relates to compliance with this division for purposes of section (2) if it does one or more of the following:

(a) Changes plan policies;

(b) Adds or deletes a project from the list of planned transportation facilities, services or improvements or from the financially-constrained project list required by federal law;

(c) Modifies the general location of a planned transportation facility or improvement;

(d) Changes the functional classification of a transportation facility; or

(e) Changes the planning period or adopts or modifies the population or employment forecast or allocation upon which the plan is based.

(4) The following amendments to a regional transportation plan do not relate to compliance with this division for purposes of section (2):

(a) Adoption of an air quality conformity determination;

(b) Changes to a federal revenue projection;

(c) Changes to estimated cost of a planned transportation project; or

(d) Deletion of a project from the list of planned projects where the project has been constructed or completed.

(5) Adoption or amendment of a regional transportation plan that extends the planning period beyond that specified in the applicable acknowledged comprehensive plan or regional transportation system plan is consistent with the requirements of this rule where the following conditions are met:

(a) The future year population forecast is consistent with those issued or adopted under ORS 195.033 or 195.036;

(b) Land needed to accommodate future urban density population and employment and other urban uses is identified in a manner consistent with Goal 14 and relevant rules;

(c) Urban density population and employment are allocated to designated centers and other identified areas to provide for implementation of the metropolitan area's integrated land use and transportation plan or strategy; and

(d) Urban density population and employment or other urban uses are allocated to areas outside of an acknowledged urban growth boundary only where:

(A) The allocation is done in conjunction with consideration by local governments of possible urban growth boundary amendments consistent with Goal 14 and relevant rules, and

(B) The RTP clearly identifies the proposed UGB amendments and any related projects as illustrative and subject to further review and approval by the affected local governments.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.012, 197.040, 197.712,197.717, 197.732
Hist.; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0020
Elements of Transportation System Plans

(1)A TSP shall establish a coordinated network of transportation facilities adequate to serve state, regional and local transportation needs.

(2) The TSP shall include the following elements:

(a) A determination of transportation needs as provided in OAR 660-012-0030;

(b) A road plan for a system of arterials and collectors and standards for the layout of local streets and other important non-collector street connections. Functional classifications of roads in regional and local TSP's shall be consistent with functional classifications of roads in state and regional TSP's and shall provide for continuity between adjacent jurisdictions. The standards for the layout of local streets shall provide for safe and convenient bike and pedestrian circulation necessary to carry out OAR 660-012-0045(3)(b). New connections to arterials and state highways shall be consistent with designated access management categories. The intent of this requirement is to provide guidance on the spacing of future extensions and connections along existing and future streets which are needed to provide reasonably direct routes for bicycle and pedestrian travel. The standards for the layout of local streets shall address:

(A) Extensions of existing streets;

(B) Connections to existing or planned streets, including arterials and collectors; and

(C) Connections to neighborhood destinations.

(c) A public transportation plan which:

(A) Describes public transportation services for the transportation disadvantaged and identifies service inadequacies;

(B) Describes intercity bus and passenger rail service and identifies the location of terminals;

(C) For areas within an urban growth boundary which have public transit service, identifies existing and planned transit trunk routes, exclusive transit ways, terminals and major transfer stations, major transit stops, and park-and-ride stations. Designation of stop or station locations may allow for minor adjustments in the location of stops to provide for efficient transit or traffic operation or to provide convenient pedestrian access to adjacent or nearby uses.

(D) For areas within an urban area containing a population greater than 25,000 persons, not currently served by transit, evaluates the feasibility of developing a public transit system at buildout. Where a transit system is determined to be feasible, the plan shall meet the requirements of paragraph (2)(c)(C) of this rule.

(d) A bicycle and pedestrian plan for a network of bicycle and pedestrian routes throughout the planning area. The network and list of facility improvements shall be consistent with the requirements of ORS 366.514;

(e) An air, rail, water and pipeline transportation plan which identifies where public use airports, mainline and branchline railroads and railroad facilities, port facilities, and major regional pipelines and terminals are located or planned within the planning area. For airports, the planning area shall include all areas within airport imaginary surfaces and other areas covered by state or federal regulations;

(f) For areas within an urban area containing a population greater than 25,000 persons a plan for transportation system management and demand management;

(g) A parking plan in MPO areas as provided in OAR 660-012-0045(5)(c);

(h) Policies and land use regulations for implementing the TSP as provided in OAR 660-012-0045;

(i) For areas within an urban growth boundary containing a population greater than 2500 persons, a transportation financing program as provided in OAR 660-012-0040.

(3) Each element identified in subsections (2)(b)–(d) of this rule shall contain:

(a) An inventory and general assessment of existing and committed transportation facilities and services by function, type, capacity and condition:

(A) The transportation capacity analysis shall include information on:

(i) The capacities of existing and committed facilities;

(ii) The degree to which those capacities have been reached or surpassed on existing facilities; and

(iii) The assumptions upon which these capacities are based.

(B) For state and regional facilities, the transportation capacity analysis shall be consistent with standards of facility performance considered acceptable by the affected state or regional transportation agency;

(C) The transportation facility condition analysis shall describe the general physical and operational condition of each transportation facility (e.g., very good, good, fair, poor, very poor).

(b) A system of planned transportation facilities, services and major improvements. The system shall include a description of the type or functional classification of planned facilities and services and their planned capacities and performance standards;

(c) A description of the location of planned facilities, services and major improvements, establishing the general corridor within which the facilities, services or improvements may be sited. This shall include a map showing the general location of proposed transportation improvements, a description of facility parameters such as minimum and maximum road right of way width and the number and size of lanes, and any other additional description that is appropriate;

(d) Identification of the provider of each transportation facility or service.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.012, 197.040, 197.712,197.717, 197.732
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 4-1995, f. & cert. ef. 5-8-95; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0025
Complying with the Goals in Preparing Transportation System Plans; Refinement Plans

(1) Except as provided in section (3) of this rule, adoption of a TSP shall constitute the land use decision regarding the need for transportation facilities, services and major improvements and their function, mode, and general location.

(2) Findings of compliance with applicable statewide planning goals and acknowledged comprehensive plan policies and land use regulations shall be developed in conjunction with the adoption of the TSP.

(3) A local government or MPO may defer decisions regarding function, general location and mode of a refinement plan if findings are adopted that:

(a) Identify the transportation need for which decisions regarding function, general location or mode are being deferred;

(b) Demonstrate why information required to make final determinations regarding function, general location, or mode cannot reasonably be made available within the time allowed for preparation of the TSP;

(c) Explain how deferral does not invalidate the assumptions upon which the TSP is based or preclude implementation of the remainder of the TSP;

(d) Describe the nature of the findings which will be needed to resolve issues deferred to a refinement plan; and

(e) Set a deadline for adoption of a refinement plan prior to initiation of the periodic review following adoption of the TSP.

(4) Where a Corridor Environmental Impact Statement (EIS) is prepared pursuant to the requirements of the National Environmental Policy Act of 1969, the development of the refinement plan shall be coordinated with the preparation of the Corridor EIS. The refinement plan shall be adopted prior to the issuance of the Final EIS.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.712, 197.717
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0030
Determination of Transportation Needs

(1) The TSP shall identify transportation needs relevant to the planning area and the scale of the transportation network being planned including:

(a) State, regional, and local transportation needs;

(b) Needs of the transportation disadvantaged;

(c) Needs for movement of goods and services to support industrial and commercial development planned for pursuant to OAR chapter 660, division 9 and Goal 9 (Economic Development).

(2) Counties or MPO's preparing regional TSP's shall rely on the analysis of state transportation needs in adopted elements of the state TSP. Local governments preparing local TSP's shall rely on the analyses of state and regional transportation needs in adopted elements of the state TSP and adopted regional TSP's.

(3) Within urban growth boundaries, the determination of local and regional transportation needs shall be based upon:

(a) Population and employment forecasts and distributions that are consistent with the acknowledged comprehensive plan, including those policies that implement Goal 14. Forecasts and distributions shall be for 20 years and, if desired, for longer periods; and

(b) Measures adopted pursuant to OAR 660-012-0045 to encourage reduced reliance on the automobile.

(4) In MPO areas, calculation of local and regional transportation needs also shall be based upon accomplishment of the requirement in OAR 660-012-0035(4) to reduce reliance on the automobile.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.712, 197.717
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-9; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0035
Evaluation and Selection of Transportation System Alternatives

(1) The TSP shall be based upon evaluation of potential impacts of system alternatives that can reasonably be expected to meet the identified transportation needs in a safe manner and at a reasonable cost with available technology. The following shall be evaluated as components of system alternatives:

(a) Improvements to existing facilities or services;

(b) New facilities and services, including different modes or combinations of modes that could reasonably meet identified transportation needs;

(c) Transportation system management measures;

(d) Demand management measures; and

(e) A no-build system alternative required by the National Environmental Policy Act of 1969 or other laws.

(2) Local governments in MPO areas of larger than 1,000,000 population shall, and other governments may also, evaluate alternative land use designations, densities, and design standards to meet local and regional transportation needs. Local governments preparing such a strategy shall consider:

(a) Increasing residential densities and establishing minimum residential densities within one quarter mile of transit lines, major regional employment areas, and major regional retail shopping areas;

(b) Increasing allowed densities in new commercial office and retail developments in designated community centers;

(c) Designating lands for neighborhood shopping centers within convenient walking and cycling distance of residential areas; and

(d) Designating land uses to provide a better balance between jobs and housing considering:

(A) The total number of jobs and total of number of housing units expected in the area or subarea;

(B) The availability of affordable housing in the area or subarea; and

(C) Provision of housing opportunities in close proximity to employment areas.

(3) The following standards shall be used to evaluate and select alternatives:

(a) The transportation system shall support urban and rural development by providing types and levels of transportation facilities and services appropriate to serve the land uses identified in the acknowledged comprehensive plan;

(b) The transportation system shall be consistent with state and federal standards for protection of air, land and water quality including the State Implementation Plan under the Federal Clean Air Act and the State Water Quality Management Plan;

(c) The transportation system shall minimize adverse economic, social, environmental and energy consequences;

(d) The transportation system shall minimize conflicts and facilitate connections between modes of transportation; and

(e) The transportation system shall avoid principal reliance on any one mode of transportation by increasing transportation choices to reduce principal reliance on the automobile. In MPO areas this shall be accomplished by selecting transportation alternatives which meet the requirements in section (4) of this rule.

(4) In MPO areas, regional and local TSPs shall be designed to achieve adopted standards for increasing transportation choices and reducing reliance on the automobile. Adopted standards are intended as means of measuring progress of metropolitan areas towards developing and implementing transportation systems and land use plans that increase transportation choices and reduce reliance on the automobile. It is anticipated that metropolitan areas will accomplish reduced reliance by changing land use patterns and transportation systems so that walking, cycling, and use of transit are highly convenient and so that, on balance, people need to and are likely to drive less than they do today.

(5) MPO areas shall adopt standards to demonstrate progress towards increasing transportation choices and reducing automobile reliance as provided for in this rule:

(a) The commission shall approve standards by order upon demonstration by the metropolitan area that:

(A) Achieving the standard will result in a reduction in reliance on automobiles;

(B) Achieving the standard will accomplish a significant increase in the availability or convenience of alternative modes of transportation;

(C) Achieving the standard is likely to result in a significant increase in the share of trips made by alternative modes, including walking, bicycling, ridesharing and transit;

(D) VMT per capita is unlikely to increase by more than five percent; and

(E) The standard is measurable and reasonably related to achieving the goal of increasing transportation choices and reducing reliance on the automobile as described in OAR 660-012-0000.

(b) In reviewing proposed standards for compliance with subsection (a), the commission shall give credit to regional and local plans, programs, and actions implemented since 1990 that have already contributed to achieving the objectives specified in paragraphs (A)–(E) above;

(c) If a plan using a standard, approved pursuant to this rule, is expected to result in an increase in VMT per capita, then the cities and counties in the metropolitan area shall prepare and adopt an integrated land use and transportation plan including the elements listed in paragraphs (A)–(E) below. Such a plan shall be prepared in coordination with the MPO and shall be adopted within three years of the approval of the standard.

(A) Changes to land use plan designations, densities, and design standards listed in subsections (2)(a)–(d);

(B) A transportation demand management plan that includes significant new transportation demand management measures;

(C) A public transit plan that includes a significant expansion in transit service;

(D) Policies to review and manage major roadway improvements to ensure that their effects are consistent with achieving the adopted strategy for reduced reliance on the automobile, including policies that provide for the following:

(i) An assessment of whether improvements would result in development or travel that is inconsistent with what is expected in the plan;

(ii) Consideration of alternative measures to meet transportation needs;

(iii) Adoption of measures to limit possible unintended effects on travel and land use patterns including access management, limitations on subsequent plan amendments, phasing of improvements, etc.; and

(iv) For purposes of this section a "major roadway expansion" includes new arterial roads or streets and highways, the addition of travel lanes, and construction of interchanges to a limited access highway

(E) Plan and ordinance provisions that meet all other applicable requirements of this division.

(d) Standards may include but are not limited to:

(A) Modal share of alternative modes, including walking, bicycling, and transit trips;

(B) Vehicle hours of travel per capita;

(C) Vehicle trips per capita;

(D) Measures of accessibility by alternative modes (i.e. walking, bicycling and transit); or

(E) The Oregon Benchmark for a reduction in peak hour commuting by single occupant vehicles.

(e) Metropolitan areas shall adopt TSP policies to evaluate progress towards achieving the standard or standards adopted and approved pursuant to this rule. Such evaluation shall occur at regular intervals corresponding with federally-required updates of the regional transportation plan. This shall include monitoring and reporting of VMT per capita.

(6) A metropolitan area may also accomplish compliance with requirements of subsection (3)(e), sections (4) and (5) by demonstrating to the commission that adopted plans and measures are likely to achieve a five percent reduction in VMT per capita over

the 20-year planning period. The commission shall consider and act on metropolitan area requests under this section by order. A metropolitan area that receives approval under this section shall adopt interim benchmarks for VMT reduction and shall evaluate progress in achieving VMT reduction at each update of the regional transportation system plan.

(7) Regional and local TSPs shall include benchmarks to assure satisfactory progress towards meeting the approved standard or standards adopted pursuant to this rule at regular intervals over the planning period. MPOs and local governments shall evaluate progress in meeting benchmarks at each update of the regional transportation plan. Where benchmarks are not met, the relevant TSP shall be amended to include new or additional efforts adequate to meet the requirements of this rule.

(8) The commission shall, at regular intervals, evaluate the results of efforts to achieve the reduction in VMT and the effectiveness of approved plans and standards in achieving the objective of increasing transportation choices and reducing reliance on the automobile.

(9) Where existing and committed transportation facilities and services have adequate capacity to support the land uses in the acknowledged comprehensive plan, the local government shall not be required to evaluate alternatives as provided in this rule.

(10) Transportation uses or improvements listed in OAR 660-012-0065(3)(d) to (g) and (o) and located in an urban fringe may be included in a TSP only if the improvement project identified in the Transportation System Plan as described in section (12) of this rule, will not significantly reduce peak hour travel time for the route as determined pursuant to section (11) of this rule, or the jurisdiction determines that the following alternatives can not reasonably satisfy the purpose of the improvement project:

(a) Improvements to transportation facilities and services within the urban growth boundary;

(b) Transportation system management measures that do not significantly increase capacity; or

(c) Transportation demand management measures. The jurisdiction needs only to consider alternatives that are safe and effective, consistent with applicable standards and that can be implemented at a reasonable cost using available technology.

(11) An improvement project significantly reduces peak hour travel time when, based on recent data, the time to travel the route is reduced more than 15 percent during weekday peak hour conditions over the length of the route located within the urban fringe. For purposes of measuring travel time, a route shall be identified by the predominant traffic flows in the project area.

(12) A "transportation improvement project" described in section (10) of this rule:

(a) Is intended to solve all of the reasonably foreseeable transportation problems within a general geographic location, within the planning period; and

(b) Has utility as an independent transportation project.

Stat. Auth.: ORS 197.040, 197.245

Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.712, 197.717

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 3-1995, f. & cert. ef. 3-31-95; LCDC 4-1995, f. & cert. ef. 5-8-95; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0040
Transportation Financing Program

(1) For areas within an urban growth boundary containing a population greater than 2,500 persons, the TSP shall include a transportation financing program.

(2) A transportation financing program shall include the items listed in (a)–(d):

(a) A list of planned transportation facilities and major improvements;

(b) A general estimate of the timing for planned transportation facilities and major improvements;

(c) A determination of rough cost estimates for the transportation facilities and major improvements identified in the TSP; and

(d) In metropolitan areas, policies to guide selection of transportation facility and improvement projects for funding in the short-term to meet the standards and benchmarks established pursuant to 0035(4)–(6). Such policies shall consider, and shall include among the priorities, facilities and improvements that support mixed-use, pedestrian friendly development and increased use of alternative modes.

(3) The determination of rough cost estimates is intended to provide an estimate of the fiscal requirements to support the land uses in the acknowledged comprehensive plan and allow jurisdictions to assess the adequacy of existing and possible alternative funding mechanisms. In addition to including rough cost estimates for each transportation facility and major improvement, the transportation financing plan shall include a discussion of the facility provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each transportation facility and major improvement. These funding mechanisms may also be described in terms of general guidelines or local policies.

(4) Anticipated timing and financing provisions in the transportation financing program are not considered land use decisions as specified in ORS 197.712(2)(e) and, therefore, cannot be the basis of appeal under 197.610(1) and (2) or 197.835(4).

(5) The transportation financing program shall provide for phasing of major improvements to encourage infill and redevelopment of urban lands prior to facilities and improvements which would cause premature development of urbanizable lands or conversion of rural lands to urban uses.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.040

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 4-1995, f. & cert. ef. 5-8-95; LCDC 11-1995, f. & cert. ef. 12-22-95; LCDD 6-1998, f. & cert. ef. 10-30-98

660-012-0045
Implementation of the Transportation System Plan

(1) Each local government shall amend its land use regulations to implement the TSP.

(a) The following transportation facilities, services and improvements need not be subject to land use regulations except as necessary to implement the TSP and, under ordinary circumstances do not have a significant impact on land use:

(A) Operation, maintenance, and repair of existing transportation facilities identified in the TSP, such as road, bicycle, pedestrian, port, airport and rail facilities, and major regional pipelines and terminals;

(B) Dedication of right-of-way, authorization of construction and the construction of facilities and improvements, where the improvements are consistent with clear and objective dimensional standards;

(C) Uses permitted outright under ORS 215.213(1)(j)–(m) and 215.283(1)(h)–(k), consistent with the provisions of OAR 660-012-0065; and

(D) Changes in the frequency of transit, rail and airport services.

(b) To the extent, if any, that a transportation facility, service or improvement concerns the application of a comprehensive plan provision or land use regulation, it may be allowed without further land use review if it is permitted outright or if it is subject to standards that do not require interpretation or the exercise of factual, policy or legal judgment;

(c) In the event that a transportation facility, service or improvement is determined to have a significant impact on land use or to concern the application of a comprehensive plan or land use regulation and to be subject to standards that require interpretation or the exercise of factual, policy or legal judgment, the local government shall provide a review and approval process that is consistent with OAR 660-012-0050. To facilitate implementation of the TSP, each local government shall amend its land use regulations to provide for consolidated review of land use decisions required to permit a transportation project.

(2) Local governments shall adopt land use or subdivision ordinance regulations, consistent with applicable federal and state

requirements, to protect transportation facilities, corridors and sites for their identified functions. Such regulations shall include:

(a) Access control measures, for example, driveway and public road spacing, median control and signal spacing standards, which are consistent with the functional classification of roads and consistent with limiting development on rural lands to rural uses and densities;

(b) Standards to protect future operation of roads, transitways and major transit corridors;

(c) Measures to protect public use airports by controlling land uses within airport noise corridors and imaginary surfaces, and by limiting physical hazards to air navigation;

(d) A process for coordinated review of future land use decisions affecting transportation facilities, corridors or sites;

(e) A process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities, corridors or sites;

(f) Regulations to provide notice to public agencies providing transportation facilities and services, MPOs, and ODOT of:

(A) Land use applications that require public hearings;

(B) Subdivision and partition applications;

(C) Other applications which affect private access to roads; and

(D) Other applications within airport noise corridors and imaginary surfaces which affect airport operations; and

(g) Regulations assuring that amendments to land use designations, densities, and design standards are consistent with the functions, capacities and performance standards of facilities identified in the TSP.

(3) Local governments shall adopt land use or subdivision regulations for urban areas and rural communities as set forth below. The purposes of this section are to provide for safe and convenient pedestrian, bicycle and vehicular circulation consistent with access management standards and the function of affected streets, to ensure that new development provides on-site streets and accessways that provide reasonably direct routes for pedestrian and bicycle travel in areas where pedestrian and bicycle travel is likely if connections are provided, and which avoids wherever possible levels of automobile traffic which might interfere with or discourage pedestrian or bicycle travel.

(a) Bicycle parking facilities as part of new multi-family residential developments of four units or more, new retail, office and institutional developments, and all transit transfer stations and park-and-ride lots;

(b) On-site facilities shall be provided which accommodate safe and convenient pedestrian and bicycle access from within new subdivisions, multi-family developments, planned developments, shopping centers, and commercial districts to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. Single-family residential developments shall generally include streets and accessways. Pedestrian circulation through parking lots should generally be provided in the form of accessways.

(A) "Neighborhood activity centers" includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops or employment centers;

(B) Bikeways shall be required along arterials and major collectors. Sidewalks shall be required along arterials, collectors and most local streets in urban areas, except that sidewalks are not required along controlled access roadways, such as freeways;

(C) Cul-de-sacs and other dead-end streets may be used as part of a development plan, consistent with the purposes set forth in this section;

(D) Local governments shall establish their own standards or criteria for providing streets and accessways consistent with the purposes of this section. Such measures may include but are not limited to: standards for spacing of streets or accessways; and standards for excessive out-of-direction travel;

(E) Streets and accessways need not be required where one or more of the following conditions exist:

(i) Physical or topographic conditions make a street or accessway connection impracticable. Such conditions include but are not limited to freeways, railroads, steep slopes, wetlands or other bodies of water where a connection could not reasonably be provided;

(ii) Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment; or

(iii) Where streets or accessways would violate provisions of leases, easements, covenants, restrictions or other agreements existing as of May 1, 1995, which preclude a required street or accessway connection.

(c) Where off-site road improvements are otherwise required as a condition of development approval, they shall include facilities accommodating convenient pedestrian and bicycle travel, including bicycle ways along arterials and major collectors;

(d) For purposes of subsection (b) "safe and convenient" means bicycle and pedestrian routes, facilities and improvements which:

(A) Are reasonably free from hazards, particularly types or levels of automobile traffic which would interfere with or discourage pedestrian or cycle travel for short trips;

(B) Provide a reasonably direct route of travel between destinations such as between a transit stop and a store; and

(C) Meet travel needs of cyclists and pedestrians considering destination and length of trip; and considering that the optimum trip length of pedestrians is generally 1/4 to 1/2 mile.

(e) Internal pedestrian circulation within new office parks and commercial developments shall be provided through clustering of buildings, construction of accessways, walkways and similar techniques.

(4) To support transit in urban areas containing a population greater than 25,000, where the area is already served by a public transit system or where a determination has been made that a public transit system is feasible, local governments shall adopt land use and subdivision regulations as provided in (a)–(g) below:

(a) Transit routes and transit facilities shall be designed to support transit use through provision of bus stops, pullouts and shelters, optimum road geometrics, on-road parking restrictions and similar facilities, as appropriate;

(b) New retail, office and institutional buildings at or near major transit stops shall provide for convenient pedestrian access to transit through the measures listed in paragraphs (A) and (B) below.

(A) Walkways shall be provided connecting building entrances and streets adjoining the site;

(B) Pedestrian connections to adjoining properties shall be provided except where such a connection is impracticable as provided for in OAR 660-012-0045(3)(b)(E). Pedestrian connections shall connect the on site circulation system to existing or proposed streets, walkways, and driveways that abut the property. Where adjacent properties are undeveloped or have potential for redevelopment, streets, accessways and walkways on site shall be laid out or stubbed to allow for extension to the adjoining property;

(C) In addition to paragraphs (A) and (B) above, on sites at major transit stops provide the following:

(i) Either locate buildings within 20 feet of the transit stop, a transit street or an intersecting street or provide a pedestrian plaza at the transit stop or a street intersection;

(ii) A reasonably direct pedestrian connection between the transit stop and building entrances on the site;

(iii) A transit passenger landing pad accessible to disabled persons;

(iv) An easement or dedication for a passenger shelter if requested by the transit provider; and

(v) Lighting at the transit stop.

(c) Local governments may implement (4)(b)(A) and (B) above through the designation of pedestrian districts and adoption of appropriate implementing measures regulating development within pedestrian districts. Pedestrian districts must comply with the requirement of (4)(b)(C) above;

(d) Designated employee parking areas in new developments shall provide preferential parking for carpools and vanpools;

(e) Existing development shall be allowed to redevelop a portion of existing parking areas for transit-oriented uses, including bus stops and pullouts, bus shelters, park and ride stations, transit-oriented developments, and similar facilities, where appropriate;

(f) Road systems for new development shall be provided that can be adequately served by transit, including provision of pedestrian access to existing and identified future transit routes. This shall include, where appropriate, separate accessways to minimize travel distances;

(g) Along existing or planned transit routes, designation of types and densities of land uses adequate to support transit.

(5) In MPO areas, local governments shall adopt land use and subdivision regulations to reduce reliance on the automobile which:

(a) Allow transit-oriented developments (TODs) on lands along transit routes;

(b) Implements a demand management program to meet the measurable standards set in the TSP in response to OAR 660-012-0035(4);

(c) Implements a parking plan which:

(A) Achieves a 10 percent reduction in the number of parking spaces per capita in the MPO area over the planning period. This may be accomplished through a combination of restrictions on development of new parking spaces and requirements that existing parking spaces be redeveloped to other uses;

(B) Aids in achieving the measurable standards set in the TSP in response to OAR 660-012-0035(4);

(C) Includes land use and subdivision regulations setting minimum and maximum parking requirements in appropriate locations, such as downtowns, designated regional or community centers, and transit oriented-developments; and

(D) Is consistent with demand management programs, transit-oriented development requirements and planned transit service.

(d) As an alternative to (c) above, local governments in an MPO may instead revise ordinance requirements for parking as follows:

(A) Reduce minimum off-street parking requirements for all non-residential uses from 1990 levels;

(B) Allow provision of on-street parking, long-term lease parking, and shared parking to meet minimum off-street parking requirements;

(C) Establish off-street parking maximums in appropriate locations, such as downtowns, designated regional or community centers, and transit-oriented developments;

(D) Exempt structured parking and on-street parking from parking maximums;

(E) Require that parking lots over 3 acres in size provide street-like features along major driveways (including curbs, sidewalks, and street trees or planting strips); and

(F) Provide for designation of residential parking districts.

(e) Require all major industrial, institutional, retail and office developments to provide either a transit stop on site or connection to a transit stop along a transit trunk route when the transit operator requires such an improvement.

(6) In developing a bicycle and pedestrian circulation plan as required by OAR 660-012-0020(2)(d), local governments shall identify improvements to facilitate bicycle and pedestrian trips to meet local travel needs in developed areas. Appropriate improvements should provide for more direct, convenient and safer bicycle or pedestrian travel within and between residential areas and neighborhood activity centers (i.e., schools, shopping, transit stops). Specific measures include, for example, constructing walkways between cul-de-sacs and adjacent roads, providing walkways between buildings, and providing direct access between adjacent uses.

(7) Local governments shall establish standards for local streets and accessways that minimize pavement width and total right-of-way consistent with the operational needs of the facility. The intent of this requirement is that local governments consider and reduce excessive standards for local streets and accessways in order to reduce the cost of construction, provide for more efficient use of urban land, provide for emergency vehicle access while discouraging inappropriate traffic volumes and speeds, and which accommodate convenient pedestrian and bicycle circulation. Not withstanding section (1) or (3) of this rule, local street standards adopted to meet this requirement need not be adopted as land use regulations.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 4-1995, f. & cert. ef. 5-8-95; LCDC 11-1995, f. & cert. ef. 12-22-95; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0050
Transportation Project Development

(1) For projects identified by ODOT pursuant to OAR chapter 731, division 15, project development shall occur in the manner set forth in that division.

(2) Regional TSPs shall provide for coordinated project development among affected local governments. The process shall include:

(a) Designation of a lead agency to prepare and coordinate project development;

(b) A process for citizen involvement, including public notice and hearing, if project development involves land use decision-making. The process shall include notice to affected transportation facility and service providers, MPOs, and ODOT;

(c) A process for developing and adopting findings of compliance with applicable statewide planning goals, if any. This shall include a process to allow amendments to acknowledged comprehensive plans where such amendments are necessary to accommodate the project; and

(d) A process for developing and adopting findings of compliance with applicable acknowledged comprehensive plan policies and land use regulations of individual local governments, if any. This shall include a process to allow amendments to acknowledged comprehensive plans or land use regulations where such amendments are necessary to accommodate the project.

(3) Project development addresses how a transportation facility or improvement authorized in a TSP is designed and constructed. This may or may not require land use decision-making. The focus of project development is project implementation, e.g. alignment, preliminary design and mitigation of impacts. During project development, projects authorized in an acknowledged TSP shall not be subject to further justification with regard to their need, mode, function, or general location. For purposes of this section, a project is authorized in a TSP where the TSP makes decisions about transportation need, mode, function and general location for the facility or improvement as required by this division.

(a) Project development does not involve land use decision-making to the extent that it involves transportation facilities, services or improvements identified in OAR 660-012-0045(1)(a); the application of uniform road improvement design standards and other uniformly accepted engineering design standards and practices that are applied during project implementation; procedures and standards for right-of-way acquisition as set forth in the Oregon Revised Statutes; or the application of local, state or federal rules and regulations that are not a part of the local government's land use regulations.

(b) Project development involves land use decision-making to the extent that issues of compliance with applicable requirements requiring interpretation or the exercise of policy or legal discretion or judgment remain outstanding at the project development phase. These requirements may include, but are not limited to, regulations protecting or regulating development within floodways and other hazard areas, identified Goal 5 resource areas, estuarine and coastal shoreland areas, and the Willamette River Greenway, and local regulations establishing land use standards or processes for selecting specific alignments. They also may include transportation improve-

ments required to comply with ORS 215.296 or 660-012-0065(5). When project development involves land use decision-making, all unresolved issues of compliance with applicable acknowledged comprehensive plan policies and land use regulations shall be addressed and findings of compliance adopted prior to project approval.

(c) To the extent compliance with local requirements has already been determined during transportation system planning, including adoption of a refinement plan, affected local governments may rely on and reference the earlier findings of compliance with applicable standards.

(4) Except as provided in section (1) of this rule, where an Environmental Impact Statement (EIS) is prepared pursuant to the National Environmental Policy Act of 1969, project development shall be coordinated with the preparation of the EIS. All unresolved issues of compliance with applicable acknowledged comprehensive plan policies and land use regulations shall be addressed and findings of compliance adopted prior to issuance of the Final EIS.

(5) If a local government decides not to build a project authorized by the TSP, it must evaluate whether the needs that the project would serve could otherwise be satisfied in a manner consistent with the TSP. If identified needs cannot be met consistent with the TSP, the local government shall initiate a plan amendment to change the TSP or the comprehensive plan to assure that there is an adequate transportation system to meet transportation needs.

(6) Transportation project development may be done concurrently with preparation of the TSP or a refinement plan

Stat. Auth.: ORS 183 & 197.040
Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.712 197.717
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 2-1999, f. & cert. ef. 1-12-99; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06

660-012-0055
Timing of Adoption and Update of Transportation System Plans; Exemptions

(1) MPOs shall complete regional TSPs for their planning areas by May 8, 1996. For those areas within a MPO, cities and counties shall adopt local TSPs and implementing measures within one year following completion of the regional TSP:

(a) If by May 8, 2000, a Metropolitan Planning Organization (MPO) has not adopted a regional transportation system plan that meets the VMT reduction standard in OAR 660-012-0035 and the metropolitan area does not have an approved alternative standard established pursuant to OAR 660-012-0035, then the cities and counties within the metropolitan area shall prepare and adopt an integrated land use and transportation plan as outlined in OAR 660-012-0035. Such a plan shall be prepared in coordination with the MPO and shall be adopted within three years;

(b) When an area is designated as an MPO or is added to an existing MPO, the affected local governments shall, within one year of adoption of the regional transportation plan, adopt a regional TSP in compliance with applicable requirements of this division and amend local transportation system plans to be consistent with the regional TSP.

(c) Local governments in metropolitan areas may request and the commission may by order grant an extension for completing an integrated land use and transportation plan required by this division. Local governments requesting an extension shall set forth a schedule for completion of outstanding work needed to complete an integrated land use and transportation plan as set forth in OAR 660-012-0035. This shall include, as appropriate:

(A) Adoption of a long-term land use and transportation vision for the region;

(B) Identification of centers and other land use designations intended to implement the vision;

(C) Adoption of housing and employment allocations to centers and land use designations; and

(D) Adoption of implementing plans and zoning for designated centers and other land use designations.

(d) Local governments within metropolitan areas that are not in compliance with the requirements of this division to adopt or implement a standard to increase transportation choices or have not completed an integrated land use and transportation plan as required by this division shall review plan and land use regulation amendments and adopt findings that demonstrate that the proposed amendment supports implementation of the region's adopted vision, strategy, policies or plans to increase transportation choices and reduce reliance on the automobile.

(2) A plan or land use regulation amendment supports implementation of an adopted regional strategy, policy or plan for purposes of this section if it achieves the following as applicable:

(a) Implements the strategy or plan through adoption of specific plans or zoning that authorizes uses or densities that achieve desired land use patterns;

(b) Allows uses in designated centers or neighborhoods that accomplish the adopted regional vision, strategy, plan or policies; and

(c) Allows uses outside designated centers or neighborhood that either support or do not detract from implementation of desired development within nearby centers.

(3) For areas outside an MPO, cities and counties shall complete and adopt regional and local TSPs and implementing measures by May 8, 1997.

(4) By November 8, 1993, affected cities and counties shall, for non-MPO urban areas of 25,000 or more, adopt land use and subdivision ordinances or amendments required by OAR 660-012-0045(3), (4)(a)–(f) and (5)(d). By May 8, 1994 affected cities and counties within MPO areas shall adopt land use and subdivision ordinances or amendments required by 660-012-0045(3), (4)(a)–(e) and (5)(e). Affected cities and counties which do not have acknowledged ordinances addressing the requirements of this section by the deadlines listed above shall apply 660-012-0045(3), (4)(a)–(g) and (5)(e) directly to all land use decisions and all limited land use decisions.

(5)(a) Affected cities and counties that either:

(A) Have acknowledged plans and land use regulations that comply with this rule as of May 8, 1995, may continue to apply those acknowledged plans and land use regulations; or

(B) Have plan and land use regulations adopted to comply with this rule as of April 12, 1995, may continue to apply the provisions of this rule as they existed as of April 12, 1995, and may continue to pursue acknowledgment of the adopted plans and land use regulations under those same rule provisions provided such adopted plans and land use regulations are acknowledged by April 12, 1996. Affected cities and counties that qualify and make this election under this paragraph shall update their plans and land use regulations to comply with the 1995 amendments to OAR 660-012-0045 as part of their transportation system plans.

(b) Affected cities and counties that do not have acknowledged plans and land use regulations as provided in subsection (a) of this section, shall apply relevant sections of this rule to land use decisions and limited land use decisions until land use regulations complying with this amended rule have been adopted.

(6) Cities and counties shall update their TSPs and implementing measures as necessary to comply with this division at each periodic review subsequent to initial compliance with this division. Local governments within metropolitan areas shall amend local transportation system plans to be consistent with an adopted regional transportation system plan within one year of the adoption of an updated regional transportation system plan or by a date specified in the adopted regional transportation system plan.

(7) The director may grant a whole or partial exemption from the requirements of this division to cities under 10,000 population and counties under 25,000 population, and for areas within a county within an urban growth boundary that contains a population less than 10,000. Eligible jurisdictions may request that the director approve an exemption from all or part of the requirements in this division. Exemptions shall be for a period determined by the director or until the jurisdiction's next periodic review, whichever is shorter.

(a) The director's decision to approve an exemption shall be based upon the following factors:

(A) Whether the existing and committed transportation system is generally adequate to meet likely transportation needs;

(B) Whether the new development or population growth is anticipated in the planning area over the next five years;

(C) Whether major new transportation facilities are proposed which would affect the planning areas;

(D) Whether deferral of planning requirements would conflict with accommodating state or regional transportation needs; and

(E) Consultation with the Oregon Department of Transportation on the need for transportation planning in the area, including measures needed to protect existing transportation facilities.

(b) The director's decision to grant an exemption under this section is appealable to the commission as provided in OAR 660-002-0020 (Delegation of Authority Rule)

(8) Portions of TSPs and implementing measures adopted as part of comprehensive plans prior to the responsible jurisdiction's periodic review shall be reviewed pursuant to OAR chapter 660, division 18, Post Acknowledgment Procedures.

Stat. Auth.: ORS 183, 197.040 & 197.245

Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.610 - 197.625, 197.628 - 197.646, 197.712 & 197.717

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 1-1993, f. & cert. ef. 6-15-93; LCDC 4-1995, f. & cert. ef. 5-8-95; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 2-2000, f. & cert. ef. 2-4-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2014, f. & cert. ef. 8-15-14

660-012-0060
Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.

(e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if:

(A) The provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards;

(B) The providers of facilities being improved at other locations provide written statements of approval; and

(C) The local jurisdictions where facilities are being improved provide written statements of approval.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.

(4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)–(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-quarter mile of the ramp terminal intersection of an existing or planned interchange on an Interstate Highway; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)–(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

(5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.

(6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in sections (1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in subsections (a)–(d) below;

(a) Absent adopted local standards or detailed information about the vehicle trip reduction benefits of mixed-use, pedestrian-friendly development, local governments shall assume that uses located within a mixed-use, pedestrian-friendly center, or neighborhood, will generate 10% fewer daily and peak hour trips than are specified in available published estimates, such as those provided by the Institute of Transportation Engineers (ITE) Trip Generation Manual that do not specifically account for the effects of mixed-use, pedestrian-friendly development. The 10% reduction allowed for by this section shall be available only if uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

(b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in subsection (a) above;

(c) Where a local government assumes or estimates lower vehicle trip generation as provided in subsection (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian connectivity and access to transit as provided for in OAR 660-012-0045(3) and (4). The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with 660-012-0045(3) and (4) or through conditions of approval or findings adopted with the plan amendment that assure compliance with these rule requirements at the time of development approval; and

(d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will vary from case to case and may be somewhat higher or lower than presumed pursuant to subsection (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

(7) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in subsections (a)–(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in OAR 660-012-0020(2)(b) and 660-012-0045(3):

(a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;

(b) The local government has not adopted a TSP or local street plan which complies with OAR 660-012-0020(2)(b) or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as contained in Title 6, Section 3 of the Urban Growth Management Functional Plan; and

(c) The proposed amendment would significantly affect a transportation facility as provided in section (1).

(8) A "mixed-use, pedestrian-friendly center or neighborhood" for the purposes of this rule, means:

(a) Any one of the following:

(A) An existing central business district or downtown;

(B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;

(C) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or

(D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.

(b) An area other than those listed in subsection (a) above which includes or is planned to include the following characteristics:

(A) A concentration of a variety of land uses in a well-defined area, including the following:

(i) Medium to high density residential development (12 or more units per acre);

(ii) Offices or office buildings;

(iii) Retail stores and services;

(iv) Restaurants; and

(v) Public open space or private open space which is available for public use, such as a park or plaza.

(B) Generally include civic or cultural uses;

(C) A core commercial area where multi-story buildings are permitted;

(D) Buildings and building entrances oriented to streets;

(E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;

(F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;

(G) One or more transit stops (in urban areas with fixed route transit service); and

(H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

(10) Notwithstanding sections (1) and (2) of this rule, a local government may amend a functional plan, a comprehensive plan or a land use regulation without applying performance standards related to motor vehicle traffic congestion (e.g. volume to capacity ratio or V/C), delay or travel time if the amendment meets the requirements of subsection (a) of this section. This section does not exempt a proposed amendment from other transportation performance standards or policies that may apply including, but not limited to, safety for all modes, network connectivity for all modes (e.g. sidewalks, bicycle lanes) and accessibility for freight vehicles of a size and frequency required by the development.

(a) A proposed amendment qualifies for this section if it:

(A) Is a map or text amendment affecting only land entirely within a multimodal mixed-use area (MMA); and

(B) Is consistent with the definition of an MMA and consistent with the function of the MMA as described in the findings designating the MMA.

(b) For the purpose of this rule, "multimodal mixed-use area" or "MMA" means an area:

(A) With a boundary adopted by a local government as provided in subsection (d) or (e) of this section and that has been acknowledged;

(B) Entirely within an urban growth boundary;

(C) With adopted plans and development regulations that allow the uses listed in paragraphs (8)(b)(A) through (C) of this rule and that require new development to be consistent with the characteristics listed in paragraphs (8)(b)(D) through (H) of this rule;

(D) With land use regulations that do not require the provision of off-street parking, or regulations that require lower levels of off-street parking than required in other areas and allow flexibility to meet the parking requirements (e.g. count on-street parking, allow long-term leases, allow shared parking); and

(E) Located in one or more of the categories below:

(i) At least one-quarter mile from any ramp terminal intersection of existing or planned interchanges;

(ii) Within the area of an adopted Interchange Area Management Plan (IAMP) and consistent with the IAMP; or

(iii) Within one-quarter mile of a ramp terminal intersection of an existing or planned interchange if the mainline facility provider has provided written concurrence with the MMA designation as provided in subsection (c) of this section.

(c) When a mainline facility provider reviews an MMA designation as provided in subparagraph (b)(E)(iii) of this section, the provider must consider the factors listed in paragraph (A) of this subsection.

(A) The potential for operational or safety effects to the interchange area and the mainline highway, specifically considering:

(i) Whether the interchange area has a crash rate that is higher than the statewide crash rate for similar facilities;

(ii) Whether the interchange area is in the top ten percent of locations identified by the safety priority index system (SPIS) developed by ODOT; and

(iii) Whether existing or potential future traffic queues on the interchange exit ramps extend onto the mainline highway or the portion of the ramp needed to safely accommodate deceleration.

(B) If there are operational or safety effects as described in paragraph (A) of this subsection, the effects may be addressed by an agreement between the local government and the facility provider regarding traffic management plans favoring traffic movements away from the interchange, particularly those facilitating clearing traffic queues on the interchange exit ramps.

(d) A local government may designate an MMA by adopting an amendment to the comprehensive plan or land use regulations to delineate the boundary following an existing zone, multiple existing zones, an urban renewal area, other existing boundary, or establishing a new boundary. The designation must be accompanied by findings showing how the area meets the definition of an MMA. Designation of an MMA is not subject to the requirements in sections (1) and (2) of this rule.

(e) A local government may designate an MMA on an area where comprehensive plan map designations or land use regulations do not meet the definition, if all of the other elements meet the definition, by concurrently adopting comprehensive plan or land use regulation amendments necessary to meet the definition. Such amendments are not subject to performance standards related to motor vehicle traffic congestion, delay or travel time.

(11) A local government may approve an amendment with partial mitigation as provided in section (2) of this rule if the amendment complies with subsection (a) of this section, the amendment meets the balancing test in subsection (b) of this section, and the local government coordinates as provided in subsection (c) of this section.

(a) The amendment must meet paragraphs (A) and (B) of this subsection or meet paragraph (D) of this subsection.

(A) Create direct benefits in terms of industrial or traded-sector jobs created or retained by limiting uses to industrial or traded-sector industries.

(B) Not allow retail uses, except limited retail incidental to industrial or traded sector development, not to exceed five percent of the net developable area.

(C) For the purpose of this section:

(i) "Industrial" means employment activities generating income from the production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development.

(ii) "Traded-sector" means industries in which member firms sell their goods or services into markets for which national or international competition exists.

(D) Notwithstanding paragraphs (A) and (B) of this subsection, an amendment complies with subsection (a) if all of the following conditions are met:

(i) The amendment is within a city with a population less than 10,000 and outside of a Metropolitan Planning Organization.

(ii) The amendment would provide land for "Other Employment Use" or "Prime Industrial Land" as those terms are defined in OAR 660-009-0005.

(iii) The amendment is located outside of the Willamette Valley as defined in ORS 215.010.

(E) The provisions of paragraph (D) of this subsection are repealed on January 1, 2017.

(b) A local government may accept partial mitigation only if the local government determines that the benefits outweigh the negative effects on local transportation facilities and the local government receives from the provider of any transportation facility that would be significantly affected written concurrence that the benefits outweigh the negative effects on their transportation facilities. If the amendment significantly affects a state highway, then ODOT must coordinate with the Oregon Business Development Department regarding the economic and job creation benefits of the proposed amendment as defined in subsection (a) of this section. The requirement to obtain concurrence from a provider is satisfied if the local government provides notice as required by subsection (c) of this section and the provider does not respond in writing (either concurring or non-concurring) within forty-five days.

(c) A local government that proposes to use this section must coordinate with Oregon Business Development Department, Department of Land Conservation and Development, area commission on transportation, metropolitan planning organization, and transportation providers and local governments directly impacted by the proposal to allow opportunities for comments on whether the proposed amendment meets the definition of economic development, how it would affect transportation facilities and the adequacy of proposed mitigation. Informal consultation is encouraged throughout the process starting with pre-application meetings. Coordination has the meaning given in ORS 197.015 and Goal 2 and must include notice at least 45 days before the first evidentiary hearing. Notice must include the following:

(A) Proposed amendment.

(B) Proposed mitigating actions from section (2) of this rule.

(C) Analysis and projections of the extent to which the proposed amendment in combination with proposed mitigating actions would fall short of being consistent with the function, capacity, and performance standards of transportation facilities.

(D) Findings showing how the proposed amendment meets the requirements of subsection (a) of this section.

(E) Findings showing that the benefits of the proposed amendment outweigh the negative effects on transportation facilities.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.610 – 197.625, 197.628 – 197.646, 197.712, 197.717, 197.732 & 197.798

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 6-1999, f. & cert. ef. 8-6-99; LCDD 3-2005, f. & cert. ef. 4-11-05; LCDD 11-2011, f. 12-30-11, cert. ef. 1-1-12; LCDD 7-2016, f. 7-29-16, cert. ef. 8-1-16

660-012-0065
Transportation Improvements on Rural Lands

(1) This rule identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with Goals 3, 4, 11, and 14 without a goal exception.

(2) For the purposes of this rule, the following definitions apply:

(a) "Access Roads" means low volume public roads that principally provide access to property or as specified in an acknowledged comprehensive plan;

(b) "Collectors" means public roads that provide access to property and that collect and distribute traffic between access roads and arterials or as specified in an acknowledged comprehensive plan;

(c) "Arterials" means state highways and other public roads that principally provide service to through traffic between cities and towns, state highways and major destinations or as specified in an acknowledged comprehensive plan;

(d) "Accessory Transportation Improvements" means transportation improvements that are incidental to a land use to provide safe and efficient access to the use;

(e) "Channelization" means the separation or regulation of conflicting traffic movements into definite paths of travel by traffic islands or pavement markings to facilitate the safe and orderly movement of both vehicles and pedestrians. Examples include, but are not limited to, left turn refuges, right turn refuges including the construction of islands at intersections to separate traffic, and raised medians at driveways or intersections to permit only right turns. "Channelization" does not include continuous median turn lanes;

(f) "Realignment" means rebuilding an existing roadway on a new alignment where the new centerline shifts outside the existing right of way, and where the existing road surface is either removed, maintained as an access road or maintained as a connection between the realigned roadway and a road that intersects the original alignment. The realignment shall maintain the function of the existing road segment being realigned as specified in the acknowledged comprehensive plan;

(g) "New Road" means a public road or road segment that is not a realignment of an existing road or road segment.

(3) The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:

(a) Accessory transportation improvements for a use that is allowed or conditionally allowed by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands);

(b) Transportation improvements that are allowed or conditionally allowed by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands);

(c) Channelization not otherwise allowed under subsections (a) or (b) of this section;

(d) Realignment of roads not otherwise allowed under subsection (a) or (b) of this section;

(e) Replacement of an intersection with an interchange;

(f) Continuous median turn lane;

(g) New access roads and collectors within a built or committed exception area, or in other areas where the function of the road is to reduce local access to or local traffic on a state highway. These roads shall be limited to two travel lanes. Private access and intersections shall be limited to rural needs or to provide adequate emergency access.

(h) Bikeways, footpaths and recreation trails not otherwise allowed as a modification or part of an existing road;

(i) Park and ride lots;

(j) Railroad mainlines and branchlines;

(k) Pipelines;

(l) Navigation channels;

(m) Replacement of docks and other facilities without significantly increasing the capacity of those facilities;

(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplanes; and

(o) Transportation facilities, services and improvements other than those listed in this rule that serve local travel needs. The travel capacity and performance standards of facilities and improvements serving local travel needs shall be limited to that necessary to support rural land uses identified in the acknowledged comprehensive plan or to provide adequate emergency access.

(4) Accessory transportation improvements required as a condition of development listed in subsection (3)(a) of this rule shall be subject to the same procedures, standards and requirements applicable to the use to which they are accessory.

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

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

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

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

(6) Notwithstanding any other provision of this division, if a jurisdiction has not met the deadline for TSP adoption set forth in OAR 660-012-0055, or any extension thereof, a transportation improvement that is listed in section (5) of this rule and that will significantly reduce peak hour travel time as provided in OAR 660-012-0035(10) may be allowed in the urban fringe only if the jurisdiction applies either:

(a) The criteria applicable to a "reasons" exception provided in Goal 2 and OAR 660, division 4; or

(b) The evaluation and selection criteria set forth in OAR 660-012-0035.

Stat. Auth.: ORS 183, 197.040, 197.245, 215.213, 215.283, 215.296
Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.712, 197.717, 197.232, 215.213, 215.283
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 3-1995, f. & cert. ef. 3-31-95; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06

660-012-0070
Exceptions for Transportation Improvements on Rural Land

(1) Transportation facilities and improvements which do not meet the requirements of OAR 660-012-0065 require an exception to be sited on rural lands.

(a) A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons that demonstrate that the standards in this rule have been met. A local government denying a proposed exception shall adopt findings of fact and a statement of reasons explaining why the standards in this rule have not been met. However, findings and reasons denying a proposed exception need not be incorporated into the local comprehensive plan.

(b) The facts and reasons relied upon to approve or deny a proposed exception shall be supported by substantial evidence in the record of the local exceptions proceeding.

(2) When an exception to Goals 3, 4, 11, or 14 is required to locate a transportation improvement on rural lands, the exception shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this division. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 14 shall not apply. Exceptions adopted pursuant to this division shall be deemed to fulfill the requirements for goal exceptions required under ORS 197.732(1)(c) and Goal 2.

(3) An exception shall, at a minimum, decide need, mode, function and general location for the proposed facility or improvement:

(a) The general location shall be specified as a corridor within which the proposed facility or improvement is to be located, including the outer limits of the proposed location. Specific sites or areas within the corridor may be excluded from the exception to avoid or lessen likely adverse impacts. Where detailed design level information is available, the exception may be specified as a specific alignment;

(b) The size, design and capacity of the proposed facility or improvement shall be described generally, but in sufficient detail to allow a general understanding of the likely impacts of the proposed facility or improvement and to justify the amount of land for the proposed transportation facility. Measures limiting the size, design or capacity may be specified in the description of the proposed use in order to simplify the analysis of the effects of the proposed use;

(c) The adopted exception shall include a process and standards to guide selection of the precise design and location within the corridor and consistent with the general description of the proposed facility or improvement. For example, where a general location or corridor crosses a river, the exception would specify that a bridge crossing would be built but would defer to project development decisions about precise location and design of the bridge within the selected corridor subject to requirements to minimize impacts on riparian vegetation, habitat values, etc.;

(d) Land use regulations implementing the exception may include standards for specific mitigation measures to offset unavoidable environmental, economic, social or energy impacts of the proposed facility or improvement or to assure compatibility with adjacent uses.

(4) To address Goal 2, Part II(c)(1) the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Further, the exception shall demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 which cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception:

(a) Alternative modes of transportation;

(b) Traffic management measures; and

(c) Improvements to existing transportation facilities.

(5) To address Goal 2, Part II(c)(2) the exception shall demonstrate that non-exception locations cannot reasonably accommodate the proposed transportation improvement or facility. The exception shall set forth the facts and assumptions used as the basis for determining why the use requires a location on resource land subject to Goals 3 or 4.

(6) To determine the reasonableness of alternatives to an exception under sections (4) and (5) of this rule, cost, operational feasibility, economic dislocation and other relevant factors shall be addressed. The thresholds chosen to judge whether an alternative method or location cannot reasonably accommodate the proposed transportation need or facility must be justified in the exception.

(a) In addressing sections (4) and (5) of this rule, the exception shall identify and address alternative methods and locations that are potentially reasonable to accommodate the identified transportation need.

(b) Detailed evaluation of such alternatives is not required when an alternative does not meet an identified threshold.

(c) Detailed evaluation of specific alternative methods or locations identified by parties during the local exceptions proceedings is not required unless the parties can specifically describe with supporting facts why such methods or locations can more reasonably accommodate the identified transportation need, taking into consideration the identified thresholds.

(7) To address Goal 2, Part II(c)(3), the exception shall:

(a) Compare the long-term economic, social, environmental and energy consequences of the proposed location and other alternative locations requiring exceptions. The exception shall describe the characteristics of each alternative location considered by the jurisdiction for which an exception might be taken, the typical

advantages and disadvantages of using the location for the proposed transportation facility or improvement, and the typical positive and negative consequences resulting from the transportation facility or improvement at the proposed location with measures designed to reduce adverse impacts;

(b) Determine whether the net adverse impacts associated with the proposed exception site, with mitigation measures designed to reduce adverse impacts, are significantly more adverse than the net impacts from other locations which would also require an exception. A proposed exception location would fail to meet this requirement only if the affected local government concludes that the impacts associated with it are significantly more adverse than the other identified exception sites. The exception shall include the reasons why the consequences of the needed transportation facility or improvement at the proposed exception location are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed location. Where the proposed goal exception location is on resource lands subject to Goals 3 or 4, the exception shall include the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base; and

(c) The evaluation of the consequences of general locations or corridors need not be site-specific, but may be generalized consistent with the requirements of section (3) of this rule. Detailed evaluation of specific alternative locations identified by parties during the local exceptions proceeding is not required unless such locations are specifically described with facts to support the assertion that the locations have significantly fewer net adverse economic, social, environmental and energy impacts than the proposed exception location.

(8) To address Goal 2, Part II(c)(4), the exception shall:

(a) Describe the adverse effects that the proposed transportation improvement is likely to have on the surrounding rural lands and land uses, including increased traffic and pressure for nonfarm or highway oriented development on areas made more accessible by the transportation improvement;

(b) Demonstrate how the proposed transportation improvement is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. Compatible is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses; and

(c) Adopt as part of the exception, facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility or improvement and support continued rural use of surrounding lands.

(9)(a) Exceptions taken pursuant to this rule shall indicate on a map or otherwise the locations of the proposed transportation facility or improvement and of alternatives identified under subsection (4)(c), sections (5) and (7) of this rule.

(b) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(10) An exception taken pursuant to this rule does not authorize uses other than the transportation facilities or improvements justified in the exception.

(a) Modifications to unconstructed transportation facilities or improvements authorized in an exception shall not require a new exception if the modification is located entirely within the corridor approved in the exception.

(b) Modifications to constructed transportation facilities authorized in an exception shall require a new exception, unless the modification is permitted without an exception under OAR 660-012-0065(3)(b)–(f). For purposes of this rule, minor transportation improvements made to a transportation facility or improvement authorized in an exception shall not be considered a modification to a transportation facility or improvement and shall not require a new exception.

(c) Notwithstanding subsections (a) and (b) of this section, the following modifications to transportation facilities or improvements authorized in an exception shall require new goal exceptions:

(A) New intersections or new interchanges on limited access highways or expressways, excluding replacement of an existing intersection with an interchange.

(B) New approach roads located within the influence area of an interchange.

(C) Modifications that change the functional classification of the transportation facility.

(D) Modifications that materially reduce the effectiveness of facility design measures or land use measures adopted pursuant to subsection (8)(c) of this rule to minimize accessibility to rural lands or support continued rural use of surrounding rural lands, unless the area subject to the modification has subsequently been relocated inside an urban growth boundary.

Stat. Auth.: ORS 183 & 197.040
Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.712, 197.717, 197.732
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06

DIVISION 13

AIRPORT PLANNING

660-013-0010
Purpose and Policy

(1) This division implements ORS 836.600 through 836.630 and Statewide Planning Goal 12 (Transportation). The policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. These rules are intended to promote a convenient and economic system of airports in the state and for land use planning to reduce risks to aircraft operations and nearby land uses.

(2) Ensuring the vitality and continued operation of Oregon's system of airports is linked to the vitality of the local economy where the airports are located. This division recognizes the interdependence between transportation systems and the communities on which they depend.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.635 & 1997 OL, ch. 859
Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0020
Definitions

For purposes of this division, the definitions in ORS Chapter 197 apply unless the context requires otherwise. In addition, the following definitions apply:

(1) "Airport" means the strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.

(2) "Aircraft" means helicopters and airplanes, but not hot air balloons or ultralights.

(3) "Airport Uses" means those uses described in OAR 660-013-0100.

(4) "Non Towered Airport" means an airport without an existing or approved control tower on June 5, 1995.

(5) "Public Assembly Uses" means a structure or outdoor facility where concentrations of people gather for purposes such as deliberation, education, worship, shopping, business, entertainment, amusement, sporting events, or similar activities, excluding airshows. Public Assembly Uses does not include places where people congregate for short periods of time such as parking lots and bus stops or uses approved by the FAA in an adopted airport master plan.

(6) "Sponsor" means the owner, manager, other person, or entity designated to represent the interests of an airport.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.635 & 1997 OL, ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0030
Preparation and Coordination of Aviation Plans

(1) The Oregon Department of Aviation (ODA) shall prepare and adopt a state Aviation System Plan (state ASP) in accordance with ORS Chapters 835 and 836 and the State Agency Coordination Program approved under ORS 197.180. ODA shall coordinate the preparation, adoption, and amendment of land use planning elements of the state ASP with local governments and airport sponsors. The purpose of the state ASP is to provide state policy guidance and a framework for planning and operation of a convenient and economic system of airports, and for land use planning to reduce risks to aircraft operations and nearby land uses. The state ASP shall encourage and support the continued operation and vitality of Oregon's airports.

(2) A city or county with planning authority for one or more airports, or areas within safety zones or compatibility zones described in this division, shall adopt comprehensive plan and land use regulations for airports consistent with the requirements of this division and ORS 836.600 through 836.630. Local comprehensive plan and land use regulation requirements shall be coordinated with acknowledged transportation system plans for the city, county, and Metropolitan Planning Organization (MPO) required by OAR 660, division 12. Local comprehensive plan and land use regulation requirements shall be consistent with adopted elements of the state ASP and shall be coordinated with affected state and federal agencies, local governments, airport sponsors, and special districts. If a state ASP has not yet been adopted, the city or county shall coordinate the preparation of the local comprehensive plan and land use regulation requirements with ODA. Local comprehensive plan and land use regulation requirements shall encourage and support the continued operation and vitality of airports consistent with the requirements of ORS 836.600 through 836.630.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859
Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99; LCDD 3-2004, f. & cert. ef. 5-7-04

660-013-0040
Aviation Facility Planning Requirements

A local government shall adopt comprehensive plan and land use regulation requirements for each state or local aviation facility subject to the requirements of ORS 836.610(1). Planning requirements for airports identified in ORS 836.610(1) shall include:

(1) A map, adopted by the local government, showing the location of the airport boundary. The airport boundary shall include the following areas, but does not necessarily include all land within the airport ownership:

(a) Existing and planned runways, taxiways, aircraft storage (excluding aircraft storage accessory to residential airpark type development), maintenance, sales, and repair facilities;

(b) Areas needed for existing and planned airport operations; and

(c) Areas at non-towered airports needed for existing and planned airport uses that:

(A) Require a location on or adjacent to the airport property;

(B) Are compatible with existing and planned land uses surrounding the airport; and

(C) Are otherwise consistent with provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.

(d) "Compatible," as used in this rule, is not intended as an absolute term meaning no interference or adverse impacts of any type with surrounding land uses.

(2) A map or description of the location of existing and planned runways, taxiways, aprons, tiedown areas, and navigational aids;

(3) A map or description of the general location of existing and planned buildings and facilities;

(4) A projection of aeronautical facility and service needs;

(5) Provisions for airport uses not currently located at the airport or expansion of existing airport uses:

(a) Based on the projected needs for such uses over the planning period;

(b) Based on economic and use forecasts supported by market data;

(c) When such uses can be supported by adequate types and levels of public facilities and services and transportation facilities or systems authorized by applicable statewide planning goals;

(d) When such uses can be sited in a manner that does not create a hazard for aircraft operations; and

(e) When the uses can be sited in a manner that is:

(A) Compatible with existing and planned land uses surrounding the airport; and

(B) Consistent with applicable provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.

(6) When compatibility issues arise, the decision maker shall take reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. A decision on compatibility pursuant to this rule shall further the policy in ORS 836.600.

(7) A description of the types and levels of public facilities and services necessary to support development located at or planned for the airport including transportation facilities and services. Provision of public facilities and services and transportation facilities or systems shall be consistent with applicable state and local planning requirements.

(8) Maps delineating the location of safety zones, compatibility zones, and existing noise impact boundaries that are identified pursuant to OAR 340, division 35.

(9) Local government shall request the airport sponsor to provide the economic and use forecast information required by this rule. The economic and use forecast information submitted by the sponsor shall be subject to local government review, modification and approval as part of the planning process outlined in this rule. Where the sponsor declines to provide such information, the local government may limit the airport boundary to areas currently devoted to airport uses described in OAR 660-013-0100.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, ch. 859
Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0050
Implementation of Local Airport Planning

A local government with planning responsibility for one or more airports or areas within safety zones or compatibility zones described in this division or subject to requirements identified in ORS 836.608 shall adopt land use regulations to carry out the requirements of this division, or applicable requirements of ORS 836.608, consistent with the applicable elements of the adopted state ASP and applicable statewide planning requirements.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859
Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0070
Local Government Safety Zones for Imaginary Surfaces

(1) A local government shall adopt an Airport Safety Overlay Zone to promote aviation safety by prohibiting structures, trees, and other objects of natural growth from penetrating airport imaginary surfaces.

(a) The overlay zone for public use airports shall be based on **Exhibit 1** incorporated herein by reference.

(b) The overlay zone for airports described in ORS 836.608(2) shall be based on **Exhibit 2** incorporated herein by reference.

(c) The overlay zone for heliports shall be based on **Exhibit 3** incorporated herein by reference.

(2) For areas in the safety overlay zone, but outside the approach and transition surface, where the terrain is at higher ele-

vations than the airport runway surface such that existing structures and planned development exceed the height requirements of this rule, a local government may authorize structures up to 35 feet in height. A local government may adopt other height exceptions or approve a height variance when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA.

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

Stat. Auth.: ORS 183

Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99; LCDD 3-2004, f. & cert. ef. 5-7-04

660-013-0080
Local Government Land Use Compatibility Requirements for Public Use Airports

(1) A local government shall adopt airport compatibility requirements for each public use airport identified in ORS 836.610(1). The requirements shall:

(a) Prohibit new residential development and public assembly uses within the Runway Protection Zone (RPZ) identified in Exhibit 4;

(b) Limit the establishment of uses identified in **Exhibit 5** within a noise impact boundary that has been identified pursuant to OAR 340, division 35 consistent with the levels identified in **Exhibit 5**;

(c) Prohibit the siting of new industrial uses and the expansion of existing industrial uses where either, as a part of regular operations, would cause emissions of smoke, dust, or steam that would obscure visibility within airport approach corridors;

(d) Limit outdoor lighting for new industrial, commercial, or recreational uses or the expansion of such uses to prevent light from projecting directly onto an existing runway or taxiway or into existing airport approach corridors except where necessary for safe and convenient air travel;

(e) Coordinate the review of all radio, radiotelephone, and television transmission facilities and electrical transmission lines with the Oregon Department of Aviation;

(f) Regulate water impoundments consistent with the requirements of ORS 836.623(2) through (6); and

(g) Prohibit the establishment of new landfills near airports, consistent with Department of Environmental Quality (DEQ) rules.

(2) A local government may adopt more stringent regulations than the minimum requirements in section (1)(a) through (e) and (g) based on the requirements of ORS 836.623(1).

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

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859

Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99; LCDD 3-2004, f. & cert. ef. 5-7-04

660-013-0100
Airport Uses at Non-Towered Airports

Local government shall adopt land use regulations for areas within the airport boundary of non-towered airports identified in ORS 836.610(1) that authorize the following uses and activities:

(1) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

(2) Emergency Medical Flight Services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. "Emergency Medical Flight Services" does not include hospitals, medical offices, medical labs, medical equipment sales, and similar uses.

(3) Law Enforcement and Firefighting Activities, including aircraft and ground based activities, facilities and accessory structures necessary to support federal, state or local law enforcement and land management agencies engaged in law enforcement or firefighting activities. These activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies.

(4) Flight Instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. "Flight Instruction" does not include schools for flight attendants, ticket agents, or similar personnel.

(5) Aircraft Service, Maintenance and Training, including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills, maintain, service and repair aircraft and aircraft components, but not including activities, structures, and facilities for the manufacturing of aircraft for sale to the public or the manufacturing of aircraft related products for sale to the public. "Aircraft Service, Maintenance and Training" includes the construction of aircraft and aircraft components for personal use. The assembly of aircraft and aircraft components is allowed as part of servicing, maintaining, or repairing aircraft and aircraft components.

(6) Aircraft Rental, including activities, facilities, and accessory structures that support the provision of aircraft for rent or lease to the public.

(7) Aircraft Sales and the sale of aeronautic equipment and supplies, including activities, facilities, and accessory structures for the storage, display, demonstration and sale of aircraft and aeronautic equipment and supplies to the public.

(8) Aeronautic Recreational and Sporting Activities, including activities, facilities and accessory structures at airports that support recreational use of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic Recreation and Sporting Activities on airport property shall be subject to approval of the airport sponsor. Aeronautic recreation and sporting activities include but are not limited to: fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used in this rule, parachuting and parachute drops includes all forms of skydiving. Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.

(9) Crop Dusting Activities, including activities, facilities and structures accessory to crop dusting operations. These include, but are not limited to: aerial application of chemicals, seed, fertilizer, pesticide, defoliant and other activities and chemicals used in a commercial agricultural, forestry or rangeland management setting.

(10) Agricultural and Forestry Activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930.

(11) Air passenger and air freight services and facilities at public use airports at levels consistent with the classification and needs identified in the state ASP.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859

Hist.: LCDC 6 -1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0110
Other Uses Within the Airport Boundary

Notwithstanding the provisions of OAR 660-013-0100, a local government may authorize commercial, industrial, manufacturing and other uses in addition to those listed in OAR 660-013-0100 within the airport boundary where such uses are consistent

with applicable provisions of the acknowledged comprehensive plan, statewide planning goals and LCDC administrative rules and where the uses do not create a safety hazard or otherwise limit approved airport uses.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859
Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0140
Safe Harbors

A "safe harbor" is a course of action that satisfies certain requirements of this division. Local governments may follow safe harbor requirements rather than addressing certain requirements in these rules. The following are considered to be "safe harbors":

(1) Portions of existing acknowledged comprehensive plans, land use regulations, Airport Master Plans and Airport Layout Plans adopted or otherwise approved by the local government as mandatory standards or requirements shall be considered adequate to meet requirements of these rules for the subject areas of rule requirements addressed by such plans and elements, unless such provisions are contrary to provisions of ORS 836.600 through 836.630. To the extent these documents do not contain specific provisions related to requirements of this division, the documents can not be considered as a safe harbor. The adequacy of existing provisions shall be evaluated based on the specificity of the documents and relationship to requirements of these rules;

(2) This division does not require elimination of existing or allowed airport related uses authorized by an acknowledged comprehensive plan and land use regulations; and

(3) Notwithstanding the safe harbor provisions of this rule, land use regulations applicable to non-towered airports shall authorize airport uses required by this division.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859
Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0155
Planning Requirements for Small Airports

(1) Airports described in ORS 836.608(2) shall be subject to the planning and zoning requirements described in ORS 836.608(2) through (6) and (8).

(2) The provisions of OAR 660-013-0100 shall be used in conjunction with ORS 836.608 to determine appropriate types of uses authorized within airport boundaries for airports described in 836.608(2).

(3) The provisions of OAR 660-013-0070(1)(b) shall be used to protect approach corridors at airports described in ORS 836.608(2).

(4) Airport boundaries for airports described in ORS 836.608(2) shall be adopted by local government pursuant to the requirements in ORS 836.608(2).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859
Hist.: LCDD 3-1999, f. & cert. ef. 2-12-99

660-013-0160
Applicability

This division applies as follows:

(1) Local government plans and land use regulations shall be updated to conform to this division at periodic review, except for provisions of chapter 859, OR Laws 1997 that became effective on passage. Prior to the adoption of the list of airports required by ORS 836.610(3), a local government shall be required to include a periodic review work task to comply with this division. However, the periodic review work task shall not begin prior to the Oregon Department of Aviation's adoption of the list of airports required by ORS 836.610(3). For airports affecting more than one local government, applicable requirements of this division shall be included in a coordinated work program developed for all affected local governments concurrent with the timing of periodic review for the jurisdiction with the most land area devoted to airport uses.

(2) Amendments to plan and land use regulations may be accomplished through plan amendment requirements of ORS 197.610 to 197.625 in advance of periodic review where such amendments include coordination with and adoption by all local governments with responsibility for areas of the airport subject to the requirements of this division.

(3) Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning.

(4) Uses authorized by this division shall comply with all applicable requirements of other laws.

(5) Notwithstanding the provisions of OAR 660-013-0140 amendments to acknowledged comprehensive plans and land use regulations, including map amendments and zone changes, require full compliance with the provisions of this division, except where the requirements of the new regulation or designation are the same as the requirements they replace.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 836.600 - 836.630 & 1997 OL, Ch. 859
Hist.: LCDC 6-1996, f. & cert. ef. 12-23-96; LCDD 3-1999, f. & cert. ef. 2-12-99; LCDD 3-2004, f. & cert. ef. 5-7-04

DIVISION 14

APPLICATION OF THE STATEWIDE PLANNING GOALS TO NEWLY INCORPORATED CITIES, ANNEXATION, AND URBAN DEVELOPMENT ON RURAL LANDS

660-014-0000
Purpose

ORS 197.175 requires cities and counties to exercise their planning and zoning responsibilities in compliance with the Statewide Planning Goals. This includes, but is not limited to, new or amended plans as a result of a city or special district boundary change including the incorporation or annexation of unincorporated territory. The purpose of this rule is to clarify the requirements of Goal 14 and to provide guidance to cities, counties and local government boundary commissions regarding urban development on rural lands, planning and zoning of newly incorporated cities, and the application of statewide goals during annexation proceedings.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251, 197.757
Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83; LCDD 4-2004, f. & cert. ef. 5-17-04; LCDD 5-2006, f. 7-13-06, cert. ef. 7-14-06

660-014-0010
Application of the Statewide Planning Goals to Newly Incorporated Cities

(1) Incorporation of a new city within an acknowledged urban growth boundary does not require an exception to Goals 3, 4, 11, or 14. Incorporation of a new city within an acknowledged urban growth boundary must be consistent with relevant provisions of acknowledged city and county plans and land use regulations for the area to be incorporated.

(2) The following are land use decisions which must comply with applicable Statewide Planning Goals or the acknowledged comprehensive plan:

(a) A county order that authorizes an incorporation election pursuant to ORS 221.040;

(b) A resolution adopted by a city approving an incorporation within three miles of its city limits pursuant to ORS 221.031(4);

(c) An order adopted by a local government boundary commission authorizing incorporation of a new city pursuant to ORS 199.461. Incorporation decisions under this section include consolidations that include unincorporated lands.

(3) A city or county decision listed in subsection (2)(a) and (b) of this rule may also require a plan amendment. If the area

proposed for incorporation is subject to an acknowledged comprehensive plan, the amendments shall be reviewed through the post acknowledgment plan amendment review process specified in ORS 197.610 to 197.650 and 197.757. If the area proposed for incorporation is not subject to an acknowledged plan, a plan amendment is subject to review upon appeal as a "land use decision" as defined in ORS 197.015(10).

(4) A newly incorporated city must adopt a comprehensive plan and implementing ordinances for all land in its planning area. Cities incorporated after January 1, 1982, shall have their comprehensive plans and land use regulations acknowledged no later than four years after the date of incorporation or as extended in accordance with a compliance schedule adopted by the commission. Comprehensive plans prepared and adopted by newly incorporated cities shall be reviewed through the plan acknowledgment review process set forth in ORS 197.251 and OAR chapter 660, division 3.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.251, 197.757
Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83; LCDD 4-2004, f. & cert. ef. 5-17-04; LCDD 5-2006, f. 7-13-06, cert. ef. 7-14-06

660-014-0030
Rural Lands Irrevocably Committed to Urban Levels of Development

(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

(a) Size and extent of commercial and industrial uses;

(b) Location, number and density of residential dwellings;

(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and

(d) Parcel sizes and ownership patterns.

(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83 ; LCDD 4-2004, f. & cert. ef. 5-17-04

660-014-0040
Establishment of New Urban Development on Undeveloped Rural Lands

(1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development 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 undeveloped rural lands, considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.

(4) Counties are not required to justify an exception to Goal 14 in order to authorize industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, in exception areas that were planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83; LCDD 4-2004, f. & cert. ef. 5-17-04; LCDD 8-2005, f. & cert. ef. 12-13-05

660-014-0060
Annexations of Lands Subject to an Acknowledged Comprehensive Plan

A city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) or 197.625 shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinances do not control the annexation.

Stat. Auth.: ORS 196 & 197
Stats. Implemented: ORS 195, 196 & 197
Hist.: LCD 3-1978, f. & ef. 2-15-78; LCDC 3-1990, f. & cert. ef. 6-6-90; Renumbered from 660-001-0310, LCDD 4-2004, f. & cert. ef. 5-17-04

660-014-0070
Annexations of Lands not subject to an Acknowledged Comprehensive Plan

(1) All appropriate goals must be applied during annexation by the city. If the annexation is subject to the jurisdiction of a local government boundary commission, the boundary commission may utilize the findings of the city. The boundary commission, however, remains responsible for ensuring that the annexation is in conformance with the statewide goals.

(2) For the annexation of lands not subject to an acknowledged plan, the requirements of Goal 14 (Urbanization) shall be considered satisfied only if the city or local government boundary commission, after notice to the county and an opportunity for it to comment, finds that adequate public facilities and services can be reasonably made available; and:

(a) The lands are physically developed for urban uses or are within an area physically developed for urban uses; or

(b) The lands are clearly and demonstrably needed for an urban use prior to acknowledgment of the appropriate plan and circumstances exist which make it clear that the lands in question will be within an urban growth boundary when the boundary is adopted in accordance with the goals.

(3) Lands for which the findings in section (2) of this rule cannot be made shall not be annexed until acknowledgment of an urban growth boundary by the commission as part of the appropriate comprehensive plan.

Stat. Auth.: ORS 196 & 197
Stats. Implemented: ORS 195, 196 & 197
Hist.: LCD 3-1978, f. & ef. 2-15-78; LCDC 3-1990, f. & cert. ef. 6-6-90
Renumbered from 660-001-0315, LCDD 4-2004, f. & cert. ef. 5-17-04

DIVISION 15

STATEWIDE PLANNING GOALS AND GUIDELINES

660-015-0000
Statewide Planning Goals and Guidelines #1 through #14

(1) #1 — Citizen Involvement;
(2) #2 — Land Use Planning;
(3) #3 — Agricultural Lands;
(4) #4 — Forest Lands;
(5) #5 — Natural Resources, Scenic and Historic Areas, and Open Spaces;
(6) #6 — Air, Water, and Land Resources Quality;
(7) #7 — Areas Subject to Natural Disasters and Hazards;
(8) #8 — Recreational Needs;
(9) #9 — Economy of the State;
(10) #10 — Housing;
(11) #11 — Public Facilities and Services;
(12) #12 — Transportation;
(13) #13 — Energy Conservation; and
(14) #14 — Urbanization.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183, 197 & 215
Stats. Implemented: ORS 197.010, 197.013, 197.015, 197.030, 197.040, 197.045, 197.225, 197.230, 197.235, 197.240, 197.245 & 197.435 –197.467
Hist.: LCD 1, f. 12-31-74, ef. 1-25-75; Renumbered from 660-010-0060; LCDC 6-1980, f. & ef. 9-15-80; LCDC 10-1983, f. & ef. 12-30-83; LCDC 5-1984, f. & ef. 10-19-84; LCDC 2-1988, f. & cert. ef. 3-31-88; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 5-1992, f. 8-21-92, cert. ef. 8-7-93; LCDC 2-1994, f. & cert. ef. 3-1-94; LCDC 4-1994, f. & cert. ef. 3-18-94; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 8-2000, f. 10-3-00, cert. ef. 10-4-00; LCDD 6-2001, f. 11-2-01, cert. ef. 6-1-02; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05; LCDD 4-2005, f. & cert. ef. 6-28-05; LCDD 8-2005, f. & cert. ef. 12-13-05; LCDD 1-2006, f. & cert. ef. 2-10-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-015-0005
Statewide Planning Goal and Guideline #15

#15 — Willamette Greenway.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010, 197.013, 197.015, 197.030, 197.040, 197.045, 197.225, 197.230, 197.235, 197.240, 197.245, 390.010 - 390.220 & 390.310 - 390.368
Hist.: LCDC 6, f. & ef. 12-24-75; LCDC 8-1980, f. & ef. 12-17-80; LCDC 2-1988, f. & cert. ef. 3-31-88; LCDD 3-2008, f. & cert. ef. 4-18-08

660-015-0010
Statewide Planning Goals and Guidelines #16 Through #19

Coastal State-Wide Planning Goals:
(1) #16 — Estuarine Resources;
(2) #17 — Coastal Shorelands;
(3) #18 — Beaches and Dunes; and
(4) #19 — Ocean Resources.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010, 197.013, 197.015, 197.040, 197.045, 197.225, 197.230, 197.235, 197.240 & 197.245
Hist.: LCDC 10, f. & ef. 6-7-77; LCDC 6-1984, f. & ef. 10-19-84; LCDC 2-1988, f. & cert. ef. 3-31-88; LCDD 7-1999, f. & cert. ef. 8-20-99; LCDD 2-2001, f. & cert. ef. 1-30-01; LCDD 3-2008, f. & cert. ef. 4-18-08

DIVISION 16

REQUIREMENTS AND APPLICATION PROCEDURES FOR COMPLYING WITH STATEWIDE GOAL 5

NOTE: The rules under this division are superseded by OAR 660, division 023, except with regard to cultural resources and certain post-acknowledgment plan amendments and periodic review work tasks described in OAR 660-023-0250(2) and 660-023-0250(4) (See 660-023-0250(1)).

660-016-0000
Inventory Goal 5 Resources

(1) The inventory process for Statewide Planning Goal 5 begins with the collection of available data from as many sources as possible including experts in the field, local citizens and landowners. The local government then analyzes and refines the data and determines whether there is sufficient information on the location, quality and quantity of each resource site to properly complete the Goal 5 process. This analysis also includes whether a particular natural area is "ecologically and scientifically significant," or an open space area is "needed," or a scenic area is "outstanding," as outlined in the Goal. Based on the evidence and local government's analysis of those data, the local government then determines which resource sites are of significance and includes those sites on the final plan inventory.

(2) A "valid" inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. Some Goal 5 resources (e.g., natural areas, historic sites, mineral and aggregate sites, scenic waterways) are more site-specific than others (e.g., groundwater, energy sources). For site-specific resources, determination of *location* must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.

(3) The determination of *quality* requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of *quantity* requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or "obtainable."

(4) The inventory completed at the local level, including options in subsections (5)(a), (b), and (c) of this rule, will be adequate for Goal compliance unless it can be shown to be based on inaccurate data, or does not adequately address location, quality or quantity. The issue of adequacy may be raised by the Department or objectors, but final determination is made by the Commission or the Land Use Board of Appeals as provided by law.

(5) Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:

(a) Do Not Include on Inventory: Based on information that is available on location, quality and quantity, the local government might deter mine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information;

(b) Delay Goal 5 Process: When some information is available, indicating the possible existence of a resource site, but that information is not adequate to identify with particularity the location, quality and quantity of the resource site, the local government should only include the site on the comprehensive plan inventory as a special category. The local government must express its intent relative to the resource site through a plan policy to address that resource site and proceed through the Goal 5 process in the future. The plan should include a time-frame for this review. Special implementing measures are not appropriate or required for Goal 5 compliance purposes until adequate information is available to enable further review and adoption of such measures. The statement in the plan commits the local government to address the resource site through the Goal 5 process in the post-acknowledgment period. Such future actions could require a plan amendment;

(c) Include on Plan Inventory: When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory and indicate the location, quality and quantity of the resource site (see above). Items included on this inventory must proceed through the remainder of the Goal 5 process.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81; LCDC 3-1990, f. & cert. ef. 6-6-90

660-016-0005
Identify Conflicting Uses

(1) It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences:

(2) Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which ensure preservation of the resource site.

(3) Determine the Economic, Social, Environmental, and Energy Consequences: If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81; LCDD 3-2004, f. & cert. ef. 5-7-04

660-016-0010
Develop Program to Achieve the Goal

Based on the determination of the economic, social, environmental and energy consequences, a jurisdiction must "develop a program to achieve the Goal." Assuming there is adequate information on the location, quality, and quantity of the resource site as well as on the nature of the conflicting use and ESEE consequences, a jurisdiction is expected to "resolve" conflicts with specific sites in any of the following three ways listed below. Compliance with Goal 5 shall also be based on the plan's overall ability to protect and conserve each Goal 5 resource. The issue of adequacy of the overall program adopted or of decisions made under sections (1), (2), and (3) of this rule may be raised by the Department or objectors, but final determination is made by the Commission, pursuant to usual procedures:

(1) Protect the Resource Site: Based on the analysis of the ESEE consequences, a jurisdiction may determine that the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site and possibly within the impact area identified in OAR 660-016-0000(5)(c). Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(2) Allow Conflicting Uses Fully: Based on the analysis of ESEE consequences and other Statewide Goals, a jurisdiction may determine that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. This approach may be used when the conflicting use for a particular site is of sufficient importance, relative to the resource site. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(3) Limit Conflicting Uses: Based on the analysis of ESEE consequences, a jurisdiction may determine that both the resource site and the conflicting use are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource site to some desired extent. To implement this decision, the jurisdiction must designate with certainty what uses and activities are allowed fully, what uses and activities are not allowed at all and which uses are allowed conditionally, and what specific standards or limitations are placed on the permitted and conditional uses and activities for each resource site. Whatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses and activities are allowed, not allowed, or allowed conditionally and under what clear and objective conditions or standards. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81; LCDD 3-2004, f. & cert. ef. 5-7-04

660-016-0015
Post-Acknowledgment Period

(1) All data, findings, and decisions made by a local government prior to acknowledgment may be reviewed by that local government in its periodic update process. This includes decisions made as a result of OAR 660-016-0000(5)(a), 660-016-0005(1), and 660-016-0010. Any changes, additions, or deletions would be made as a plan amendment, again following all Goal 5 steps.

(2) If the local government has included in its plan items under OAR 660-016-0000(5)(b), the local government has committed itself to take certain actions within a certain time frame in the post-acknowledgment period. Within those stated time frames, the local government must address the issue as stated in its plan, and treat the action as a plan amendment.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

660-016-0020
Landowner Involvement

(1) The development of inventory data, identification of conflicting uses and adoption of implementing measures must, under Statewide Planning Goals 1 and 2, provide opportunities for citizen involvement and agency coordination. In addition, the adoption of regulations or plan provisions carries with it basic legal notice requirements. (County or city legal counsel can advise the planning department and governing body of these requirements.) Depending upon the type of action involved, the form and method of landowner notification will vary. State statutes and local charter provisions contain basic notice requirements. Because of the nature of the Goal 5 process as outlined in this paper it is important to provide for notification and involvement of landowners, including public agencies, at the earliest possible opportunity. This will likely avoid problems or disagreements later in the process and improve the local decision-making process in the development of the plan and implementing measures.

(2) As the Goal 5 process progresses and more specificity about the nature of resources, identified conflicting uses, ESEE consequences and implementing measures is known, notice and involvement of affected parties will become more meaningful. Such notice and landowner involvement, although not identified as a Goal 5 requirement is in the opinion of the Commission, imperative.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

660-016-0030
Mineral and Aggregate Resources

(1) When planning for and regulating the development of aggregate resources, local governments shall address ORS 517.750 to 517.900 and OAR chapter 632, divisions 1 and 30.

(2) Local governments shall coordinate with the State Department of Geology and Mineral Industries to ensure that requirements for the reclamation of surface mines are incorporated into programs to achieve the Goal developed in accordance with OAR 660-016-0010.

(3) Local governments shall establish procedures designed to ensure that comprehensive plan provisions, land use regulations, and land use permits necessary to authorize mineral and aggregate development are coordinated with the State Department of Geology and Mineral Industries. Local governments shall amend comprehensive plans and land use regulations, as necessary, no later than January 1, 1993.

(4) The provisions of this rule shall be effective immediately.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040
Hist.: LCDC 3-1992, f. & cert. ef. 6-10-92

DIVISION 17

CLASSIFYING OREGON ESTUARIES

660-017-0000
Purpose

(1) This rule carries out requirements of the Estuarine Resources Goal (State-Wide Planning Goal 16). To assure diversity among the estuaries of the state, the Estuarine Resources Goal requires in part that LCDC, with the cooperation and participation of local governments, special districts, and state and federal agencies, shall classify the Oregon estuaries to specify the most intensive level of development or alteration allowable within each estuary. This rule is adopted pursuant to ORS 197.040(1)(b). (See **Appendix A**.)

(2) The estuarine classification system adopted by this rule:

(a) Specifies the most intensive level of development or alteration allowable within each estuary;

(b) Directs the kinds of management units appropriate and allowable in each estuary;

(c) Affects the extent of detail required and items inventoried for each estuary;

(d) Affects the issuance of and conditions attached to permits by state and federal agencies;

(e) Provides guidance for the dispersal of state and federal public works funds; and

(f) Indirectly affects decisions concerning private investment in and around estuaries.

(3) Appendix A — Oregon Estuary Classification System, is incorporated into this rule.

[ED. NOTE: Appendix & Publications referenced are available from the agency.]

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 12, f. & ef. 10-14-77; LCDD 3-2004, f. & cert. ef. 5-7-04

660-017-0005
Definitions

As used in this rule, unless the context requires otherwise:

(1) "Alteration" means any man-caused change in the environment, including physical, topographic, hydraulic, biological, or other similar environmental changes, or changes which affect water quality.

(2) "Altered Shorelines" include shorelines with bulkheads, seawalls, riprap, or other physical structures, but do not include earthen, vegetated dikes.

(3) "Commission" means the Oregon Land Conservation and Development Commission.

(4) "Design Depth" means the channel depth authorized by Congress and maintained by the U.S. Army Corps of Engineers. The actual maintained depth of a channel may exceed the design or authorized depth because of:

(a) The limits of dredging precision which causes "overdepth"; and

(b) The practice, where approved by the Corps of Engineers, of "advanced maintenance" overdredging which designates the amount of extra depth to be dredged to insure clear project depths for the time period between maintenance operations.

(5) "Entrance Channel" means that portion of the waterway exposed to wave surge from the open sea and which provides protected access or opening to the main channel, as authorized by the Corps of Engineers.

(6) "Estuary" means a body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from land. The estuary includes estuarine water, tidelands, tidal marshes, and submerged lands. Estuaries extend upstream to the head of tidewater, except for the Columbia River estuary, which, by definition, is considered to extend to the western edge of Puget Island.

(7) "Jetty" means a structure extending seaward from the mouth of a river designed to stabilize the river mouth by preventing the build up of material at the river's mouth, and to direct or confine the stream or tidal flow.

(8) "Main Channel" means that part of a waterway which extends upstream from the entrance channel into the estuary proper (also called "inner channel"). All or segments of the main channel may be maintained by dredging. The main channel does not include auxiliary channels or waterways.

(9) "Maintained Channels and Jetties" are only those channels or jetties authorized by Congress and which are periodically rehabilitated to deepen or stabilize the watercourse.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 12, f. & ef. 10-14-77

660-017-0010
Classification System

There are four different types of estuaries. These are defined as:

(1) "Natural estuaries": Estuaries lacking maintained jetties or channels, and which are usually little developed for residential, commercial, or industrial uses. They may have altered shorelines, provided that these altered shorelines are not adjacent to an urban

area. Shorelands around natural estuaries are generally used for agricultural, forest, recreation, and other rural uses.

(2) "Conservation estuaries": Estuaries lacking maintained jetties or channels, but which are within or adjacent to urban areas which have altered shorelines adjacent to the estuary.

(3) "Shallow-draft development estuaries": Estuaries with maintained jetties and a main channel (not entrance channel) maintained by dredging at 22 feet or less, except Nehalem Bay, which now has only authorized jetties and no authorized or maintained channel.

(4) "Deep-draft development estuaries": Estuaries with maintained jetties and a main channel maintained by dredging at deeper than 22 feet.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 12, f. & ef. 10-14-77; LCD 3-1981, f. & ef. 3-4-81

660-017-0015
Major Estuary Classification

Twenty-one of the 22 major Oregon estuaries are classed in the following manner:

(1) Natural Estuaries include Sand Lake, Salmon River, Elk River (Curry County), Sixes River, and Pistol River.

(2) Conservation Estuaries include Necanicum River, Netarts Bay, Nestucca River, Siletz Bay, Alsea Bay, and Winchuck River.

(3) Shallow-draft Development Estuaries include Tillamook Bay, Nehalem Bay, Depoe Bay, Siuslaw River, Umpqua River, Coquille River, Rogue River, and Chetco River.

(4) Deep-draft Development Estuaries include Columbia River, Yaquina Bay, and Coos Bay.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 12, f. & ef. 10-14-77; LCD 3-1981, f. & ef. 3-4-81

660-017-0020
Minor Estuary Classification

Minor estuaries, including tidal streams which have estuarine features, are not classified at this time. Minor estuaries shall be identified and classed as either natural estuaries or conservation estuaries during the development of local comprehensive plans.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 12, f. & ef. 10-14-77

660-017-0025
Level of Development or Alteration

No development or alteration shall be more intensive than that specified in the Estuarine Resources Goal as permissible uses for comparable management units:

(1)(a) Natural estuaries shall be managed to preserve the natural resources and the dynamic natural processes. Those uses which would change, alter, or destroy the natural resources and natural processes are not permitted. Natural estuaries shall only be used for undeveloped, low intensity, water-dependent recreation; and navigation aids such as beacons and buoys; protection of habitat, nutrient, fish, wildlife, and aesthetic resources; passive restoration measures, and where consistent with the resource capabilities of the area and the purposes of maintaining natural estuaries, aquaculture; communication facilities; placement of low water bridges and active restoration measures. Existing man-made features may be retained, maintained, and protected where they occur in a natural estuary. Activities and uses, such as waste discharge and structural changes, are prohibited. Riprap is not an allowable use, except that it may be allowed to a very limited extent where necessary for erosion control to protect:

(A) Uses existing as of October 7, 1977;

(B) Unique natural resource and historical and archeological values; or

(C) Public facilities; and where consistent with the natural management unit description in Goal #16 (and as deemed appropriate by the permitting agency).

(b) Natural estuaries shall contain only natural management units, as provided in the Estuarine Resource Goal.

(2) Conservation estuaries shall be managed for long-term uses of renewable resources that do not require major alterations of the estuary. Permissible uses in conservation management units shall be those allowed in section (1) of this rule; active restoration measures; aquaculture; and communication facilities. Where consistent with resource capabilities of the management unit and the purposes of maintaining conservation management units, high-intensity water-dependent recreation; maintenance dredging of existing facilities; minor navigational improvements; mining and mineral extraction; water dependent uses requiring occupation of water surface area by means other than fill; bridge crossings; and riprap shall also be appropriate. Conservation estuaries may have shorelines within urban or developed areas. Dredged marinas and boat basins without jetties or channels are appropriate in conservation estuaries. Waste discharge meeting state and federal water quality standards would be acceptable. Maintained jetties and channels shall not be allowed. Conservation estuaries shall have both conservation and natural management units, as provided in the Estuarine Resource Goal.

(3)(a) Both shallow and deep draft development estuaries shall be managed to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses consistent with overall Estuarine Resources Goal requirements. Where consistent with the development management unit requirements of the Estuarine Resources Goal, other appropriate uses include riprap and those uses listed as permissible uses in development management units in the Estuarine Resources Goal. Minor and major navigational improvements are allowed in both shallow-draft and deep-draft estuaries, consistent with the requirements of the Goal. However, in shallow-draft estuaries, extension or improvements in main channels shall not be designed to exceed 22 feet in depth. Information about the location, extent, and depth of channels and jetties including planned extensions, shall be developed during the local planning process and described in the comprehensive plan;

(b) Shallow and deep-draft development estuaries shall have natural, conservation, and development management units as provided in the Estuarine Resources Goal.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 12, f. & ef. 10-14-77; LCD 5-1979, f. & ef. 8-8-79

660-017-0030
Revisions and Changes

(1) The Commission shall review the overall Oregon Estuary Classification at the request of any coastal jurisdiction after the inventories and initial planning efforts are completed for all estuaries. Initial planning efforts include the identification of needs, and of potential conflicts among needs and goals.

(2) Any change in the Oregon Estuary Classification must retain diversity among Oregon Estuaries.

(3) Requests for change should be addressed to the Director of the Department of Land Conservation and Development.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.040
Hist.: LCD 12, f. & ef. 10-14-77

DIVISION 18

POST-ACKNOWLEDGEMENT AMENDMENTS

660-018-0005
Purpose

This division is intended to implement provisions of ORS 197.610 through 197.625. The overall purpose of this division is to carry out the state policies outlined in ORS 197.010.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0010
Definitions and Computation of Time

(1) For the purpose of this division, the definitions in ORS 197.015 apply. In addition, the following definitions apply:

(a) "A change" to an acknowledged comprehensive plan or land use regulation means an amendment to the plan or implementing land use regulations, including an amendment to the plan text or map. This term includes additions and deletions to the acknowledged plan or regulations, the adoption of a new plan or regulation, or the repeal of an acknowledged plan or regulation.

(b) "Date of Decision" means the date on which the local government adopts the change.

(c) "Date of Mailing" means the date the documents are postmarked or the date of U.S. Postal Service proof of mailing.

(d) "Decision" means a local government adoption of a change to a comprehensive plan or land use regulation. Except where adoption is required by ORS 197.646 for new statutes or rules, a local government denial of a proposed change shall not be considered a "Decision" for purposes of notices of adoption otherwise required by this division.

(e) "Final Evidentiary Hearing" means the last hearing where all interested persons are allowed to present evidence and rebut testimony on a proposal to adopt a change to a comprehensive plan or land use regulation. A hearing held solely on the record of a previous hearing held by the governing body or its designated hearing body is not a "final evidentiary hearing."

(f) "First Evidentiary Hearing" means the first hearing conducted by the local government where interested persons are allowed to present and rebut evidence and testimony on a proposal to adopt a change to a comprehensive plan or land use regulation. "First evidentiary hearing" does not include a work session or briefing where public testimony is not allowed.

(g) "Map Change" means a change in the designation or boundary of an area as shown on the comprehensive plan map, zoning map or both, including an area added to or removed from a comprehensive plan or zoning map.

(2) Computation of time: for purposes of this division, the time within which a particular act must be done, such as "35 days before," is computed as follows. The first day of the designated period to complete the task, notice, objection or appeal shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday under ORS 187.010 or 187.020. In that event the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 187.010, 187.020, 197.610-197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0020
Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation

(1) Before a local government adopts a change to an acknowledged comprehensive plan or a land use regulation, unless circumstances described in OAR 660-018-0022 apply, the local government shall submit the proposed change to the department, including the information described in section (2) of this rule. The local government must submit the proposed change to the director at the department's Salem office at least 35 days before holding the first evidentiary hearing on adoption of the proposed change.

(2) The submittal must include applicable forms provided by the department, be in a format acceptable to the department, and include all of the following materials:

(a) The text of the proposed change to the comprehensive plan or land use regulation implementing the plan, as provided in section (3) of this rule;

(b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a copy of the relevant portion of the map that is created or altered;

(c) A brief narrative summary of the proposed change and any supplemental information that the local government believes may be useful to inform the director and members of the public of the effect of the proposed change;

(d) The date set for the first evidentiary hearing;

(e) The notice or a draft of the notice required under ORS 197.763 regarding a quasi-judicial land use hearing, if applicable; and

(f) Any staff report on the proposed change or information that describes when the staff report will be available and how a copy may be obtained.

(3) The proposed text submitted to comply with subsection (2)(a) of this rule must include all of the proposed wording to be added to or deleted from the acknowledged plan or land use regulations. A general description of the proposal or its purpose, by itself, is not sufficient. For map changes, the material submitted to comply with Subsection (2)(b) must include a graphic depiction of the change; a legal description, tax account number, address or similar general description, by itself, is not sufficient. If a goal exception is proposed, the submittal must include the proposed wording of the exception.

(4) If a local government proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the purpose of conforming the plan and regulations to new requirements in a land use statute, statewide land use planning goal, or a rule implementing the statutes or goals, the local government may adopt such a change without holding a public hearing, notwithstanding contrary provisions of state and local law, provided:

(a) The local government provides notice to the department of the proposed change identifying it as a change described under this section, and includes the materials described in section (2) of this rule, 35 days before the proposed change is adopted by the local government, and

(b) The department confirms in writing prior to the adoption of the change that the only effect of the proposed change is to conform the comprehensive plan or the land use regulations to the new requirements.

(5) For purposes of computation of time for the 35-day notice under this rule and OAR 660-018-0035(1)(c), the proposed change is considered to have been "submitted" on the day that paper copies or an electronic file of the applicable notice forms and other documents required by section (2) this rule are received or, if mailed, on the date of mailing. The materials must be mailed to or received by the department at its Salem office.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12; LCDD 4-2013, f. 12-20-13, cert. ef. 1-1-14

660-018-0021
Joint Submittal of Notices and Changes

(1) Where two or more local governments are required by plan provisions, coordination agreements, statutes or goals to agree on and mutually adopt a change to a comprehensive plan or land use regulation, the local governments shall jointly submit the notice required in OAR 660-018-0020 and, if the change is adopted, the decision and materials required by OAR 660-018-0040. Notice of such proposed changes must be jointly submitted at least 35 days prior to the first evidentiary hearing. For purposes of notice and appeal, the date of the decision is the date of the last local government's adoption of the change.

(2) For purposes of this rule, a change to a comprehensive plan or land use regulation that requires two or more local governments to agree on and mutually adopt the change includes, but is not limited to, the establishment or amendment of an urban growth boundary or urban reserve by a city and county in the manner specified in Goal 14.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0022
Exemptions to Notice Requirements Under OAR 660-018-0020

(1) When a local government determines that no goals, commission rules, or land use statutes apply to a particular proposed change, the notice of a proposed change under OAR 660-018-0020 is not required.

(2) If a local government determines that emergency circumstances beyond the control of the local government require expedited review such that the local government cannot submit the proposed change consistent with the 35-day deadline under OAR 660-018-0020, the local government may submit the proposed change to the department as soon as practicable. The submittal must include a description of the emergency circumstances.

(3) A local government must submit any adopted change to an acknowledged comprehensive plan or land use regulation to the department within 20 days after the decision to adopt the change, as required by OAR 660-018-0040, regardless of the reason for not submitting the proposed change in advance, as provided in ORS 197.615(1) and (2).

(4) Notwithstanding the requirements of ORS 197.830(2) to have appeared before the local government in the proceedings concerning the proposal, if a local government does not provide any notice described in OAR 660-018-0020, regardless of the reason for not providing the notice, the director or any other person may appeal the decision to the board under ORS 197.830 to 197.845, except as provided in ORS 197.620(3).

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610(2)
Hist.: LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0025
Requests for Department Notice of Proposed Changes

(1) Within 15 days of receipt of a notice of a proposed change to an acknowledged comprehensive plan or a land use regulation described under OAR 660-018-0020, the department shall provide notice of the proposed change to persons that have requested notice of such changes. The notice shall be provided using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method.

(2) The department shall notify persons that are generally interested in proposed changes to acknowledged comprehensive plans by posting notices received under OAR 660-018-0020 on a weekly basis on the department website using the Internet or a similar electronic method.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0035
Department Participation

(1) When the department determines that a proposed change to an acknowledged comprehensive plan or a land use regulation may not be in compliance with land use statutes or the statewide land use planning goals, including administrative rules implementing either the statutes or the goals, the department shall notify the local government of the concerns at least 15 days before the final evidentiary hearing, unless:

(a) The local government holds only one hearing on the proposal, in which case the notification must occur prior to the close of the hearing;

(b) The proposed change has been modified to the extent that resubmission is required under OAR 660-018-0045; or

(c) The local government did not submit the proposed change within 35 days in advance of the final hearing in accordance with OAR 660-018-0020(1), regardless of the circumstances that resulted in that delay.

(2) Notwithstanding section (1) of this rule, the department may provide advisory recommendations to the local government concerning a proposed change to the acknowledged comprehensive plan or land use regulation at any time prior to the adoption of the change.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0040
Submittal of Adopted Change

(1) When a local government adopts a proposed change to an acknowledged comprehensive plan or a land use regulation it shall submit the decision to the department, with the appropriate notice forms provided by the department, within 20 days.

(2) For purposes of the 20-day requirement under section (1) of this rule, the proposed change is considered submitted to the department:

(a) On the day the applicable notice forms and other required documents are received by the department in its Salem office, if hand-delivered or submitted by electronic mail or similar electronic method, or

(b) On the date of mailing if the local government mails the forms and documents.

(3) The submission to the department must in a format acceptable to the department and include all of the following materials:

(a) A copy of final decision;

(b) The findings and the text of the change to the comprehensive plan or land use regulation;

(c) If a comprehensive plan map or zoning map is created or altered by the proposed change:

(A) A map showing the area changed and applicable designations; and

(B) Electronic files containing geospatial data showing the area changed, as specified in section (5) of this rule, if applicable.

(d) A brief narrative summary of the decision, including a summary of substantive differences from the proposed change submitted under OAR 660-018-0020 and any supplemental information that the local government believes may be useful to inform the director or members of the public of the effect of the actual change; and

(e) A statement by the individual transmitting the decision identifying the date of the decision and the date the submission was mailed to the department.

(4) Where amendments or new land use regulations, including supplementary materials, exceed 100 pages, a summary of the amendment briefly describing its purpose and requirements shall be included with the submittal to the director.

(5) For local governments that produce geospatial data describing an urban growth boundary (UGB) or urban or rural reserve that is created or altered as part of an adopted change to a comprehensive plan or land use regulation, the submission must include electronic geospatial data depicting the boundary change. Local governments that create or alter other zoning or comprehensive plan maps as geospatial data are encouraged but not required to share this data with the department. Geospatial data submitted to the department must comply with the following standards endorsed by the Oregon Geographic Information Council:

(a) Be in an electronic format compatible with the State's Geographic Information System software standard described in OAR 125-600-7550; and

(b) Be accompanied by metadata that meets at least the minimum requirements of the federal Content Standard for Digital Geospatial Metadata.

(6) Local government must notify the department of withdrawals or denials of proposals previously sent to the department under requirements of OAR 660-018-0020.

(7) If a local government did not submit a notice of a proposed change to a comprehensive plan or land use regulation to the department as required by OAR 660-018-0020, the transmittal must clearly indicate which provisions of OAR 660-018-022 are applicable.

NOTE: ORS 197.610 clearly requires all adopted plan and land use regulation amendments and new land use regulations to be submitted to the director even if they were not required to be submitted for review prior to adoption.

(8) ORS 197.620 provides that a local government may cure the untimely submission of materials by either postponing the date for the final evidentiary hearing by the greater of 10 days or the number of days by which the submission was late; or by holding the evidentiary record open for an additional period of time equal to 10 days or the number of days by which the submission was late, whichever is greater. The local government shall provide notice of such postponement or record extension to the department.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 12-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 5-1-12; LCDD 3-2012, f. & cert. ef. 2-14-12; LCDD 4-2013, f. 12-20-13, cert. ef. 1-1-14

660-018-0045
Alterations to a Proposed Change

(1) If, after initially submitting the notice and accompanying materials under OAR 660-018-0020, a proposed change to an acknowledged comprehensive plan or land use regulation is altered to such an extent that the materials submitted no longer reasonably describe the proposed change, the local government must, at least 10 days before the final evidentiary hearing on the proposal:

(a) Notify the department of the alterations to the proposed change, and

(b) Provide a summary of the alterations along with any alterations to the proposed text or map and other materials described in OAR 660-018-0020.

(2) When the department receives a notification of alteration of a proposal as described in section (1) of this rule, the department shall issue a new notice to persons that have requested notice in the manner described OAR 660-018-0025.

(3) Circumstances requiring resubmission of a proposed change to a comprehensive plan or land use regulation under this rule may include, but are not limited to:

(a) Alteration of the proposed principal uses that would be allowed under the proposed change to the comprehensive plan or land use regulations;

(b) A significant change in the location at which the principal uses would be allowed, limited or prohibited; or

(c) A significant change in the conditions or restrictions that would be applied to a proposed use.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0050
Notice to Other Parties of Adopted Changes

(1) Notice of an adopted change to a comprehensive plan or land use regulation to persons other than the department is governed by ORS 197.615(4) and (5), which require that on the same day the local government submits the decision to the director the local government shall mail or otherwise deliver notice of the decision to persons that:

(a) Participated in the local government proceedings that led to the decision to adopt the change to the acknowledged comprehensive plan or the land use regulation; and

(b) Requested in writing that the local government provide them with notice of the change to the acknowledged comprehensive plan or the land use regulation.

(2) The notice to persons who participated and requested notice as required by section (1) of this rule must:

(a) Clearly describe the decision;

(b) State the date of the decision;

(c) Indicate how and where the materials described in OAR 660-018-0040(3) may be obtained;

(d) Include a statement by the individual delivering the notice that identifies the date on which the notice was delivered and the individual delivering the notice;

(e) List the locations and times at which the public may review the decision and findings; and

(f) Explain the requirements for appealing the land use decision under ORS 197.830 to 197.845.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.615(2)
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0055
Notice by the Department of Local Adoption

(1) Within five working days of the receipt of a local government notice of adoption of a change to a comprehensive plan or a land use regulation described under OAR 660-018-0040, the department shall provide notice of the decision and an explanation of the requirements for appealing the land use decision under ORS 197.830 to 197.845, to persons that have requested notice from the director of such adopted changes. The notice shall be provided using electronic mail, electronic bulletin board, electronic mailing list server or similar electronic method.

(2) The department shall notify persons that are generally interested in changes to acknowledged comprehensive plans by posting notices received under OAR 660-018-0040 periodically on the department website using the Internet or a similar electronic method.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0060
Who May Appeal

Eligibility to appeal a local government decision to adopt a change to a comprehensive plan or land use regulation is governed by ORS 197.620, 197.830, and Oregon Laws 2011, chapter 280, section 6.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610-197.845; OL 2011, Ch 280, § 6
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0085
Acknowledgement of a Change to a Plan or Land Use Regulation

(1) Pursuant to ORS 197.625, an adopted change to a comprehensive plan or a land use regulation is deemed to be acknowledged when the local government has complied with the requirements of ORS 197.610 and 197.615 , the applicable requirements of this division, and either:

(a) The 21-day appeal period set out in ORS 197.830(9) has expired and a notice of intent to appeal has not been filed; or

(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms the decision.

(2) Pursuant to ORS 197.625(3), prior to acknowledgment of an adopted change to an acknowledged comprehensive plan or a land use regulation as provided in section (1) of this rule, the

adopted change is effective at the time specified by local government charter or ordinance.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610 - 197.625

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 3-2012, f. & cert. ef. 2-14-12

660-018-0150

Time Limits Regarding Certified Industrial Sites

(1) Upon application for a change to a comprehensive plan or land use regulation necessary to expedite and facilitate industrial or traded sector development on any of the certified industrial sites identified and prioritized under Oregon Laws 2003, chapter 800, section 12, a local government shall take action approving, approving with modifications, or denying the application no later than 180 days after the date the application is deemed complete by the local government.

(2) For purposes of this rule, "certified industrial sites" are those sites so designated by the Economic Revitalization Team Regulatory Efficiency Group established by Oregon Laws 2003, chapter 800, section 2 in accordance with the requirements of Oregon Laws 2003, chapter 800, section 12.

(3) Persons, including the director, who participated in the local government proceedings leading to the adoption of a change to a comprehensive plan or land use regulation described in section (1) of this rule may appeal the decision by the local government in accordance with requirements and time limits specified in ORS 197.610 through 197.625, except as provided in section (4) of this rule.

(4) For a decision to expand an urban growth boundary or designate an urban reserve necessary to expedite and facilitate industrial or traded sector development on any of the certified industrial sites identified and prioritized under Oregon Laws 2003, chapter 800, section 12, and provided the decision is subject to ORS 197.626, the commission shall review the action following the timelines and procedures specified in OAR 660-025-0040, 660-025-0140 through 660-025-0160, and 660-025-0175.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.610-197.625; OL 2003, Ch 800, § 17(2)

Hist.: LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2011, f. & cert. ef. 10-20-11; LCDD 3-2012, f. & cert. ef. 2-14-12

DIVISION 20

WILLAMETTE RIVER GREENWAY PLAN

660-020-0060

Willamette River Greenway Plan Segments

The Land Conservation and Development Commission hereby adopts by reference orders approving the Oregon Department of Transportation Willamette River Greenway Plan Segments for the following: Cities of: Salem; Milwaukie; Gladstone; Corvallis; St. Helens; Dundee; Independence; Albany; Harrisburg; Millersburg; Eugene; Cottage Grove; Lake Oswego; Oregon City; West Linn; Wilsonville; Portland; and Springfield. Counties of: Multnomah; Lane, Benton (left bank); Columbia; Yamhill; Marion; Polk; Linn; and Clackamas.

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

Stat. Auth.: ORS 390

Stats. Implemented: ORS 197.040 & 390.318

Hist.: LCD 2-1978, f. & ef. 1-30-78; LCD 6-1978(Temp), f. & ef. 4-10-78; LCD 7-1978, f. & ef. 5-12-78; LCD 10-1978, f. & ef. 12-12-78; LCD 1-1979, f. & ef. 2-22-79; LCD 3-1980(Temp), f. & ef. 5-20-80; LCD 4-1980, f. & ef. 6-24-80; LCD 8-1981, f. & ef. 7-1-81; LCDC 2-1982, f. & ef. 5-27-82; LCDC 1-1988, f. & cert. ef. 3-18-88; LCDD 3-2004, f. & cert. ef. 5-7-04

660-020-0065

Amending Willamette Greenway Plan

The following procedure is established for amending segments of the Willamette River Greenway Plan:

(1) A request for a Willamette Greenway Plan modification from the plan that had previously been approved by LCDC shall be submitted by the Oregon Parks and Recreation Department (OPRD).

(2) If the plan change is initiated by a city or county the request shall be made by council or board action in writing to the Oregon Parks and Recreation Department requesting submission of the amendment to LCDC for adoption of an administrative rule amending the Greenway Plan. This request shall include the proposed plan change, and reasons why such a plan change is necessary. The Oregon Parks and Recreation Department shall, within 30 days submit the request with comments to LCDC.

(3) If the plan change is initiated by the Oregon Parks and Recreation Department, the request shall be made in writing to LCDC:

(a) Requesting that LCDC adopt by administrative rule certain changes to OPRD Greenway Plan;

(b) Explaining the proposed change to the plan;

(c) Explaining why the proposed change to the plan is necessary. The Oregon Parks and Recreation Department shall notify the affected city or county 30 days prior to the submission of the proposed plan change to LCDC. The affected city or county comments on the proposed change shall be forwarded with the request to LCDC.

(4) The LCDC shall provide public notice of the proposed plan amendment, including the time and place of a public hearing on the proposed plan amendment.

(5) The LCDC shall review and consider testimony regarding the proposed plan amendment, pursuant to the requirements of ORS Chapter 183.

(6) The LCDC may adopt by rule the plan amendment if the plan change is consistent with the intent and purposes of the Willamette River Greenway as stated in Goal 15 of the Statewide Planning Goals and ORS 390.310 to 390.368.

(7) The local jurisdiction shall adopt the Willamette Greenway Plan amendment by ordinance. Such ordinance shall not have an effective date which is prior to LCDC's adoption of the plan amendment.

(8) A copy of the approved plan amendment shall be sent to the Oregon Parks and Recreation Department, and the boundary change(s) shall be recorded on the OPRD and LCDC Greenway maps as well as the local Greenway map(s) in the appropriate County Recorder's office.

Stat. Auth.: ORS 197 & 390

Stats. Implemented: ORS 197.040

Hist.: LCD 5-1980, f. & ef. 7-2-80; LCDD 3-2004, f. & cert. ef. 5-7-04

DIVISION 21

URBAN RESERVES

660-021-0000
Purpose

This division interprets and implements ORS 195.137 through 195.145 and statewide planning goals pertaining to Urbanization. Rules in this division authorize planning for areas outside urban growth boundaries to be reserved for eventual inclusion in an urban growth boundary and to be protected from patterns of development that would impede urbanization.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.137-195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 7-2011, f & cert. ef. 10-20-11

660-021-0010
Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the statewide planning goals (OAR chapter 660, division 15) apply. In addition, the following definitions apply:

(1) "Urban Reserve" means lands outside of an urban growth boundary that will provide for:

(a) Future expansion over a long-term period; and

(b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.

(2) "Resource Land" means land subject to the statewide planning goals listed in OAR 660-004-0010(1)(a) through (g), except subsections (c) and (d).

(3) "Nonresource Land" means land not subject to one or more of the statewide planning goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in this definition is meant to imply that other goals do not apply to nonresource land.

(4) "Exception Areas" means rural lands for which an exception to statewide planning goals 3 or 4, or both, as defined in ORS 197.732 and OAR 660-004-0005(1), has been acknowledged.

(5) "Developable Land" means land that is not severely constrained by natural hazards or designated or zoned to protect natural resources and that is either entirely vacant or has a portion of its area unoccupied by structures or roads.

(6) "Adjacent Land" means abutting land.

(7) "Nearby Land" means land that lies wholly or partially within a quarter mile of an urban growth boundary.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 7-2011, f & cert. ef. 10-20-11

660-021-0020
Authority to Establish Urban Reserve

(1) Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan area urban growth boundary, may designate urban reserves under the requirements of this division, in coordination with special districts listed in OAR 660-021-0050(2) and other affected local governments, including neighboring cities within two miles of the urban growth boundary. Where urban reserves are adopted or amended, they shall be shown on all applicable comprehensive plan and zoning maps, and plan policies and land use regulations shall be adopted to guide the management of these reserves in accordance with the requirements of this division.

(2) As an alternative to designation of urban reserves under the requirements of this division, Metro may designate urban reserves for the Portland Metropolitan area urban growth boundary under OAR chapter 660, division 27.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 7-2011, f & cert. ef. 10-20-11

660-021-0030
Determination of Urban Reserve

(1) Urban reserves shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land.

(2) Inclusion of land within an urban reserve shall be based upon the locational factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land. Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan Area Urban Growth Boundary, shall first study lands adjacent to, or nearby, the urban growth boundary for suitability for inclusion within urban reserves, as measured by the factors and criteria set forth in this section. Local governments shall then designate, for inclusion within urban reserves, that suitable land which satisfies the priorities in section (3) of this rule.

(3) Land found suitable for an urban reserve may be included within an urban reserve only according to the following priorities:

(a) First priority goes to land adjacent to, or nearby, an urban growth boundary and identified in an acknowledged comprehensive plan as an exception area or nonresource land. First priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;

(b) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, second priority goes to land designated as marginal land pursuant to former ORS 197.247 (1991 edition);

(c) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

(4) Land of lower priority under section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in section (1) of this rule for one or more of the following reasons:

(a) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or

(b) Maximum efficiency of land uses within a proposed urban reserve requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

(5) Findings and conclusions concerning the results of the consideration required by this rule shall be adopted by the affected jurisdictions.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 7-1996, f. & cert. ef. 12-31-96; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 7-2011, f & cert. ef. 10-20-11

660-021-0040
Urban Reserve Area Planning and Zoning

(1) Until included in the urban growth boundary, lands in urban reserves shall continue to be planned and zoned for rural uses in accordance with the requirements of this rule and the applicable statutes and goals, but in a manner that ensures a range of opportunities for the orderly, economic and efficient provision of urban services when these lands are included in the urban growth boundary.

(2) Urban reserve land use regulations shall ensure that development and land divisions in exception areas and nonresource lands will not hinder the efficient transition to urban land uses and the orderly and efficient provision of urban services. These

measures shall be adopted by the time the urban reserves are designated, or in the case of those local governments with planning and zoning responsibility for lands in the vicinity of the Portland Metropolitan Area Urban Growth Boundary, by the time such local governments amend their comprehensive plan and zoning maps to implement urban reserve designations made by the Portland Metropolitan Service District. The measures may include:

(a) Prohibition on the creation of new parcels less than ten acres;

(b) Requirements for clustering as a condition of approval of new parcels;

(c) Requirements for preplatting of future lots or parcels;

(d) Requirements for written waivers of remonstrance against annexation to a provider of sewer, water or streets; and

(e) Regulation of the siting of new development on existing lots for the purpose of ensuring the potential for future urban development and public facilities.

(3) For exception areas and nonresource land in urban reserves, land use regulations shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted by acknowledged zoning in effect as of the date of establishment of the urban reserves. Such regulations shall remain in effect until such time as the land is included in the urban growth boundary.

(4) Resource land that is included in urban reserves shall continue to be planned and zoned under the requirements of applicable statewide planning goals.

(5) Urban reserve agreements consistent with applicable comprehensive plans and meeting the requirements of OAR 660-021-0050 shall be adopted for urban reserves.

(6) Cities and counties are authorized to plan for the eventual provision of urban public facilities and services to urban reserves. However, this division is not intended to authorize urban levels of development or services in urban reserves prior to their inclusion in the urban growth boundary. This division is not intended to prevent any planning for, installation of, or connection to public facilities or services in urban reserves consistent with the statewide planning goals and with acknowledged comprehensive plans and land use regulations in effect on the applicable date of this division.

(7) A local government shall not prohibit the siting of a single family dwelling on a legal parcel pursuant to urban reserve planning requirements if the single family dwelling would otherwise have been allowed under law existing prior to the designation of the parcel as part of an urban reserve.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 7-2011, f & cert. ef. 10-20-11

660-021-0050
Urban Reserve Agreements

Urban reserve planning shall include the adoption and maintenance of urban reserve agreements among cities, counties and special districts serving or projected to serve the designated urban reserves. These agreements shall be adopted by each applicable jurisdiction at or prior to the time of reserve designation and shall contain:

(1) Designation of the local government responsible for building code administration and land use regulation in the urban reserves, both at the time of reserve designation and upon inclusion of these reserves within the urban growth boundary.

(2) Designation of the local government or special district responsible for the following services: sewer, water, fire protection, parks, transportation and storm water. The agreement shall include maps indicating areas and levels of current rural service responsibility and areas projected for future urban service responsibility when included in the urban growth boundary.

(3) Terms and conditions under which service responsibility will be transferred or expanded for areas where the provider of the service is expected to change over time.

(4) Procedures for notification and review of land use actions to ensure involvement by all affected local governments and special districts.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 7-2011, f & cert. ef. 10-20-11

660-021-0060
Urban Growth Boundary Expansion

All lands within urban reserves established pursuant to this division shall be included within an urban growth boundary before inclusion of other lands, except where an identified need for a particular type of land cannot be met by lands within an established urban reserve.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

660-021-0070
Adoption and Review of Urban Reserve

(1) Designation and amendment of urban reserves shall follow the applicable procedures of ORS 197.610 through 197.650.

(2) Disputes between jurisdictions regarding urban reserve boundaries, planning and regulation, or urban reserve agreements may be mediated by the department or commission upon request by an affected local government or special district.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 7-2011, f & cert. ef. 10-20-11

660-021-0080
Applicability

The provisions of this division, and amendments to rules in this division, are effective upon filing with the Secretary of State.

Stat. Auth.: ORS 183, 197.040
Stats. Implemented: ORS 195.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-1997, f. & cert. ef. 12-23-97; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 7-2011, f & cert. ef. 10-20-11

DIVISION 22

UNINCORPORATED COMMUNITIES

660-022-0000
Purpose

(1) The purpose of this division is to establish a statewide policy for the planning and zoning of unincorporated communities that recognizes the importance of communities in rural Oregon. It is intended to expedite the planning process for counties by reducing their need to take exceptions to statewide planning goals when planning and zoning unincorporated communities.

(2) This division interprets Goals 11 and 14 concerning urban and rural development outside urban growth boundaries and applies only to unincorporated communities defined in OAR 660-022-0010.

(3) This division does not apply to areas approved as destination resorts under the destination resort statute, ORS 197.435 through 197.467.

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.040
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

660-022-0010
Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the statewide planning goals (OAR chapter 660, division 15) apply. In addition, the following definitions apply:

(1) "Commercial Use" means the use of land primarily for the retail sale of products or services, including offices. It does not

include factories, warehouses, freight terminals, or wholesale distribution centers.

(2) "Community Sewer System" means a sewage disposal system which has service connections to at least 15 permanent dwelling units, including manufactured homes, within the unincorporated community.

(3) "Community Water System" means a system that distributes potable water through pipes to at least 15 permanent dwelling units, including manufactured homes within the unincorporated community.

(4) "Industrial Use" means the use of land primarily for the manufacture, processing, storage, or wholesale distribution of products, goods, or materials. It does not include commercial uses.

(5) "Permanent residential dwellings" includes manufactured homes, but does not include dwellings primarily intended for a caretaker of an industrial use, commercial use, recreational vehicle park or campground.

(6) "Resort Community" is an unincorporated community that was established primarily for and continues to be used primarily for recreation or resort purposes; and

(a) Includes residential and commercial uses; and

(b) Provides for both temporary and permanent residential occupancy, including overnight lodging and accommodations.

(7) "Rural Community" is an unincorporated community which consists primarily of permanent residential dwellings but also has at least two other land uses that provide commercial, industrial, or public uses (including but not limited to schools, churches, grange halls, post offices) to the community, the surrounding rural area, or to persons traveling through the area.

(8) "Rural Service Center" is an unincorporated community consisting primarily of commercial or industrial uses providing goods and services to the surrounding rural area or to persons traveling through the area, but which also includes some permanent residential dwellings.

(9) "Urban Unincorporated Community" is an unincorporated community which has the following characteristics:

(a) Include at least 150 permanent residential dwellings units;

(b) Contains a mixture of land uses, including three or more public, commercial or industrial land uses;

(c) Includes areas served by a community sewer system; and

(d) Includes areas served by a community water system.

(10) "Unincorporated Community" means a settlement with all of the following characteristics:

(a) It is made up primarily of lands subject to an exception to Statewide Planning Goal 3, Goal 4 or both;

(b) It was either identified in a county's acknowledged comprehensive plan as a "rural community," "service center," "rural center," "resort community," or similar term before this division was adopted (October 28, 1994), or it is listed in the Department of Land Conservation and Development's January 30, 1997, "Survey of Oregon's Unincorporated Communities";

(c) It lies outside the urban growth boundary of any city;

(d) It is not incorporated as a city; and

(e) It met the definition of one of the four types of unincorporated communities in sections (6) through (9) of this rule, and included the uses described in those definitions, prior to the adoption of this division (October 28, 1994).

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.040
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94; LCDC 1-1997, f. & cert. ef. 2-27-97

660-022-0020
Designation of Community Areas

(1) Except as provided in OAR 660-022-0070, county comprehensive plans shall designate and identify unincorporated communities in accordance with the definitions in OAR 660-022-0010. Counties may amend these designations as circumstances change over time.

(2) Counties shall establish boundaries of unincorporated communities in order to distinguish lands within the community from exception areas, resource lands and other rural lands. The boundaries of unincorporated communities shall be shown on the county comprehensive plan map at a scale sufficient to determine accurately which properties are included.

(3) Only land meeting the following criteria may be included within an unincorporated community boundary:

(a) Land which has been acknowledged as a Goal 3 or 4 exception area and historically considered to be part of the community provided the land only includes existing, contiguous concentrations of:

(A) Commercial, industrial, or public uses; and/or

(B) Dwelling units and associated residential lots at a greater density than exception lands outside rural communities.

(b) Land planned and zoned for farm or forest use provided such land meets the criteria in section (4) of this rule.

(4) Community boundaries may include land that is designated for farm or forest use pursuant to Goals 3 and 4 if all the following criteria is met:

(a) The land is contiguous to Goal 3 or 4 exception lands included in the community boundary;

(b) The land was occupied on the date of this division (October 28, 1994) by one or more of the following uses considered to be part of the community: Church, cemetery, school, park, playground, community center, fire station, museum, golf course, or utility facility;

(c) Only the portion of the lot or parcel that is occupied by the use(s) in subsection (b) of this section is included within the boundary; and

(d) The land remains planned and zoned under Goals 3 or 4.

(5) Site specific unincorporated community boundaries that are shown on an acknowledged plan map on October 28, 1994, are deemed to comply with subsections (2) and (3) of this rule unless the boundary includes land designated for farm or forest use that does not meet the criteria in section (4) of this rule.

(6) Communities which meet the definitions in both OAR 660-022-0010(6) and (9) shall be classified and planned as either resort communities or urban unincorporated communities.

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.040
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94; LCDC 1-1997, f. & cert. ef. 2-27-97

660-022-0030
Planning and Zoning of Unincorporated Communities

(1) For rural communities, resort communities and urban unincorporated communities, counties shall adopt individual plan and zone designations reflecting the projected use for each property (e.g., residential, commercial, industrial, public) for all land in each community. Changes in plan or zone designation shall follow the requirements to the applicable post-acknowledgment provisions of ORS 197.610 through 197.625.

(2) County plans and land use regulations may authorize any residential use and density in unincorporated communities, subject to the requirements of this division.

(3) County plans and land use regulations may authorize only the following new or expanded industrial uses in unincorporated communities:

(a) Uses authorized under Goals 3 and 4;

(b) Expansion of a use existing on the date of this rule;

(c) Small-scale, low impact uses;

(d) Uses that require proximity to rural resource, as defined in OAR 660-004-0022(3)(a);

(e) New uses that will not exceed the capacity of water and sewer service available to the site on the effective date of this rule, or, if such services are not available to the site, the capacity of the site itself to provide water and absorb sewage;

(f) New uses more intensive than those allowed under subsection (a) through (e) of this section, provided an analysis set forth in the comprehensive plan demonstrates, and land use regulations ensure:

(A) That such uses are necessary to provide employment that does not exceed the total projected work force within the community and the surrounding rural area;

(B) That such uses would not rely upon a work force employed by uses within urban growth boundaries; and

(C) That the determination of the work force of the community and surrounding rural area considers the total industrial and commercial employment in the community and is coordinated with employment projections for nearby urban growth boundaries.;

(g) Industrial uses, including accessory uses subordinate to industrial development, as provided under either paragraph (A) or (B) of this subsection:

(A) Industrial developments sited on an abandoned or diminished industrial mill site, as defined in ORS 197.719 that was engaged in the processing or manufacturing of wood products, provided the uses will be located only on the portion of the mill site that is zoned for industrial uses; or

(B) Industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, in an area planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

(4) County plans and land use regulations may authorize only the following new commercial uses in unincorporated communities:

(a) Uses authorized under Goals 3 and 4;

(b) Small-scale, low impact uses;

(c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.

(5) County plans and land use regulations may authorize hotels and motels in unincorporated communities only if served by a community sewer system and only as provided in subsections (a) through (c) of this section:

(a) Any number of new motel and hotel units may be allowed in resort communities;

(b) New motels and hotels up to 35 units may be allowed in an urban unincorporated community, rural service center, or rural community if the unincorporated community is at least 10 miles from the urban growth boundary of any city adjacent to Interstate Highway 5, regardless of its proximity to any other UGB;

(c) New motels and hotels up to 100 units may be allowed in any urban unincorporated community that is at least 10 mile from any urban growth boundary.

(6) County plans and land use regulations shall ensure that new or expanded uses authorized within unincorporated communities do not adversely affect agricultural or forestry uses.

(7) County plans and land use regulations shall allow only those uses which are consistent with the identified function, capacity and level of service of transportation facilities serving the community, pursuant to OAR 660-012-0060(1)(a) through (c).

(8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:

(A) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and

(B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services.

(9) County plans and land use regulations for lands within unincorporated communities shall be consistent with acknowledged metropolitan regional goals and objectives, applicable regional functional plans and regional framework plan components of metropolitan service districts.

(10) For purposes of subsection (b) of section (4) of this rule, a small-scale, low impact commercial use is one which takes place in an urban unincorporated community in a building or building not exceeding 8,000 square feet of floor space, or in any other type of unincorporated community in a building or buildings not exceeding 4, 000 square feet of floor space.

(11) For purposes of subsection (c) of section (3) of this rule, a small-scale, low impact industrial use is one which takes place in an urban unincorporated community in a building or buildings not exceeding 60,000 square feet of floor space, or in any other type of unincorporated community in a building or buildings not exceeding 40,000 square feet of floor space.

Stat. Auth.: ORS 197.040 & 197.245

Stats. Implemented: ORS 197.040

Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 2-2003(Temp) f. & cert. ef. 3-28-03 thru 9-23-03; LCDD 3-2003, f. 9-23-03, cert. ef. 9-24-03; LCDD 4-2003, f. & cert. ef. 9-26-03; LCDD 8-2005, f. & cert. ef. 12-13-05

660-022-0040
Urban Unincorporated Communities

(1) Counties with qualifying communities shall adopt plans and land use regulations for urban unincorporated communities (UUC's). All statewide planning goals applicable to cities shall also apply to UUC's, except for those goals provisions relating to urban growth boundaries and related requirements regarding the accommodation of long-term need for housing and employment growth.

(2) Counties may expand the boundaries of those UUC's with the following characteristics in order to include developable land to meet a demonstrated long-term need for housing and employment:

(a) The UUC is at least 20 road miles from an urban growth boundary with a population over 25,000; and

(b) The UUC is at least 10 road miles from an urban growth boundary with a population of 25,000 or less.

(3) To expand the boundary of a UUC, a county shall demonstrate a long-term need for housing and employment in the community. The county shall base its demonstration upon population growth estimates from a reputable forecast service (such as Portland State University). The county shall coordinate its estimates with those for other cities and communities in the county. The county shall consider:

(a) Plans to extend facilities and services to existing community land; and

(b) The infill potential of existing land in the community.

(4) If a county determines that it must expand the boundary of a UUC to accommodate a long-term need for housing and employment, it shall follow the criteria for amendment of an urban growth boundary in statewide planning Goal 14 and shall select land using the following priorities:

(a) First priority goes to that developable land nearest to the UUC which is identified in an acknowledged comprehensive plan as exception area or nonresource land;

(b) If land described in subsection (a) of this section is not adequate to accommodate the need demonstrated pursuant to section (3) of this rule, second priority goes to land designated in a comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use, with designated marginal land considered the lowest capability (highest priority for selection);

(c) Land described in subsection (4)(b) of this section may be included if land of higher priority is inadequate to accommodate the need projected according to section (3) of this rule for any one of the following reasons:

(A) Specific types of identified land needs cannot be reasonably accommodated on higher priority land; or

(B) Public facilities and services cannot reasonably be provided to the higher priority area due to topographic or other physical constraints; or

(C) Maximum efficiency of land use within the UUC requires inclusion of lower priority land in order to provide public facilities and services to higher priority land.

(5) Counties shall apply plans and land use regulations to ensure that land added to a UUC:

(a) Is used only to satisfy needs identified pursuant to section (3) of this rule; and

(b) Is provided with sewer and water services at the time of development; and

(c) Is planned and zoned according to the requirements of this division; and

(d) If designated for residential use, meets the requirements of statewide planning Goal 10 and ORS 197.314; and

(6) Counties shall not rely upon the use of land included within a UUC as the basis for determining that nearby land designated in compliance with goals relating to agriculture or forestry is committed to nonresource use as defined in OAR 660-004-0005(3).

(7) Counties shall include findings of fact and conclusions of law demonstrating compliance with the provisions of this rule in their comprehensive plans.

(8) For purposes of this rule, "developable land" shall have the meaning given that term in OAR 660-021-0010(5).

(9) For purposes of this rule, "long-term need" means needs for the UUC anticipated for the next 10 years.

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.040
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 4-2006, f. & cert. ef. 5-15-06

660-022-0050
Community Public Facility Plans

(1) In coordination with special districts, counties shall adopt public facility plans meeting the requirements of OAR 660, division 11, and include them in the comprehensive plan for unincorporated communities over 2,500 in population. A community public facility plan addressing sewer and water is required if the unincorporated community is designated as an urban unincorporated community under OAR 660-022-0010 and 660-022-0020. For all communities, a sewer and water community public facility plan is required if:

(a) Existing sewer or water facilities are insufficient for current needs, or are projected to become insufficient due to physical conditions, financial circumstances or changing state or federal standards; or

(b) The plan for the unincorporated community provides for an amount, type or density of additional growth or infill that cannot be adequately served with individual water or sanitary systems or by existing community facilities and services; or

(c) The community relies on groundwater and is within a groundwater limited or groundwater critical area as identified by the Oregon Department of Water Resources; or

(d) Land in the community has been declared a health hazard or has a history of failing septic systems or wells.

(2) A community public facility plan shall include inventories, projected needs, policies and regulations for the water and sewerage facilities which are existing or needed to serve the unincorporated community, including:

(a) An inventory of the condition and capacity of existing public facilities and services;

(b) An assessment of the level of facilities and services needed to adequately serve the planned buildout within the community area boundary; and

(c) Coordination agreements consistent with ORS chapter 195.

(3) If existing community facilities and services are not currently adequate to serve the development allowed in the plan and zoning ordinance, the community public facility plan shall contain either:

(a) Development restrictions to ensure development will not exceed the capacity of the land to absorb waste and provide potable water and will not exceed the capacity of public facilities; or

(b) A list of new facilities, and improvements for existing public facilities, necessary to adequately serve the planned buildout in the unincorporated community, including the projected costs of these improvements and an identification of the provider or providers of these improvements; and

(c) A discussion of the provider's funding mechanisms and the ability of these and possibly new mechanisms to fund the development of each community public facility project; and

(d) A requirement that development not occur until the necessary public facilities are available for that development.

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.040
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 4-2006, f. & cert. ef. 5-15-06

660-022-0060
Coordination and Citizen Involvement

(1) Counties shall ensure that residents of unincorporated communities have adequate opportunities to participate in all phases of the planning process. Counties shall provide such oppor-

tunities in accordance with their acknowledged citizen involvement programs.

(2) When a county proposes to designate an unincorporated community or to amend plan provisions or land use regulations that apply to such a community, the county shall specify the following:

(a) How residents of the community and surrounding area will be informed about the proposal;

(b) How far in advance of the final decision residents of the community and the surrounding area will be informed about the proposal;

(c) Which citizen advisory committees will be notified of the proposal.

(3) The information on these three points shall be included in the appropriate plan amendment proposals or periodic review work task.

(4) When a county proposes to designate an urban unincorporated community, the county shall adopt a citizen involvement program for that community in accordance with the provisions of Goal 1, Citizen Involvement.

(5) Proposals to designate, plan, or zone unincorporated communities shall be coordinated with all special districts, metropolitan service districts, and cities likely to be affected by such actions. For any unincorporated community, such coordination shall include a minimum of 45-day mailed notice to all cities and special districts (including metropolitan service districts) located within the distance described in OAR 660-022-0040(2).

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.040
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

660-022-0070
Applicability

For each unincorporated community in the county, by January 1, 1998, or a date specified in a periodic review work program, all counties shall:

(1) Plan for unincorporated communities under the requirements of this division; or

(2) Demonstrate that all uses authorized by acknowledged comprehensive plans and land use regulations for unincorporated communities are rural, in compliance with statewide planning Goals 11 and 14; or

(3) Amend acknowledged comprehensive plans and land use regulations to limit uses to those which are rural in compliance with statewide planning Goals 11 and 14; or

(4) Adopt exceptions to statewide planning Goal 14, and Goal 11 if necessary, to allow urban uses on rural land.

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.040
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

DIVISION 23

PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0000
Purpose and Intent

This division establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. This division explains how local governments apply Goal 5 when conducting periodic review and when amending acknowledged comprehensive plans and land use regulations.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0010
Definitions

As used in this division, unless the context requires otherwise:

(1) "Conflicting use" is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses.

(2) "ESEE consequences" are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

(3) "Impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.

(4) "Inventory" is a survey, map, or description of one or more resource sites that is prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features associated with such sites. As a verb, "inventory" means to collect, prepare, compile, or refine information about one or more resource sites. (See resource list.)

(5) "PAPA" is a "post-acknowledgment plan amendment." The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

(6) "Program" or "program to achieve the goal" is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as part of the comprehensive plan and land use regulations (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).

(7) "Protect," when applied to an individual resource site, means to limit or prohibit uses that conflict with a significant resource site (except as provided in OAR 660-023-0140, 660-023-0180, and 660-023-0190). When applied to a resource category, "protect" means to develop a program consistent with this division.

(8) "Resource category" is any one of the cultural or natural resource groups listed in Goal 5.

(9) "Resource list" includes the description, maps, and other information about significant Goal 5 resource sites within a jurisdiction, adopted by a local government as a part of the comprehensive plan or as a land use regulation. A "plan inventory" adopted under OAR 660-016-0000(5)(c) shall be considered to be a resource list.

(10) "Resource site" or "site" is a particular area where resources are located. A site may consist of a parcel or lot or portion thereof or may include an area consisting of two or more contiguous lots or parcels.

(11) "Safe harbor" has the meaning given to it in OAR 660-023-0020(2).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0020
Standard and Specific Rules and Safe Harbors

(1) The standard Goal 5 process, OAR 660-023-0030 through 660-023-0050, consists of procedures and requirements to guide local planning for all Goal 5 resource categories. This division also provides specific rules for each of the fifteen Goal 5 resource categories (see OAR 660-023-0090 through 660-023-0230). In some cases this division indicates that both the standard and the specific rules apply to Goal 5 decisions. In other cases, this division indicates that the specific rules supersede parts or all of the standard process rules (i.e., local governments must follow the specific rules rather than the standard Goal 5 process). In case of conflict, the resource-specific rules set forth in OAR 660-023-0090 through 660-023-0230 shall supersede the standard provisions in OAR 660-023-0030 through 660-023-0050.

(2) A "safe harbor" consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process. For example, a jurisdiction may choose to identify "significant" riparian corridors using the safe harbor criteria under OAR

660-023-0090(5) rather than follow the general requirements for determining "significance" in the standard Goal 5 process under OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0030
Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

(a) Collect information about Goal 5 resource sites;
(b) Determine the adequacy of the information;
(c) Determine the significance of resource sites; and
(d) Adopt a list of significant resource sites.

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

(a) Notify state and federal resource management agencies and request current resource information; and

(b) Consider other information submitted in the local process.

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.

(b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.

(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

(a) The quality, quantity, and location information;

(b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and

(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0040
ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

(a) Identify conflicting uses;
(b) Determine the impact area;
(c) Analyze the ESEE consequences; and
(d) Develop a program to achieve Goal 5.

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would

be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see 660-023-0020(1)).

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0050
Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0060
Notice and Land Owner Involvement

Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0070
Buildable Lands Affected by Goal 5 Measures

(1) If measures to protect significant resource sites inside urban growth boundaries affect the inventory of buildable lands in acknowledged plans required by Goals 9, 10, and 14, a local government outside of the Metro UGB, and Metro inside the Metro UGB, prior to or at the next periodic review, shall:

(a) Amend its urban growth boundary to provide additional buildable lands sufficient to compensate for the loss of buildable lands caused by the application of Goal 5;

(b) Redesignate other land to replace identified land needs under Goals 9, 10, and 14 provided such action does not take the plan out of compliance with other statewide goals; or

(c) Adopt a combination of the actions described in subsections (a) and (b) of this section.

(2) If a local government redesignates land for higher density under subsections (1)(b) or (c) of this rule in order to meet identified housing needs, the local government shall ensure that the redesignated land is in locations appropriate for the housing types, and is zoned at density ranges that are likely to be achieved by the housing market.

(3) Where applicable, the requirements of ORS 197.296 shall supersede the requirements of sections (1) and (2) of this rule.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0080
Metro Regional Resources

(1) For purposes of this rule, the following definitions apply:

(a) "Metro" is the Metropolitan Service District organized under ORS Chapter 268, and operating under the 1992 Metro Charter, for 24 cities and certain urban portions of Multnomah, Clackamas, and Washington counties.

(b) "Regional resource" is a site containing a significant Goal 5 resource, including but not limited to a riparian corridor, wetland, or open space area, which is identified as a regional resource on a map adopted by Metro ordinance.

(2) Local governments shall complete the Goal 5 process in this division for all regional resources prior to or during the first periodic review following Metro's adoption of a regional resources map, unless Metro adopts a regional functional plan by ordinance to establish a uniform time for all local governments to complete the Goal 5 process for particular regional resource sites.

(3) Metro may adopt one or more regional functional plans to address all applicable requirements of Goal 5 and this division for one or more resource categories and to provide time limits for local governments to implement the plan. Such functional plans shall be submitted for acknowledgment under the provisions of ORS 197.251 and 197.274. Upon acknowledgment of Metro's regional resource functional plan, local governments within Metro's jurisdiction shall apply the requirements of the functional plan for regional resources rather than the requirements of this division.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0090
Riparian Corridors

(1) For the purposes of this rule, the following definitions apply:

(a) "Fish habitat" means those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.

(b) "Riparian area" is the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

(c) "Riparian corridor" is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.

(d) "Riparian corridor boundary" is an imaginary line that is a certain distance upland from the top bank, for example, as specified in section (5) of this rule.

(e) "Stream" is a channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

(f) "Structure" is a building or other major improvement that is built, constructed, or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components, that are not customarily regulated through zoning ordinances.

(g) "Top of bank" shall have the same meaning as "bankfull stage" defined in OAR 141-085-0010(12).

(h) "Water area" is the area between the banks of a lake, pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

(2) Local governments shall amend acknowledged plans in order to inventory riparian corridors and provide programs to achieve Goal 5 prior to or at the first periodic review following the effective date of this rule, except as provided in OAR 660-023-0250(5).

(3) Local governments shall inventory and determine significant riparian corridors by following either the safe harbor methodology described in section (5) of this rule or the standard inventory process described in OAR 660-023-0030 as modified by the requirements in section (4) of this rule. The local government may divide the riparian corridor into a series of stream sections (or reaches) and regard these as individual resource sites.

(4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Local governments may postpone determination of the precise location of the riparian area on lands designated for farm or forest use until receipt of applications for local permits for uses that would conflict with these resources. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:

(a) Oregon Department of Forestry stream classification maps;

(b) United States Geological Service (USGS) 7.5-minute quadrangle maps;

(c) National Wetlands Inventory maps;

(d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;

(e) Federal Emergency Management Agency (FEMA) flood maps; and

(f) Aerial photographs.

(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

(a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.

(b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.

(c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

(d) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, local governments shall apply OAR 660-023-0030 rather than apply the safe harbor provisions of this section.

(6) Local governments shall develop a program to achieve Goal 5 using either the safe harbor described in section (8) of this rule or the standard Goal 5 ESEE process in OAR 660-023-0040 and 660-023-0050 as modified by section (7) of this rule.

(7) When following the standard ESEE process in OAR 660-023-0040 and 660-023-0050, a local government shall comply with Goal 5 if it identifies at least the following activities as conflicting uses in riparian corridors:

(a) The permanent alteration of the riparian corridor by placement of structures or impervious surfaces, except for:

(A) Water-dependent or water-related uses; and

(B) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) Removal of vegetation in the riparian area, except:

(A) As necessary for restoration activities, such as replacement of vegetation with native riparian species;

(B) As necessary for the development of water-related or water-dependent uses; and

(C) On lands designated for agricultural or forest use outside UGBs.

(8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:

(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

(A) Streets, roads, and paths;

(B) Drainage facilities, utilities, and irrigation pumps;

(C) Water-related and water-dependent uses; and

(D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:

(A) Removal of non-native vegetation and replacement with native plant species; and

(B) Removal of vegetation necessary for the development of water-related or water-dependent uses.

(c) Notwithstanding subsection (b) of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4;

(d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance; and

(e) The ordinance may authorize the permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (5)(a) of this rule upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 3-2004, f. & cert. ef. 5-7-04

660-023-0100
Wetlands

(1) For purposes of this rule, a "wetland" is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Local governments shall amend acknowledged plans and land use regulations prior to or at periodic review to address the requirements of this division, as set out in OAR 660-023-0250(5) through (7). The standard inventory process requirements in OAR 660-023-0030 do not apply to wetlands. Instead, local governments shall follow the requirements of section (3) of this rule in order to inventory and determine significant wetlands.

(3) For areas inside urban growth boundaries (UGBs) and urban unincorporated communities (UUCs), local governments shall:

(a) Conduct a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 through 141-086-0240 and adopt the LWI as part of the comprehensive plan or as a land use regulation; and

(b) Determine which wetlands on the LWI are "significant wetlands" using the criteria adopted by the Division of State Lands (DSL) pursuant to ORS 197.279(3)(b) and adopt the list of significant wetlands as part of the comprehensive plan or as a land use regulation.

(4) For significant wetlands inside UGBs and UUCs, a local government shall:

(a) Complete the Goal 5 process and adopt a program to achieve the goal following the requirements of OAR 660-023-0040 and 660-023-0050; or

(b) Adopt a safe harbor ordinance to protect significant wetlands consistent with this subsection, as follows:

(A) The protection ordinance shall place restrictions on grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and

(B) The ordinance shall include a variance procedure to consider hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions under paragraph (A) of this subsection for any lands demonstrated to have been rendered not buildable by application of the ordinance.

(5) For areas outside UGBs and UUCs, local governments shall either adopt the statewide wetland inventory (SWI; see ORS 196.674) as part of the local comprehensive plan or as a land use regulation, or shall use a current version for the purpose of section (7) of this rule.

(6) For areas outside UGBs and UUCs, local governments are not required to amend acknowledged plans and land use regulations in order to determine significant wetlands and complete the Goal 5 process. Local governments that choose to amend acknowledged plans for areas outside UGBs and UUCs in order to inventory and protect significant wetlands shall follow the requirements of sections (3) and (4) of this rule.

(7) All local governments shall adopt land use regulations that require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory, as per ORS 227.350 and 215.418, or on the SWI as provided in section (5) of this rule.

(8) All jurisdictions may inventory and protect wetlands under the procedures and requirements for wetland conservation plans adopted pursuant to ORS 196.668 et seq. A wetlands conservation plan approved by the director of DSL shall be deemed to comply with Goal 5 (ORS 197.279(1)).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0110
Wildlife Habitat

(1) For purposes of this rule, the following definitions apply:

(a) "Documented" means that an area is shown on a map published or issued by a state or federal agency or by a professional with demonstrated expertise in habitat identification.

(b) "Wildlife habitat" is an area upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites.

(2) Local governments shall conduct the inventory process and determine significant wildlife habitat as set forth in OAR 660-023-0250(5) by following either the safe harbor methodology described in section (4) of this rule or the standard inventory process described in OAR 660-023-0030.

(3) When gathering information regarding wildlife habitat under the standard inventory process in OAR 660-023-0030(2), local governments shall obtain current habitat inventory information from the Oregon Department of Fish and Wildlife (ODFW), and other state and federal agencies. These inventories shall include at least the following:

(a) Threatened, endangered, and sensitive wildlife species habitat information;

(b) Sensitive bird site inventories; and

(c) Wildlife species of concern and/or habitats of concern identified and mapped by ODFW (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs).

(4) Local governments may determine wildlife habitat significance under OAR 660-023-0040 or apply the safe harbor criteria in

this section. Under the safe harbor, local governments may determine that "wildlife" does not include fish, and that significant wildlife habitat is only those sites where one or more of the following conditions exist:

(a) The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;

(b) The habitat has documented occurrences of more than incidental use by a species described in subsection (a) of this section;

(c) The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to ORS 527.710 (Oregon Forest Practices Act) and OAR 629-024-0700 (Forest Practices Rules);

(d) The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or

(e) The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, or pigeon springs).

(5) For certain threatened or endangered species sites, publication of location information may increase the threat of habitat or species loss. Pursuant to ORS 192.501(13), local governments may limit publication, display, and availability of location information for such sites. Local governments may adopt inventory maps of these areas, with procedures to allow limited availability to property owners or other specified parties.

(6) As set out in OAR 660-023-0250(5), local governments shall develop programs to protect wildlife habitat following the standard procedures and requirements of OAR 660-023-0040 and 660-023-0050. Local governments shall coordinate with appropriate state and federal agencies when adopting programs intended to protect threatened, endangered, or sensitive species habitat areas.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0115
Greater Sage-Grouse

(1) Introduction. Greater Sage-Grouse (hereafter "sage-grouse") habitat is a unique wildlife resource subject to a variety of threats across a broad, multi-state region. Oregon's sage-grouse habitat is comprised of a combination of public land managed by the federal government and nonfederal land generally in private ownership. Managing private and other nonfederal land for the best possible outcomes requires partnership and cooperation among many stakeholders. Accordingly, private and other nonfederal lands are strongly encouraged to participate in a Candidate Conservation Agreement with Assurances program. Voluntary conservation efforts of this nature are recognized by the State of Oregon as a critical part in recovering the breeding population targeted by Oregon's Greater Sage-Grouse Conservation Assessment and Strategy for Oregon. Beyond voluntary efforts it remains necessary to provide a regulatory framework that offers fairness, predictability and certainty for all involved parties. Engagement on the part of county government is critical to Oregon's efforts to address possible impacts from future development.

(2) Exempt activities.

(a) Those activities that do not require governmental approval, including farm use as defined in ORS 215.203(2), are exempt from the provisions of this rule. State agency permits necessary to facilitate a farm use, including granting of new water right permits by the Oregon Water Resources Department (OWRD), are also exempt from the provisions of this rule.

(b) Any energy facility that submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule is exempt from the provisions of this rule. Notwithstanding ORS 197.646(3), this rule shall not be directly applicable to any land use decision regarding that facility unless the applicant chooses otherwise. Similarly, any changes to a local government's acknowledged comprehensive plan or land use ordinances developed to achieve consistency with this rule shall not constitute "applicable substantive criteria" pursuant to OAR 345-022-0030(3), unless they are in effect on the date the applicant submits a preliminary application for site certificate, unless the applicant chooses otherwise.

(c) Private and other nonfederal lands are strongly encouraged to participate in a Candidate Conservation Agreement with Assurances (CCAA) program. Voluntary conservation efforts of this nature are recognized by the State of Oregon as a critical part in recovering the breeding population targeted by the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon. Uses identified in CCAA agreements are relieved from the provisions of this rule except that conflicting uses identified in section (7) will be subject to sections (9) to (11) in all instances regardless of enrollment status.

(3) Definitions. For purposes of this rule, the definitions in OAR 635-140-0002 and in the glossary of the "Greater Sage-Grouse Conservation Assessment and Strategy for Oregon" adopted by the Oregon Fish and Wildlife Commission on April 22, 2011 (copies of the plan are available through the Oregon Department of Fish and Wildlife (ODFW)) shall apply. In addition, the following definitions shall apply:

(a) "Areas of High Population Richness" means mapped areas of breeding and nesting habitat within core habitat that support the 75th percentile of breeding bird densities (i.e. the top 25 percent). Please see Exhibit A.

(b) "Candidate Conservation Agreement with Assurances" means a formal agreement between the United States Fish and Wildlife Service (USFWS) and one or more parties to address the conservation needs of proposed or candidate species, or species likely to become candidates, before they become listed as endangered or threatened. Landowners voluntarily commit to conservation actions that will help stabilize or restore the species with the goal that listing under the Federal Endangered Species Act will become unnecessary.

(c) "Core areas" means mapped sagebrush types or other habitats that support sage-grouse annual life history requirements that are encompassed by areas:

(A) Of very high, high, and moderate lek density strata;

(B) Where low lek density strata overlap local connectivity corridors; or

(C) Where winter habitat use polygons overlap with either low lek density strata, connectivity corridors, or occupied habitat. Core area maps are maintained by ODFW.

(d) "Development action" means any human activity subject to regulation by local, state, or federal agencies that could result in the loss of significant sage-grouse habitat. Development actions may include but are not limited to, construction and operational activities of local, state, and federal agencies. Development actions also include subsequent repermitting of existing activities proposing new impacts beyond current conditions.

(e) "Direct impact" means an adverse effect of a development action upon significant sage-grouse habitat which is proximal to the development action in time and place.

(f) "Disturbance" includes natural threats to sage-grouse habitat such as: wildfire, juniper infestation and the spread of noxious weeds or human activities that can negatively affect sage-grouse use of habitat either through changing the vegetation type or condition, or displacement of sage-grouse use of an area. For purposes of this rule only disturbance from human activities are considered.

(g) "General habitat" means occupied (seasonal or year-round) sage-grouse habitat outside core and low density habitats.

(h) "Indirect impacts" means adverse effects to significant sage-grouse habitat that are caused by or will ultimately result from an affected development activity. Indirect impacts usually occur later in time or are removed in distance compared to direct effects.

(i) "Large-scale development" means uses that are: over 50 feet in height; have a direct impact in excess of five acres; generate

more than 50 vehicle trips per day; or create noise levels of at least 70 dB at zero meters for sustained periods of time. Uses that constitute large-scale development also require review by county decision makers and are listed in one of the following categories identified in the table attached to OAR 660-033-0120.

(A) Commercial Uses.

(B) Mineral, Aggregate, Oil and Gas Uses.

(C) Transportation Uses.

(D) Utility/Solid Waste Disposal Facilities.

(E) Parks/Public/Quasi-Public.

(j) "Lek" means an area where male sage-grouse display during the breeding season to attract females (also referred to as strutting-ground).

(k) "Low density areas" means mapped sagebrush types or other habitats that support sage-grouse that are encompassed by areas where:

(A) Low lek density strata overlapped with seasonal connectivity corridors;

(B) Local corridors occur outside of all lek density strata;

(C) Low lek density strata occur outside of connectivity corridors; or

(D) Seasonal connectivity corridors occur outside of all lek density strata. Low density area maps are maintained by ODFW.

(l) "Mitigation hierarchy" means an approach used by decision makers to consider development proposals and is ordinarily comprised of a three step process:

(A) "Avoidance" is the first step in the mitigation hierarchy and is accomplished by not taking a certain development action or parts of that action.

(B) "Minimization" is the second step in the mitigation hierarchy and is accomplished by limiting the degree or magnitude of the development action and its implementation.

(C) "Compensatory mitigation" is the third step in the mitigation hierarchy and means the replacement or enhancement of the function of habitat capable of supporting sage-grouse in greater numbers than predicted to be impacted by a development.

(m) "Occupied Lek" means a lek that has been regularly visited by ODFW and has had one or more male sage-grouse counted in one or more of the last seven years.

(n) "Occupied Pending Lek" means a lek that has not been counted regularly by ODFW in the last seven years, but sage-grouse were present at ODFW's last visit.

(o) "Priority Areas for Conservation" (PACs) means key habitats identified by state sage-grouse conservation plans or through other sage-grouse conservation efforts (e.g., BLM Planning). In Oregon, core area habitats are PACs.

(4) Local program development and direct applicability of rule. Local governments may develop a program to achieve consistency with this rule by following the standard process in OAR 660-023-0030, 660-023-0040 and 660-023-0050 and submitting the amendment to the commission in the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175. Until the commission has acknowledged a county amendment to its comprehensive plan and land use regulations to be in compliance with Goal 5 and equivalent to this rule with regard to protecting sage-grouse habitat, sections (5) to (12) shall apply directly to county land use decisions affecting significant sage-grouse habitat. Once the commission has acknowledged a local government program under this section, that program becomes the controlling county land use document and sections (5) to (12) of this rule no longer apply directly.

(5) Quality, Quantity and Location. For purposes of this rule, sage-grouse habitat is only present in Baker, Crook, Deschutes, Harney, Lake, Malheur and Union Counties. The location of sage-grouse habitat within these counties shall be determined by following the map produced by ODFW included as Exhibit B.

(6) Determination of Significance. Significant sage-grouse habitat includes only lands protected under Statewide Planning Goals 3 or 4 as of July 1, 2015 that are identified as:

(a) Core areas;

(b) Low density areas; and

(c) Lands within a general habitat area located within 3.1 miles of an occupied or occupied-pending lek.

(d) The exact location of sage-grouse habitat may be refined during consideration of specific projects but must be done in consultation with ODFW.

(7) Conflicting uses. For purposes of protecting significant sage-grouse habitat, conflicting uses are:

(a) Large-scale development; and

(b) Other activities, which require review by county decision makers pursuant to OAR 660-033-0120 table and are proposed:

(A) In a core area within 4.0 miles of an occupied or occupied-pending lek;

(B) In a low density area within 3.1 miles of an occupied or occupied-pending lek; or

(C) In general habitat within 3.1 miles of an occupied or occupied-pending lek.

(8) Pre-Application Conference. A county should convene a pre-application conference prior to accepting an application for a conflicting use in significant sage-grouse habitat. The pre-application conference should include, at a minimum, the applicant, county planning staff and local ODFW staff.

(9) Program to achieve the goal of protecting significant sage grouse habitat in a core area.

(a) A county may consider a large-scale development in a core area upon applying disturbance thresholds and the mitigation hierarchy as follows:

(A) A county may consider a large-scale development that does not cause the one-percent metering threshold described in section (16) or the three-percent disturbance threshold described in section (17) to be exceeded.

(B) Avoidance. Before proceeding with large-scale development activity that impacts a core area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within core area habitat. If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within core area habitat, then the proposal must not be allowed unless it can satisfy the following criteria.

(i) It is not technically feasible to locate the proposed large-scale development outside of a core area based on accepted engineering practices, regulatory standards or some combination thereof. Costs associated with technical feasibility may be considered, but cost alone may not be the only consideration in determining that development must be located such that it will have direct or indirect impacts on significant sage-grouse areas; or

(ii) The proposed large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands; and

(iii) If either subparagraph (9)(a)(B)(i) or (9)(a)(B)(ii) is found to be satisfied the county must also find that the large-scale development will provide important economic opportunity, needed infrastructure, public safety benefits or public health benefits for local citizens or the entire region.

(C) Minimization. If the proposed use cannot be sited by avoiding a core area altogether, including direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the core area(s) in question by locating the development adjacent to existing development and at the edge of the core area when possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction. Minimizing impacts from large-scale development in core habitat shall also ensure direct and indirect impacts do not occur in known areas of high population richness within a given core area, unless a project proponent demonstrates, by a preponderance of the evidence, that such an approach is not feasible. Costs associated with minimization may be considered, but cost alone may not be the only consideration in determining that location of development cannot further minimize direct or indirect impacts to core areas.

(D) Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect impacts of the development to any core area. he required compensatory mitigation must comply with OAR chapter 635, division 140.

(b) A county may approve a conflicting use as identified at subsection (7)(b) above upon either:

(A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage-grouse habitat or the way sage-grouse use that habitat; or

(B) Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.

(10) Program to achieve the goal of protecting significant sage-grouse habitat in a low density area.

(a) A county may approve a large-scale development in a low density area upon applying the mitigation hierarchy as follows:

(A) Avoidance. Before proceeding with large-scale development activity that impacts a low density area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within a low density area. If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within a low density area, then the proposal must not be allowed unless it can satisfy the following criteria:

(i) It is not technically or financially feasible to locate the proposed large-scale development outside of a low density area based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or

(ii) The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or it is a linear use that must cross significant sage-grouse habitat in order to achieve a reasonably direct route.

(B) Minimization. If the proposed use cannot be sited by avoiding a low density area altogether, including direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the low density area(s) in question by locating the development adjacent to existing development and at the edge of the low density area when possible. Uses should minimize impacts through micrositing, limitations on the timing of construction or use, or both, and methods of construction.

(C) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.

(b) A county may approve a conflicting use as identified at subsection (7)(b) above when found to be consistent with the provisions of subsection (9)(b).

(11) Program to achieve the goal of protecting significant sage-grouse habitat on general habitat.

(a) A county may approve a large-scale development on significant sage-grouse habitat in general habitat upon requiring:

(A) General Habitat Consultation. Minimizing impacts from development actions in general habitat shall include consultation between the development proponent and ODFW that considers and results in recommendations on how to best locate, construct or operate the development action so as to avoid or minimize direct and indirect impacts on significant sage-grouse habitat within the area of general habitat. A county shall attach ODFW recommendations as a condition of approval; and

(B) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D)above.

(b) A county may approve a conflicting use identified in subsection (7)(b) above when found to be consistent with the provisions of subsection (9)(b).

(12) Especially Unique Local Economic Opportunity. A county may approve a large-scale development proposal that does not meet the avoidance test for significant sage-grouse habitat if the county determines that the overall public benefits of the proposal outweigh the damage to significant sage-grouse habitat. Requirements for minimization and compensatory mitigation continue to apply and attempts should be made to avoid areas of high population richness, if possible. The county shall make this balancing determination only when the proposal involves an economic opportunity that will provide a number of permanent, full-time jobs, not including construction activities, paying at least 150 percent of average county wages sufficient to increase the amount of total private nonfarm payroll employment by at least 0.5 percent over the figure included in the most recent data available from the Oregon Department of Employment rounded down to the nearest whole number. The applicant has the burden to show that the overall public benefits outweigh the damage to the significant sage-grouse habitat. This provision may be exercised by each effected county once during every ten-year period beginning on the effective date of this rule. A county is also free not to approve a proposal submitted under this section.

(13) A proposal to up-zone lands containing significant sage-grouse habitat to a greater development potential than otherwise allowed under Goals 3 and 4 shall follow the ordinary Goal 5 process at OAR 660-023-0030 to 660-023-0050. Furthermore, up-zoning lands in a core area shall be considered a direct impact and count towards the three percent disturbance threshold pursuant to section (17) below.

(14) Landscape-Level Consideration. The standards in sections (9), (10) and (11) above, are designed to minimize the amount of future impacts from human sources to significant sage-grouse habitat areas. Consistent with available science concerning the relation between human activities and sage-grouse population levels, the department will monitor direct impacts in core areas in each of the PACs shown in Exhibit (C).

(15) Central Registry. The department will work with the counties identified in section (5), ODFW, the Bureau of Land Management (BLM), and USFWS to maintain a central registry, tracking human disturbance from existing (baseline) and all new development affecting core areas. In addition to serving as partners in maintaining the central registry, counties must report all development land use permits for all uses within a core area to the department. The registry will include baseline calculations of direct impact levels consistent with the approach identified by the BLM. The percentage figures included in Exhibit D establish the baseline for human disturbance existing on the effective date of this rule. If better information becomes available, the commission may revise the baseline subject to a rule amendment that is coordinated with the counties identified in section (5) and other interested parties. Counties may establish more refined, project specific data to replace the baseline figures so long as all counties utilize a common methodology. Each year the department shall report to the commission the amount of new direct impacts in each PAC. The report shall be coordinated with and made available to all affected counties.

(16) Metering. This rule is intended to ensure that the area of direct impact levels in any PAC, including energy facilities exempted under subsection (2)(b), does not increase by an amount greater than 1.0 percent of the total area of the PAC in any ten-year period. The initial period shall commence upon the effective date of this rule and continue for ten consecutive years, where upon the process shall be successively repeated. The commission will consider revisions to this rule if the department's yearly reports required by section (15) indicate that the development trends in any PAC indicate that the 1.0 percent direct impact threshold is in jeopardy of being exceeded before the ten-year period has expired. Any proposal to amend this rule undertaken by the department shall be developed in coordination with all affected counties and other stakeholders.

(17) Disturbance Threshold. This rule is intended to ensure that direct impact level, including energy facilities exempted under subsection (2)(b), does not exceed three percent of the total area in any PAC. If this three-percent threshold is approached, then the department must report that situation to the commission along with

a proposal to amend this rule to adapt the standards and criteria such that the threshold is not exceeded.

(18) State agency coordination programs. All state agencies that carry out or that permit conflicting uses in core area, low density area, or significant general habitat including but not limited to OWRD, Oregon Department of Transportation, Department of State Lands, Department of Geology and Mineral Industries, Oregon Department of Energy and the Energy Facility Siting Council, and Department of Environmental Quality must report the proposed development to the department, along with an estimate of the direct impact of the development. In addition, to the extent not regulated by a county, such development, other than the issuance of water rights, the expansion of cultivation, and other farm uses under ORS 215.203(2), must meet the requirements of paragraph (9)(a)(D) of this rule.

(19) Scheduled Review. The department shall commence a review of these rules no later than June 30, 2020 and, if determined to be necessary, recommend revisions to achieve the policy objectives found herein. Furthermore, should the species become listed under the Federal Endangered Species Act, the commission shall consider whether continued application of this rule is necessary. Should the rule remain applicable and the species is de-listed the commission shall consider whether continued application of this rule is necessary.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040
Hist.: LCDD 5-2015, f. 8-6-15, cert. ef. 8-13-15; LCDD 4-2016, f. & cert. ef. 2-10-16

660-023-0120
Federal Wild and Scenic Rivers

(1) At each periodic review, local governments shall amend acknowledged plans and land use regulations to address any federal Wild and Scenic River (WSR) and associated corridor established by the federal government that is not addressed by the acknowledged plan. The standards and procedures of OAR 660-023-0030 through 660-023-0050 apply to WSRs, except as provided in this rule.

(2) Local governments shall not inventory WSRs using the standard process under OAR 660-023-0030, except that local governments shall follow the requirements of 660-023-0030(5) by designating all WSRs as significant Goal 5 resources.

(3) A local government may delay completion of OAR 660-023-0040 and 660-023-0050 for a WSR until the federal government adopts a management plan for the WSR. Prior to the federal government adoption of a management plan, the local government shall notify the federal government of proposed development and changes of land use within the interim WSR corridor.

(4) Prior to or at the first periodic review following adoption of a management plan by the federal government for an established WSR, the local government shall adopt a program to protect the WSR and associated corridor by following the ESEE standards and procedures of OAR 660-023-0040 and 660-023-0050. The impact area determined under OAR 660-023-0040(3) shall be the WSR corridor that is established by the federal government. Notwithstanding the provisions of OAR 660-023-0040(5), the local program shall be consistent with the federal management plan.

(5) For any lands in a designated WSR corridor that are also within the impact area of a designated Oregon Scenic Waterway, the local government may apply the requirements of OAR 660-023-0130 rather than the applicable requirements of this rule in order to develop a program to achieve Goal 5.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0130
Oregon Scenic Waterways

(1) At each periodic review, local governments shall amend acknowledged plans and land use regulations to address any Oregon Scenic Waterway (OSW) and associated corridor that is not addressed by the acknowledged plan. The standards and procedures of OAR 660-023-0030 through 660-023-0050 apply to OSWs, except as provided in this rule.

(2) Local governments shall not inventory OSWs following all the steps of the standard inventory process under OAR 660-023-0030. Instead, local governments shall follow only the requirements of OAR 660-023-0030(5) by designating OSWs as significant Goal 5 resources.

(3) A local government may delay completion of the Goal 5 process (OAR 660-023-0040 and 660-023-0050) for an OSW until the Oregon Parks and Recreation Commission (OPRC) adopts a management plan for the OSW. Prior to the OPRC adoption of a management plan for the OSW, the local government shall:

(a) Notify the Oregon Parks and Recreation Department (OPRD) of proposed developments and changes of land use on land within the interim OSW corridor; and

(b) Inform landowners who apply to the local government for development approval or changes of land use within the OSW corridor of their notice obligations under ORS 390.845.

(4) Prior to or at the first periodic review following adoption of a management plan by the OPRC for an established OSW, the local government shall adopt a Goal 5 program for the OSW and associated corridor by following either the ESEE standards and procedures of OAR 660-023-0040 and 660-023-0050 or the safe harbor provisions in section (5) of this rule. The impact area determined under OAR 660-023-0040(3) shall be the scenic waterway and adjacent lands as set forth in ORS 390.805(2) and (3). Notwithstanding the provisions of OAR 660-023-0040(5), the local program for the OSW shall be consistent with the management plan adopted by OPRC.

(5) As a safe harbor, a local government may adopt only those plan and implementing ordinance provisions necessary to carry out the management plan adopted by OPRC rather than follow the ESEE standards and procedures of OAR 660-023-0040 and 660-023-0050.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0140
Groundwater Resources

(1) For purposes of this rule, the following definitions apply:

(a) "Delineation" is a determination that has been certified by the Oregon Health Division pursuant to OAR 333-061-0057, regarding the extent, orientation, and boundary of a wellhead protection area, considering such factors as geology, aquifer characteristics, well pumping rates, and time of travel.

(b) "Groundwater" is any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water.

(c) "Protect significant groundwater resources" means to adopt land use programs to help ensure that reliable groundwater is available to areas planned for development and to provide a reasonable level of certainty that the carrying capacity of groundwater resources will not be exceeded.

(d) "Public water system" is a system supplying water for human consumption that has four or more service connections, or a system supplying water to a public or commercial establishment that operates a total of at least 60 days per year and that is used by 10 or more individuals per day.

(e) "Wellhead protection area" is the surface and subsurface area surrounding a water well, spring, or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach that water well, spring, or wellfield.

(2) Local governments shall amend acknowledged plans prior to or at each periodic review in order to inventory and protect significant groundwater resources under Goal 5 only as provided in sections (3) through (5) of this rule. Goal 5 does not apply to other groundwater areas, although other statewide Goals, especially Goals 2, 6, and 11, apply to land use decisions concerning such groundwater areas. Significant groundwater resources are limited to:

(a) Critical groundwater areas and restrictively classified areas designated by the Oregon Water Resources Commission (OWRC), as provided in ORS 340 and 536, subject to the requirements in section (3) of this rule applied in conjunction with the requirements of OAR 660-023-0030 through 660-023-0050; and

(b) Wellhead protection areas, subject to the requirements in sections (4) and (5) of this rule instead of the requirements in OAR 660-023-0030 through 660-023-0050.

(3) Critical groundwater areas and restrictively classified areas are significant groundwater resources. Following designation by OWRC, and in coordination with the Oregon Water Resources Department (WRD), local plans shall declare such areas as significant groundwater resources as per OAR 660-023-0030(5). Following the requirements of OAR 660-023-0040 and 660-023-0050 and this rule, local governments shall develop programs to protect these significant groundwater resources.

(4) A local government or water provider may delineate a wellhead protection area for wells or wellfields that serve lands within its jurisdiction. For the delineation of wellhead protection areas, the standards and procedures in OAR chapter 333, division 61 (Oregon Health Division rules) shall apply rather than the standards and procedures of OAR 660-023-0030.

(5) A wellhead protection area is a significant groundwater resource only if the area has been so delineated and either:

(a) The public water system served by the wellhead area has a service population greater than 10,000 or has more than 3,000 service connections and relies on groundwater from the wellhead area as the primary or secondary source of drinking water; or

(b) The wellhead protection area is determined to be significant under criteria established by a local government, for the portion of the wellhead protection area within the jurisdiction of the local government.

(6) Local governments shall develop programs to resolve conflicts with wellhead protection areas described under section (5) of this rule. In order to resolve conflicts with wellhead protection areas, local governments shall adopt comprehensive plan provisions and land use regulations, consistent with all applicable statewide goals, that:

(a) Reduce the risk of contamination of groundwater, following the standards and requirements of OAR chapter 340, division 40; and

(b) Implement wellhead protection plans certified by the Oregon Department of Environmental Quality (DEQ) under OAR 340-040-0180.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 3-2004, f. & cert. ef. 5-7-04

660-023-0150
Approved Oregon Recreation Trails

(1) For purposes of this rule, "recreation trail" means an Oregon Recreation Trail designated by rule adopted by the Oregon Parks and Recreation Commission (OPRC).

(2) Recreation trails are designated by OPRC in cooperation with local governments and private land owners. Local governments are not required to inventory recreation trails under OAR 660-023-0030. Instead, local governments shall designate all recreation trails designated by OPRC as significant Goal 5 resources. At each periodic review, local governments shall amend acknowledged plans to recognize any recreation trail designated by OPRC subsequent to acknowledgment or a previous periodic review.

(3) Local governments are not required to amend acknowledged plans or land use regulations in order to supplement OPRC protection of recreation trails. If a local government chooses to supplement OPRC protection, it shall follow the requirements of OAR 660-023-0040 and 660-023-0050.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0160
Natural Areas

(1) For purposes of this rule, "natural areas" are areas listed in the Oregon State Register of Natural Heritage Resources.

(2) At periodic review, local governments shall consider information about natural areas not addressed at acknowledgment or in previous periodic reviews. Local governments shall inventory such areas as significant and develop a program to achieve the goal following the standard Goal 5 process in OAR 660-023-0040 and 660-023-0050.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0170
Wilderness Areas

(1) For purposes of this rule, "wilderness areas" are those areas designated as wilderness by the federal government.

(2) Local governments are not required to inventory wilderness areas using the procedures of OAR 660-023-0030, except that local governments shall list all federally designated wilderness areas as significant Goal 5 resources as provided under OAR 660-023-0030(5).

(3) At periodic review, local governments shall amend acknowledged plans to recognize any wilderness areas designated after the last periodic review or acknowledgment.

(4) A local government need not complete the Goal 5 process in OAR 660-023-0040 and 660-023-0050 for wilderness areas unless it chooses to provide additional protection for the wilderness area, such as the regulation of conflicting uses in an impact area adjacent to the wilderness area.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0180
Mineral and Aggregate Resources

(1) For purposes of this rule, the following definitions apply:

(a) "Aggregate resources" are naturally occurring concentrations of stone, rock, sand gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction.

(b) "Conflicting use" is a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site (as specified in subsection (5)(b) and section (7) of this rule).

(c) "Existing site" is an aggregate site that meets the requirements of subsection (3)(a) of this rule and was lawfully operating, or was included on an inventory of significant aggregate sites in an acknowledged plan, on September 1, 1996.

(d) "Expansion area" is an aggregate mining area contiguous to an existing site.

(e) "Farmland" means land planned and zoned for exclusive farm use pursuant to Goal 3 and OAR chapter 660, division 033.

(f) "Mineral resources" are those materials and substances described in ORS 517.750(7) but excluding materials and substances described as "aggregate resources" under subsection (a) of this section.

(g) "Minimize a conflict" means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels), to "minimize a conflict" means to ensure conformance to the applicable standard.

(h) "Mining" is the extraction and processing of mineral or aggregate resources, as defined in ORS 215.298(3) for farmland, and in ORS 517.750 for land other than farmland.

(i) "Mining area" is the area of a site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas on a parcel where mining is not authorized.

(j) "Processing" means the activities described in ORS 517.750(10).

(k) "Protect" means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site. For purposes of subsection (2)(d) of this rule, "protect" also means to limit or prohibit new conflicting uses within the impact area of the site.

(l) "Thickness of the aggregate layer" means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and nonaggregate overburden.

(m) "Willamette Valley" means Clackamas, Columbia, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties and the portions of Lane and Benton Counties east of the summit of the Coast Range.

(2) Local governments are not required to amend acknowledged inventories or plans with regard to mineral and aggregate resources except in response to an application for a post acknowledgement plan amendment (PAPA) or at periodic review as specified in section (9) of this rule. The requirements of this rule modify, supplement, or supersede the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, as follows:

(a) A local government may inventory mineral and aggregate resources throughout its jurisdiction, or in a portion of its jurisdiction. When a local government conducts an inventory of mineral and aggregate sites in all or a portion of its jurisdiction, it shall follow the requirements of OAR 660-023-0030 except as modified by subsection (b) of this section with respect to aggregate sites. When a local government is following the inventory process for a mineral or aggregate resource site under a PAPA, it shall follow the applicable requirements of OAR 660-023-0030, except where those requirements are expanded or superceded for aggregate resources as provided in subsections (b) through (d) of this section and sections (3), (4) and (8) of this rule;

(b) Local governments shall apply the criteria in section (3) or (4) of this rule, whichever is applicable, rather than OAR 660-023-0030(4), in determining whether an aggregate resource site is significant;

(c) Local governments shall follow the requirements of section (5) or (6) of this rule, whichever is applicable, in deciding whether to authorize the mining of a significant aggregate resource site, and OAR 660-023-0040 through 660-023-0050 in deciding whether to authorize mining of a significant mineral resource; and

(d) For significant mineral and aggregate sites where mining is allowed, except for aggregate sites that have been determined to be significant under section (4) of this rule, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses.

(3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

(a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;

(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or

(c) The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.

(d) Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:

(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or

(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:

(i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;

(ii) 25 feet in Polk, Yamhill, and Clackamas counties; or

(iii) 17 feet in Linn and Benton counties.

(4) Notwithstanding section (3) of this rule, a local government may also determine that an aggregate resource site on farmland is significant if subsections (a) and (b) of this section apply or if subsection (c) of this section applies:

(a) The quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less for a site in the Willamette Valley, or 500,000 tons or less for a site outside the Willamette Valley; and

(b) Not more than 35 percent of the proposed mining area consists of soil:

(A) Classified as Class I on Natural Resource and Conservation Service (NRCS) maps available on June 11, 2004; or

(B) Classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds the amounts specified in paragraph (B) of subsection (3)(d) of this rule.

(c) A local land use permit that allows mining on the site was issued prior to April 3, 2003, and the permit is in effect at the time of the significance determination.

(5) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.

(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.

(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;

(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining oper-

ation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;

(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013;

(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;

(E) Conflicts with agricultural practices; and

(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780.

(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.

(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:

(A) The degree of adverse effect on existing land uses within the impact area;

(B) Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and

(C) The probable duration of the mining operation and the proposed post-mining use of the site.

(e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:

(A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;

(B) Not requested in the PAPA application; or

(C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.

(f) Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.

(g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.

(6) For an aggregate site on farmland that is determined to be significant under section (4) of this rule, the requirements of section (5) of this rule are not applicable, except for subsection (5)(f), and the requirements of OAR 660-023-0040 though 660-023-0050 are not applicable. Instead, local governments shall decide whether mining is permitted by applying subsections (a) through (d) of this section:

(a) The proposed aggregate mine shall satisfy discretionary conditional use permit approval standards adopted by the local government pursuant to applicable requirements of ORS 215.213(2) or 215.283(2), and the requirements of ORS 215.296 and 215.402 through 215.416;

(b) The local government shall determine the post-mining use in accordance with subsection (5)(f) of this rule;

(c) The local government shall issue a permit for mining aggregate only for a site included on an inventory of significant aggregate sites in the comprehensive plan in accordance with ORS 215.298(2); and

(d) The conditional use permit shall not allow mining of more than the maximum amount of aggregate material specified under subsection (4)(a) of this rule.

(7) Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (5) of this rule, the local government decides that mining will not be authorized at the site.)

(8) In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the requirements of this section rather than OAR 660-023-0030(3). An application for approval of an aggregate site following sections (4) and (6) of this rule shall be adequate if it provides sufficient information to determine whether the requirements in those sections are satisfied. An application for a PAPA concerning a significant aggregate site following sections (3) and (5) of this rule shall be adequate if it includes:

(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;

(b) A conceptual site reclamation plan;

NOTE: Final approval of reclamation plans resides with DOGAMI rather than local governments, except as provided in ORS 517.780

(c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (5)(b)(B) of this rule;

(d) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area; and

(e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.

(9) Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for the consideration of PAPAs concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:

(a) Such regulations were acknowledged subsequent to 1989; and

(b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review after September 1, 1996, except as provided under OAR 660-023-0250(7).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 5-2004, f. & cert. ef. 6-25-04

660-023-0190
Energy Sources

(1) For purposes of this rule:

(a) "Energy source" includes naturally occurring locations, accumulations, or deposits of one or more of the following resources used for the generation of energy: natural gas, surface water (i.e., dam sites), geothermal, solar, and wind areas. Energy sources applied for or approved through the Oregon Energy Facility Siting Council (EFSC) or the Federal Energy Regulatory Commission (FERC) shall be deemed significant energy sources for purposes of Goal 5.

(b) "Protect," for energy sources, means to adopt plan and land use regulations for a significant energy source that limit new conflicting uses within the impact area of the site and authorize the present or future development or use of the energy source at the site.

(2) In accordance with OAR 660-023-0250(5), local governments shall amend their acknowledged comprehensive plans to address energy sources using the standards and procedures in OAR 660-023-0030 through 660-023-0050. Where EFSC or FERC regulate a local site or an energy facility that relies on a site specific energy source, that source shall be considered a significant energy source under OAR 660-023-0030. Alternatively, local governments may adopt a program to evaluate conflicts and develop a protection program on a case-by-case basis, i.e., upon application to develop an individual energy source, as follows:

(a) For proposals involving energy sources under the jurisdiction of EFSC or FERC, the local government shall comply with Goal 5 by amending its comprehensive plan and land use regulations to implement the EFSC or FERC decision on the proposal as per ORS 469.504; and

(b) For proposals involving energy sources not under the jurisdiction of EFSC or FERC, the local government shall follow the standards and procedures of OAR 660-023-0030 through 660-023-0050.

(3) Local governments shall coordinate planning activities for energy sources with the Oregon Department of Energy.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 3-2004, f. & cert. ef. 5-7-04

660-023-0200
Historic Resources

(1) For purposes of this rule, the following definitions apply:

(a) "Designation" is a decision by a local government declaring that a historic resource is "significant" and including the resource on the list of significant historic resources.

(b) "Historic areas" are lands with buildings, structures, objects, sites, or districts that have local, regional, statewide, or national historic significance.

(c) "Historic resources" are those buildings, structures, objects, sites, or districts that have a relationship to events or conditions of the human past.

(d) "Historic resources of statewide significance" are buildings, structures, objects, sites, or districts listed in the National Register of Historic Places, and within approved national register historic districts pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).

(e) "Protect" means to require local government review of applications for demolition, removal, or major exterior alteration of a historic resource.

(2) Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories or programs regarding historic resources, except as specified in this rule. The requirements of the standard Goal 5 process (see OAR 660-023-0030 through 660-023-0050) in conjunction with the requirements of this rule apply when local governments choose to amend acknowledged historic preservation plans and regulations. However, the sequence of steps in the standard process is not recommended, as per section (3) of this rule. The provisions in section (3) of this rule are advisory only. Sections (4) through (9) of this rule are mandatory for all local governments, except where the rule provides recommended or optional criteria.

(3) Local comprehensive plans should foster and encourage the preservation, management, and enhancement of structures, resources, and objects of historic significance within the jurisdiction in a manner conforming with, but not limited by, the provisions of ORS 358.605. In developing local historic preservation programs, local governments should follow the recommendations in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. Where possible, local governments should develop a local historic context statement and adopt a historic preservation plan and a historic preservation ordinance before commencement of local historic inventories.

(4) Local governments shall provide broad public notice prior to the collection of information about historic resources. Local governments shall notify landowners about opportunities to participate in the inventory process. Local governments may delegate the determination of significant historic sites to a local planning commission or historic resources commission. The determination of significance should be based on the National Register Criteria for Evaluation or the Secretary of the Interior's Standards for Evaluation.

(5) Local governments shall adopt or amend the list of significant historic resource sites (i.e., "designate" such sites) as a land use regulation. Local governments shall allow owners of inventoried historic resources to refuse historic resource designation at any time prior to adoption of the designation and shall not include a site on a list of significant historic resources if the owner of the property objects to its designation.

(6) The local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government.

(7) Local governments are not required to apply the ESEE process in order to determine a program to protect historic resources. Rather, local governments are encouraged to adopt historic preservation regulations regarding the demolition, removal, or major exterior alteration of all designated historic resources. Historic protection ordinances should be consistent with standards and guidelines recommended in the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior.

(8) Local governments shall protect all historic resources of statewide significance through local historic protection regulations, regardless of whether these resources are "designated" in the local plan.

(9) A local government shall not issue a permit for demolition or modification of a historic resource described under subsection (6) of this rule for at least 120 days from the date a property owner requests removal of historic resource designation from the property.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0220
Open Space

(1) For purposes of this rule, "open space" includes parks, forests, wildlife preserves, nature reservations or sanctuaries, and public or private golf courses.

(2) Local governments are not required to amend acknowledged comprehensive plans in order to identify new open space resources. If local governments decide to amend acknowledged plans in order to provide or amend open space inventories, the requirements of OAR 660-023-0030 through 660-023-0050 shall apply, except as set forth in section (3) of this rule.

(3) Local governments may adopt a list of significant open space resource sites as an open space acquisition program. Local governments are not required to apply the requirements of OAR 660-023-0030 through 660-023-0050 to such sites unless land use regulations are adopted to protect such sites prior to acquisition.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0230
Scenic Views and Sites

(1) For purposes of this rule, "scenic views and sites" are lands that are valued for their aesthetic appearance.

(2) Local governments are not required to amend acknowledged comprehensive plans in order to identify scenic views and sites. If local governments decide to amend acknowledged plans in order to provide or amend inventories of scenic resources, the requirements of OAR 660-023-0030 through 660-023-0050 shall apply.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0240
Relationship of Goal 5 to Other Goals

(1) The requirements of Goal 5 do not apply to the adoption of measures required by Goals 6 and 7. However, to the extent that such measures exceed the requirements of Goals 6 or 7 and affect a Goal 5 resource site, the local government shall follow all applicable steps of the Goal 5 process.

(2) The requirements of Goals 15, 16, 17, and 19 shall supersede requirements of this division for natural resources that are also subject to and regulated under one or more of those goals. However, local governments may rely on a Goal 5 inventory produced under OAR 660-023-0030 and other applicable inventory requirements of this division to satisfy the inventory requirements under Goal 17 for resource sites subject to Goal 17.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

660-023-0250
Applicability

(1) This division replaces OAR 660, division 16, except with regard to cultural resources, and certain PAPAs and periodic review work tasks described in sections (2) and (4) of this rule. Local governments shall follow the procedures and requirements of this division or OAR 660, division 16, whichever is applicable, in the adoption or amendment of all plan or land use regulations pertaining to Goal 5 resources. The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.

(2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section "initiated" means that the local government has deemed the PAPA application to be complete.

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

(4) Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, division 16.

(5) Local governments are required to amend acknowledged plan or land use regulations at periodic review to address Goal 5 and the requirements of this division only if one or more of the following conditions apply, unless exempted by the director under section (7) of this rule:

(a) The plan was acknowledged to comply with Goal 5 prior to the applicability of OAR 660, division 16, and has not subsequently been amended in order to comply with that division;

(b) The jurisdiction includes riparian corridors, wetlands, or wildlife habitat as provided under OAR 660-023-0090 through 660-023-0110, or aggregate resources as provided under OAR 660-023-0180; or

(c) New information is submitted at the time of periodic review concerning resource sites not addressed by the plan at the time of acknowledgement or in previous periodic reviews, except for historic, open space, or scenic resources.

(6) If a local government undertakes a Goal 5 periodic review task that concerns specific resource sites or specific Goal 5 plan or implementing measures, this action shall not by itself require a local government to conduct a new inventory of the affected Goal 5 resource category, or revise acknowledged plans or implementing measures for resource categories or sites that are not affected by the work task.

(7) The director may exempt a local government from a work task for a resource category required under section (5) of this rule. The director shall consider the following factors in this decision:

(a) Whether the plan and implementing ordinances for the resource category substantially comply with the requirements of this division; and

(b) The resources of the local government or state agencies available for periodic review, as set forth in ORS 197.633(3)(g).

(8) Local governments shall apply the requirements of this division to work tasks in periodic review work programs approved or amended under ORS 197.633(3)(g) after September 1, 1996. Local governments shall apply OAR 660, division 16, to work tasks in periodic review work programs approved before September 1, 1996, unless the local government chooses to apply this division to one or more resource categories, and provided:

(a) The same division is applied to all work tasks concerning any particular resource category;

(b) All the participating local governments agree to apply this division for work tasks under the jurisdiction of more than one local government; and

(c) The local government provides written notice to the department. If application of this division will extend the time necessary to complete a work task, the director or the commission may consider extending the time for completing the work task as provided in OAR 660-025-0170.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.225 - 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

DIVISION 24

URBAN GROWTH BOUNDARIES

660-024-0000
Purpose and Applicability

(1) The rules in this division clarify procedures and requirements of Goal 14 regarding a local government adoption or amendment of an urban growth boundary (UGB). The rules in this division do not apply to the simplified UGB process under OAR chapter 660, division 38.

(2) The rules in this division interpret Goal 14 as amended by the Land Conservation and Development Commission (LCDC or commission) on or after April 28, 2005, and are not applicable to plan amendments or land use decisions governed by previous versions of Goal 14 still in effect.

(3) The rules in this division adopted on October 5, 2006, are effective April 5, 2007. The rules in this division amended on March 20, 2008, are effective April 18, 2008. The rules in this division adopted March 13, 2009, and amendments to rules in this division adopted on that date, are effective April 16, 2009, except as follows:

(a) A local government may choose to not apply this division to a plan amendment concerning the evaluation or amendment of a

UGB, regardless of the date of that amendment, if the local government initiated the evaluation or amendment of the UGB prior to April 5, 2007;

(b) For purposes of this rule, "initiated" means that the local government either:

(A) Issued the public notice specified in OAR 660-018-0020 for the proposed plan amendment concerning the evaluation or amendment of the UGB; or

(B) Received LCDC approval of a periodic review work program that includes a work task to evaluate the UGB land supply or amend the UGB;

(c) A local government choice whether to apply this division must include the entire division and may not differ with respect to individual rules in the division.

(4) The rules in this division adopted on December 4, 2015, are effective January 1, 2016, except that a local government may choose to not apply the amendments to rules in this division adopted December 4, 2015 to a plan amendment concerning the amendment of a UGB, regardless of the date of that amendment, if the local government initiated the amendment of the UGB prior to January 1, 2016.

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764

Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0010
Definitions

In this division, the definitions in the statewide goals and the following definitions apply:

(1) "Buildable Land" is a term applying to residential land only, and has the same meaning as provided in OAR 660-008-0005(2).

(2) "EOA" means an economic opportunities analysis carried out under OAR 660-009-0015.

(3) "Housing need" or "housing need analysis" refers to a local determination as to the needed amount, types and densities of housing that will be:

(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the 20-year planning period;

(b) Consistent with any adopted regional housing standards, state statutes regarding housing need and with Goal 10 and rules interpreting that goal; and

(c) Consistent with Goal 14 requirements.

(4) "Local government" means a city or county, or a metropolitan service district described in ORS 197.015(13).

(5) "Metro boundary" means the boundary of a metropolitan service district defined in ORS 197.015(13).

(6) "Net Buildable Acre" consists of 43,560 square feet of residentially designated buildable land after excluding future rights-of-way for streets and roads.

(7) "Safe harbor" means an optional course of action that a local government may use to satisfy a requirement of Goal 14. Use of a safe harbor prescribed in this division will satisfy the requirement for which it is prescribed. A safe harbor is not the only way or necessarily the preferred way to comply with a requirement and it is not intended to interpret the requirement for any purpose other than applying a safe harbor within this division.

(8) "Suitable vacant and developed land" describes land for employment opportunities, and has the same meaning as provided in OAR 660-009-0005 section (1) for "developed land," section (12) for "suitable," and section (14) for "vacant land."

(9) "UGB" means "urban growth boundary."

(10) "Urban area" means the land within a UGB.

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764

Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09

660-024-0020

Adoption or Amendment of a UGB

(1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:

(a) The exceptions process in Goal 2 and OAR chapter 660, division 4, is not applicable unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1);

(b) Goals 3 and 4 are not applicable;

(c) Goal 5 and related rules under OAR chapter 660, division 23, apply only in areas added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;

(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;

(e) Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;

(f) Goals 16 to 18 are not applicable to land added to the UGB unless the land is within a coastal shorelands boundary;

(g) Goal 19 is not applicable to a UGB amendment.

(2) The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location.

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764

Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09

660-024-0040
Land Need

(1) The UGB must be based on the appropriate 20-year population forecast for the urban area as determined under Rules in OAR 660, div 32, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision. Local governments in Crook, Deschutes or Jefferson Counties may determine the need for Regional Large-Lot Industrial Land by following the provisions of OAR 660-024-0045 for areas subject to that rule.

(2) If the UGB analysis or amendment is conducted as part of a periodic review work program, the 20-year planning period must commence on the date initially scheduled for completion of the appropriate work task. If the UGB analysis or amendment is conducted as a post-acknowledgement plan amendment under ORS 197.610 to 197.625, the 20-year planning period must commence either:

(a) On the date initially scheduled for final adoption of the amendment specified by the local government in the initial notice of the amendment required by OAR 660-018-0020; or

(b) If more recent than the date determined in subsection (a), at the beginning of the 20-year period specified in the appropriate coordinated population forecast for the urban area as determined under Rules in OAR 660, div 32, unless ORS 197.296 requires a different date for local governments subject to that statute.

(3) A local government may review and amend the UGB in consideration of one category of land need (for example, housing need) without a simultaneous review and amendment in consideration of other categories of land need (for example, employment need).

(4) The determination of 20-year residential land needs for an urban area must be consistent with the appropriate 20-year coordinated population forecast for the urban area determined under Rules in OAR 660, div 32, and with the requirements for determining housing needs in Goals 10 and 14, OAR chapter 660, division 7 or 8, and applicable provisions of ORS 197.295 to 197.314 and 197.475 to 197.490.

(5) Except for a metropolitan service district described in ORS 197.015(13), the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR chapter 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses consistent with 660-009-0025. Employment land need may be based on an estimate of job growth over the planning period; local government must provide a reasonable justification for the job growth estimate but Goal 14 does not require that job growth estimates necessarily be proportional to population growth. Local governments in Crook, Deschutes or Jefferson Counties may determine the need for Regional Large-Lot Industrial Land by following the provisions of 660-024-0045 for areas subject to that rule.

(6) Cities and counties may jointly conduct a coordinated regional EOA for more than one city in the county or for a defined region within one or more counties, in conformance with Goal 9, OAR chapter 660, division 9, and applicable provisions of ORS 195.025. A defined region may include incorporated and unincorporated areas of one or more counties.

(7) The determination of 20-year land needs for transportation and public facilities for an urban area must comply with applicable requirements of Goals 11 and 12, rules in OAR chapter 660, divisions 11 and 12, and public facilities requirements in ORS 197.712 and 197.768. The determination of school facility needs must also comply with 195.110 and 197.296 for local governments specified in those statutes.

(8) The following safe harbors may be applied by a local government to determine housing need under this division:

(a) A local government may estimate persons per household for the 20-year planning period using the persons per household for the urban area indicated in the most current data for the urban area published by the U.S. Census Bureau.

(b) If a local government does not regulate government-assisted housing differently than other housing types, it is not required to estimate the need for government-assisted housing as a separate housing type.

(c) If a local government allows manufactured homes on individual lots as a permitted use in all residential zones that allow 10 or fewer dwelling units per net buildable acre, it is not necessary to provide an estimate of the need for manufactured dwellings on individual lots.

(d) If a local government allows manufactured dwelling parks required by ORS 197.475 to 197.490 in all areas planned and zoned for a residential density of six to 12 units per acre, a separate estimate of the need for manufactured dwelling parks is not required.

(e) A local government outside of the Metro boundary may estimate its housing vacancy rate for the 20-year planning period using the vacancy rate in the most current data published by the U.S. Census Bureau for that urban area that includes the local government.

(f) A local government outside of the Metro boundary may determine housing needs for purposes of a UGB amendment using the combined Housing Density and Housing Mix safe harbors described in this subsection and in Table 1, or in combination with the Alternative Density safe harbor described under subsection (g) of this section and in Table 2. To meet the Housing Density safe harbor in this subsection, the local government may Assume For UGB Analysis that all buildable land in the urban area, including land added to the UGB, will develop at the applicable average overall density specified in column B of Table 1. Buildable land in the UGB, including land added to the UGB, must also be Zoned to Allow at least the average overall maximum density specified as Zone To Allow in column B of Table 1. Finally, the local government must adopt zoning that ensures buildable land in the urban area, including land added to the UGB, cannot develop at an average overall density less than the applicable Required Overall Minimum density specified in column B of Table 1. To meet the Housing Mix safe harbor in this subsection, the local government must Zone to Allow the applicable percentages of low, medium and high density residential specified in column C of Table 1.

(g) When using the safe harbor in subsection (f), a local government may choose to also use the applicable Alternative Density safe harbors for Small Exception Parcels and High Value Farm Land specified in Table 2. If a local government chooses to use the Alternative Density safe harbors described in Table 2, it must

(A) Apply the applicable Small Exception Parcel density assumption and the High Value Farm Land density assumption measures specified in the table to all buildable land that is within these categories, and

(B) Apply the Housing Density and Mix safe harbors specified in subsection (f) of this section and specified in Table 1 to all buildable land in the urban area that does not consist of Small Exception Parcels or High Value Farm Land.

(h) As an alternative to the density safe harbors in subsection (f) and, if applicable, subsection (g), of this section, a local government outside of the Metro boundary may assume that the average overall density of buildable residential land in the urban area for the 20-year planning period will increase by 25 percent over the average overall density of developed residential land in the urban area at the time the local government initiated the evaluation or amendment of the UGB. If a local government uses this Incremental Housing Density safe harbor, it must also meet the applicable Zoned to Allow density and Required Overall Minimum density requirements in Column B of Table 1 and, if applicable, Table 2, and must use the Housing Mix safe harbor in Column C of Table 1.

(i) As an alternative to the Housing Mix safe harbor required in subsection (f) of this section and in Column C of Table 1, a local government outside the Metro boundary that uses the housing

density safe harbor in either subsection (f), (g) or (h) of this section may estimate housing mix using the Incremental Housing Mix safe harbor described in paragraphs (A) to (C) of this subsection, as illustrated in Table 3:

(A) Determine the existing percentages of low density, medium density, and high density housing on developed land (not "buildable land") in the urban area at the time the local government initiated the evaluation or amendment of the UGB;

(B) Increase the percentage of medium density housing estimated in paragraph (A) of this subsection by 10 percent, increase the percentage of high density housing estimated in paragraph (A) of this subsection by five percent, as illustrated in Table 3, and decrease the percentage of low density single family housing by a proportionate amount so that the overall mix total is 100 percent, and

(C) Zone to Allow the resultant housing mix determined under subparagraphs (A) and (B) of this subsection.

(j) Tables 1, 2 and 3 are adopted as part of this rule, and the following definitions apply to terms used in the tables:

(A) "Assume For UGB Analysis" means the local government may assume that the UGB will develop over the 20-year planning period at the applicable overall density specified in Column B of Tables 1 and 2.

(B) "Attached housing" means housing where each unit shares a common wall, ceiling or floor with at least one other unit. "Attached housing" includes, but is not limited to, apartments, condominiums, and common-wall dwellings or row houses where each dwelling unit occupies a separate lot.

(C) "Average Overall Density" means the average density of all buildable land in the UGB, including buildable land already inside the UGB and buildable land added to the UGB, including land zoned for residential use that is presumed to be needed for schools, parks and other institutional uses.

(D) "Coordinated 20-year Population Forecast" and "20-year Population Forecast" under Column A of the Tables refers to the appropriate population forecast for the urban area determined under rules in OAR 660, div 32.

(E) "Density" means the number of dwelling units per net buildable acre.

(F) "High Value Farm Land" has the same meaning as the term defined in ORS 195.300(10).

(G) "Required Overall Minimum" means a minimum allowed overall average density, or a "density floor," that must be ensured in the applicable residential zones with respect to the overall supply of buildable land for that zone in the urban area for the 20-year planning period.

(H) "Single Family Detached Housing" means a housing unit that is free standing and separate from other housing units, including mobile homes and manufactured dwellings under ORS 197.475 to 197.492.

(I) "Small Exception Parcel" means a residentially zoned parcel five acres or less with a house on it, located on land that is outside a UGB prior to a proposed UGB expansion, subject to an acknowledged exception to Goal 3 or 4 or both.

(J) "Zone To Allow" or "Zoned to Allow" means that the comprehensive plan and implementing zoning shall allow the specified housing types and densities under clear and objective standards and other requirements specified in ORS 197.307(3)(b) and (6).

(9) The following safe harbors may be applied by a local government to determine its employment needs for purposes of a UGB amendment under this rule, Goal 9, OAR chapter 660, division 9, Goal 14 and, if applicable, ORS 197.296.

(a) A local government may estimate that the current number of jobs in the urban area will grow during the 20-year planning period at a rate equal to either:

(A) The county or regional job growth rate provided in the most recent forecast published by the Oregon Employment Department; or

(B) The population growth rate for the urban area in the appropriate 20-year coordinated population forecast determined under Rules in OAR 660, div 32.

(b) A local government with a population of 10,000 or less may assume that retail and service commercial land needs will grow in direct proportion to the forecasted urban area population growth over the 20-year planning period. This safe harbor may not be used to determine employment land needs for sectors other than retail and service commercial.

(10) As a safe harbor during periodic review or other legislative review of the UGB, a local government may estimate that the 20-year land needs for streets and roads, parks and school facilities will together require an additional amount of land equal to 25 percent of the net buildable acres determined for residential land needs under section (4) of this rule, and in conformance with the definition of "Net Buildable Acre" as defined in OAR 660-024-0010(6).

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14; ORS 195.033(10)
Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764, 195.033,195.036 & OL 2013 Ch. 574, Sec. 3
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 9-2012, f. 11-26-12, cert. ef. 12-10-12; LCDD 1-2015, f. & cert. ef. 3-25-15

660-024-0045
Regional Large Lot Industrial Land

(1) Local governments in Crook, Deschutes or Jefferson Counties may determine a need for large lot industrial land in the region and provide sites to meet that need in accordance with this rule.

(2) In addition to the definitions in OAR 660-024-0010, the following definitions apply to this rule:

(a) "Analysis" means the document that determines the regional large lot industrial land need within Crook, Deschutes, or Jefferson County that is not met by the participating local governments' comprehensive plans at the time the analysis is adopted. The analysis shall also identify necessary site characteristics of needed land.

(b) "COIC" means the Central Oregon Intergovernmental Council.

(c) "Intergovernmental Agreement (IGA)" means the document adopted by the three counties and any participating city to implement the provisions of the analysis.

(d) "Participating city" means a city within Crook, Deschutes, or Jefferson County that has adopted the analysis and entered into the intergovernmental agreement to implement the provisions of the analysis.

(e) "Participating local government" means Crook, Deschutes, and Jefferson Counties, and participating cities.

(f) "Regional large lot industrial land need" means the need for a specific type of 20-year employment land need, as described in OAR 660-024-0040(1) and (5), that is determined based upon the analysis.

(g) "Site" means land in the region that:

(A) Provides the site characteristics necessary for traded sector uses as set forth in the analysis;

(B) Is 50 acres or larger as provided in section (3) of this rule; and

(C) Is determined to be "available," as that term is defined in OAR 660-009-0025(7), for regional large-lot industrial users and for purposes identified by the analysis.

(h) "Site characteristics" has the meaning given that term in OAR 660-009-0005(1).

(i) "Traded Sector use" has the meaning given that term in ORS 285B.280.

(3) For purposes of subsection (2)(g) of this rule, a large lot is at least 50 acres if it is:

(a) A single lot, parcel that is at least 50 acres,

(b) An aggregation of existing lots or parcels under the same ownership that comprises at least 50 acres, or

(c) An aggregation of existing lots or parcels not in the same ownership created and maintained as a unit of land comprising at least 50 acres through a binding agreement among the owners.

(4) Participating local governments may adopt the analysis and implement its provisions. The analysis may demonstrate a need for six vacant, suitable and available sites in the region, and up to three additional sites that may be designated in order to replace one of the original six sites that is developed or committed to development as provided in section (12) of this rule. The original six sites must include two sites of at least 100 acres and not more than 200 acres, and one site more than 200 acres.

(5) If a participating city adopts the analysis, it is deemed to provide an adequate factual basis for the determination of regional large lot industrial land need for that city provided:

(a) The city and other participating local governments have entered into an intergovernmental agreement with the COIC, and

(b) The analysis is adopted by Crook, Deschutes and Jefferson Counties.

(6) Participating cities may adopt the analysis and enter into the intergovernmental agreement without amending the Economic Opportunities Analysis adopted by the city prior to the adoption of the analysis.

(7) The intergovernmental agreement shall describe the process by which the COIC shall coordinate with participating local governments in:

(a) The determination of a qualifying site that a participating city may designate in order to satisfy the regional large lot industrial land need; and

(b) The allocation of the qualifying sites among the participating cities in accordance with section (4) of this rule.

(8) A participating city may amend its comprehensive plan and land use regulations, including urban growth boundaries (UGB), in order to designate a site in accordance with the requirements of this rule, other applicable laws and the intergovernmental agreement, as follows:

(a) A participating city must show whether a suitable and available site is located within its existing UGB. If a participating city determines that a suitable site already exists within the city's urban growth boundary, that site must be designated to meet the regional industrial land need. Cities shall not be required to evaluate lands within their UGB designated to meet local industrial land needs.

(b) If a site is not designated per subsection(a), then a participating city may evaluate land outside the UGB to determine if any suitable sites exist. If candidate sites are found, the city may amend its UGB in accordance with Goal 14, other applicable laws and the intergovernmental agreement.

(9) A participating city that designates a site shall apply a regional large-lot industrial zone or overlay zone to the site in order to protect and maintain the site for regional large lot purposes. The zone or overlay zone must:

(a) Include development agreements and other provisions that prevent redesignation of the site for other uses for at least 10 years from the time the site is added to the city's comprehensive plan to meet regional large lot industrial land needs;

(b) Prohibit division or separation of lots or parcels within the site to new lots or parcels less than the minimum size of the site need until the site is developed with a primary traded sector use requiring a large lot; and

(c) Limit allowed uses on the site to the traded sector uses, except as provided in section (10) of this rule.

(10) The zone or overlay zone established under section (9) may allow:

(a) Subordinate industrial uses that rely upon and support the primary traded sector use when a site is occupied by a primary traded sector use; and

(b) Non-industrial uses serving primarily the needs of employees of industrial uses developed on the site provided the zone includes measures that limit the type, size and location of new buildings so as to ensure such non-industrial uses are intended primarily for the needs of such employees;

(11) If a participating city adds a site to its plan pursuant to this rule, it must consider the site in any subsequent urban growth boundary evaluation conducted to determine local industrial land needs and the adequacy of land available to meet local industrial land needs.

(12) A site may be considered developed or committed to industrial development if a large-lot traded sector user demonstrates a commitment to develop the site by obtaining land use approvals such as site plan review or conditional use permits, and

(a) Obtaining building permits; or

(b) Providing other evidence that demonstrates at least an equivalent commitment to industrial development of the site as is demonstrated by a building permit.

(13) The participating local governments shall review the analysis after the regional supply of six sites has either been replenished by three additional sites or after ten years, whichever comes first.

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14
Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764
Hist.: LCDD 9-2012, f. 11-26-12, cert. ef. 12-10-12

660-024-0050
Land Inventory and Response to Deficiency

(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute. For employment land, the inventory must include suitable vacant and developed land designated for industrial or other employment use, and must be conducted in accordance with OAR 660-009-0015.

(2) As safe harbors, a local government, except a city with a population over 25,000 or a metropolitan service district described in ORS 197.015(13), may use the following assumptions to inventory the capacity of buildable lands to accommodate housing needs:

(a) The infill potential of developed residential lots or parcels of one-half acre or more may be determined by subtracting one-quarter acre (10,890 square feet) for the existing dwelling and assuming that the remainder is buildable land;

(b) Existing lots of less than one-half acre that are currently occupied by a residence may be assumed to be fully developed.

(3) As safe harbors when inventorying land to accommodate industrial and other employment needs, a local government may assume that a lot or parcel is vacant if it is:

(a) Equal to or larger than one-half acre, if the lot or parcel does not contain a permanent building; or

(b) Equal to or larger than five acres, if less than one-half acre of the lot or parcel is occupied by a permanent building.

(4) If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs determined under OAR 660-024-0040, the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. If the local government determines there is a need to expand the UGB, changes to the UGB must be determined by evaluating alternative boundary locations consistent with Goal 14 and applicable rules at OAR 660-024-0060 or 660-024-0065 and 660-024-0067.

(5) In evaluating an amendment of a UGB submitted under ORS 197.626, the director or the commission may determine that a difference between the estimated 20-year needs determined under OAR 660-024-0040 and the amount of land and development capacity added to the UGB by the submitted amendment is

unlikely to significantly affect land supply or resource land protection, and as a result, may determine that the proposed amendment complies with section (4) of this rule.

(6) When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination and the requirements of section (7) of this rule, if applicable. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.

(7) Lands included within a UGB pursuant to OAR 660-024-0065(3) to provide for a particular industrial use, or a particular public facility, must be planned and zoned for the intended use and must remain planned and zoned for that use unless the city removes the land from the UGB.

(8) As a safe harbor regarding requirements concerning "efficiency," a local government that chooses to use the density and mix safe harbors in OAR 660-024-0040(8) is deemed to have met the Goal 14 efficiency requirements under:

(a) Sections (1) and (4) of this rule regarding evaluation of the development capacity of residential land inside the UGB to accommodate the estimated 20-year needs; and

(b) Goal 14 regarding a demonstration that residential needs cannot be reasonably accommodated on residential land already inside the UGB, but not with respect to:

(A) A demonstration that residential needs cannot be reasonably accommodated by rezoning non-residential land, and

(B) Compliance with Goal 14 Boundary Location factors.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325

Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0060
Metro Boundary Location Alternatives Analysis

(1) When considering a Metro UGB amendment, Metro must determine which land to add by evaluating alternative urban growth boundary locations. For Metro, this determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, Metro must determine which land in that priority is suitable to accommodate the need deficiency determined under OAR 660-024-0050.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, Metro must apply the location factors of Goal 14 to choose which land in that priority to include in the Metro UGB.

(c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, Metro must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

(d) Notwithstanding subsection (a) to (c) of this section, Metro may consider land of lower priority as specified in ORS 197.298(3).

(e) For purposes of this section, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

(2) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during a legislative review of the Metro UGB, Metro may approve an application under ORS 197.610 to 197.625 for a Metro UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

(3) The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the Metro UGB location, Metro must show that all the factors were considered and balanced.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(5) If Metro has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, Metro may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

(6) The adopted findings for a Metro UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative Metro UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation (ODOT) with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the Metro UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the Metro UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325

Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0065
Establishment of Study Area to Evaluate Land for Inclusion in the UGB

(1) When considering a UGB amendment to accommodate a need deficit identified in OAR 660-024-0050(4), a city outside of Metro must determine which land to add to the UGB by evaluating alternative locations within a "study area" established pursuant to this rule. To establish the study area, the city must first identify a "preliminary study area" which shall not include land within a different UGB or the corporate limits of a city within a different UGB. The preliminary study area shall include:

(a) All lands in the city's acknowledged urban reserve, if any;

(b) All lands that are within the following distance from the acknowledged UGB:

(A) For cities with a UGB population less than 10,000: one-half mile;

(B) For cities with a UGB population equal to or greater than 10,000: one mile;

(c) All exception areas contiguous to an exception area that includes land within the distance specified in subsection (b) and that are within the following distance from the acknowledged UGB:

(A) For cities with a UGB population less than 10,000: one mile;

(B) For cities with a UGB population equal to or greater than 10,000: one and one-half miles;

(d) At the discretion of the city, the preliminary study area may include land that is beyond the distance specified in subsections (b) and (c).

(2) A city that initiated the evaluation or amendment of its UGB prior to January 1, 2016, may choose to identify a preliminary study area applying the standard in this section rather than section (1). For such cities, the preliminary study area shall consist of:

(a) All land adjacent to the acknowledged UGB, including all land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency, and

(b) All land in the city's acknowledged urban reserve established under OAR chapter 660, division 21, if applicable.

(3) When the primary purpose for expansion of the UGB is to accommodate a particular industrial use that requires specific site characteristics, or to accommodate a public facility that requires specific site characteristics, and the site characteristics may be found in only a small number of locations, the preliminary study area may be limited to those locations within the distance described in section (1) or (2), whichever is appropriate, that have or could be improved to provide the required site characteristics. For purposes of this section:

(a) The definition of "site characteristics" in OAR 660-009-0005(11) applies for purposes of identifying a particular industrial use.

(b) A "public facility" may include a facility necessary for public sewer, water, storm water, transportation, parks, schools, or fire protection. Site characteristics may include but are not limited to size, topography and proximity.

(4) The city may exclude land from the preliminary study area if it determines that:

(a) Based on the standards in section (7) of this rule, it is impracticable to provide necessary public facilities or services to the land;

(b) The land is subject to significant development hazards, due to a risk of:

(A) Landslides: The land consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer. If the owner of a lot or parcel provides the city with a site-specific analysis by a certified engineering geologist demonstrating that development of the property would not be subject to significant landslide risk, the city may not exclude the lot or parcel under this paragraph;

(B) Flooding, including inundation during storm surges: the land is within the Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate Map (FIRM);

(C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS 455.446;

(c) The land consists of a significant scenic, natural, cultural or recreational resource described in this subsection:

(A) Land that is designated in an acknowledged comprehensive plan prior to initiation of the UGB amendment, or that is mapped on a published state or federal inventory at a scale sufficient to determine its location for purposes of this rule, as:

(i) Critical or essential habitat for a species listed by a state or federal agency as threatened or endangered;

(ii) Core habitat for Greater Sage Grouse; or

(iii) Big game migration corridors or winter range, except where located on lands designated as urban reserves or exception areas;

(B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal agency responsible for the scenic program;

(C) Designated Natural Areas on the Oregon State Register of Natural Heritage Resources;

(D) Wellhead protection areas described under OAR 660-023-0140 and delineated on a local comprehensive plan;

(E) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or Conservation management unit designated in an acknowledged comprehensive plan;

(F) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

(G) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 18, Implementation Requirement 2;

(d) The land is owned by the federal government and managed primarily for rural uses.

(5) After excluding land from the preliminary study area under section (4), the city must adjust the area, if necessary, so that it includes an amount of land that is at least twice the amount of land needed for the deficiency determined under OAR 660-024-0050(4) or, if applicable, twice the particular land need described in section (3). Such adjustment shall be made by expanding the distance specified under the applicable section (1) or (2) and applying section (4) to the expanded area.

(6) For purposes of evaluating the priority of land under OAR 660-024-0067, the "study area" shall consist of all land that remains in the preliminary study area described in section (1), (2) or (3) of this rule after adjustments to the area based on sections (4) and (5), provided that when a purpose of the UGB expansion is to accommodate a public park need, the city must also consider whether land excluded under subsection (4)(a) through (c) of this rule can reasonably accommodate the park use.

(7) For purposes of subsection (4)(a), the city may consider it impracticable to provide necessary public facilities or services to the following lands:

(a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of 25 percent or greater, provided that contiguous areas 20 acres or more that are less than 25 percent slope may not be excluded under this subsection. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

(b) Land that is isolated from existing service networks by physical, topographic, or other impediments to service provision such that it is impracticable to provide necessary facilities or services to the land within the planning period. The city's determination shall be based on an evaluation of:

(A) The likely amount of development that could occur on the land within the planning period;

(B) The likely cost of facilities and services; and,

(C) Any substantial evidence collected by or presented to the city regarding how similarly situated land in the region has, or has not, developed over time.

(c) As used in this section, "impediments to service provision" may include but are not limited to:

(A) Major rivers or other water bodies that would require new bridge crossings to serve planned urban development;

(B) Topographic features such as canyons or ridges with slopes exceeding 40 percent and vertical relief of greater than 80 feet;

(C) Freeways, rail lines, or other restricted access corridors that would require new grade separated crossings to serve planned urban development;

(D) Significant scenic, natural, cultural or recreational resources on an acknowledged plan inventory and subject to protection mea-

sures under the plan or implementing regulations, or on a published state or federal inventory, that would prohibit or substantially impede the placement or construction of necessary public facilities and services.

(8) Land may not be excluded from the preliminary study area based on a finding of impracticability that is primarily a result of existing development patterns. However, a city may forecast development capacity for such land as provided in OAR 660-024-0067(1)(d).

(9) Notwithstanding OAR 660-024-0050(4) and section (1) of this rule, except during periodic review or other legislative review of the UGB, the city may approve an application under ORS 197.610 to 197.625 for a UGB amendment to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325

Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0067

Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities

(1) A city considering a UGB amendment must decide which land to add to the UGB by evaluating all land in the study area determined under OAR 660-024-0065, as follows

(a) Beginning with the highest priority category of land described in section (2), the city must apply section (5) to determine which land in that priority category is suitable to satisfy the need deficiency determined under OAR 660-024-0050 and select for inclusion in the UGB as much of the land as necessary to satisfy the need.

(b) If the amount of suitable land in the first priority category is not sufficient to satisfy all the identified need deficiency, the city must apply section (5) to determine which land in the next priority is suitable and select for inclusion in the UGB as much of the suitable land in that priority as necessary to satisfy the need. The city must proceed in this manner until all the land need is satisfied, except as provided in OAR 660-024-0065(9).

(c) If the amount of suitable land in a particular priority category in section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by applying the criteria in section (7) of this rule.

(d) In evaluating the sufficiency of land to satisfy a need under this section, the city may use the factors identified in sections (5) and (6) of this rule to reduce the forecast development capacity of the land to meet the need.

(e) Land that is determined to not be suitable under section (5) of this rule to satisfy the need deficiency determined under OAR 660-024-0050 is not required to be selected for inclusion in the UGB unless its inclusion is necessary to serve other higher priority lands.

(2) Priority of Land for inclusion in a UGB:

(a) First Priority is urban reserve, exception land, and nonresource land. Lands in the study area that meet the description in paragraphs (A) through (C) of this subsection are of equal (first) priority:

(A) Land designated as an urban reserve under OAR chapter 660, division 21, in an acknowledged comprehensive plan;

(B) Land that is subject to an acknowledged exception under ORS 197.732; and

(C) Land that is nonresource land.

(b) Second Priority is marginal land: land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

(c) Third Priority is forest or farm land that is not predominantly high-value farm land: land within the study area that is designated for forest or agriculture uses in the acknowledged comprehensive plan and that is not predominantly high-value farmland as defined in ORS 195.300, or that does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS). In selecting which lands to include to satisfy the need, the city must use the agricultural land capability classification system or the cubic foot site class system, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic foot site class lands first.

(d) Fourth Priority is agricultural land that is predominantly high-value farmland: land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high-value farmland as defined in ORS 195.300. A city may not select land that is predominantly made up of prime or unique farm soils, as defined by the USDA NRCS, unless there is an insufficient amount of other land to satisfy its land need. In selecting which lands to include to satisfy the need, the city must use the agricultural land capability classification system to select lower capability lands first.

(3) Notwithstanding section (2)(c) or (d) of this rule, land that would otherwise be excluded from a UGB may be included if:

(a) The land contains a small amount of third or fourth priority land that is not important to the commercial agricultural enterprise in the area and the land must be included in the UGB to connect a nearby and significantly larger area of land of higher priority for inclusion within the UGB; or

(b) The land contains a small amount of third or fourth priority land that is not predominantly high-value farmland or predominantly made up of prime or unique farm soils and the land is completely surrounded by land of higher priority for inclusion into the UGB.

(4) For purposes of categorizing and evaluating land pursuant tosubsections (2)(c) and (d) and section (3) of this rule,

(a) Areas of land not larger than 100 acres may be grouped together and studied as a single unit of land;

(b) Areas of land larger than 100 acres that are similarly situated and have similar soils may be grouped together provided soils of lower agricultural or forest capability may not be grouped with soils of higher capability in a manner inconsistent with the intent of section (2) of this rule, which requires that higher capability resource lands shall be the last priority for inclusion in a UGB;

(c) Notwithstanding subsection (4)(a), if a city initiated the evaluation or amendment of its UGB prior to January 1, 2016, and if the analysis involves more than one lot or parcel or area within a particular priority category for which circumstances are reasonably similar, these lots, parcels and areas may be considered and evaluated as a single group;

(d) When determining whether the land is predominantly high-value farmland, or predominantly prime or unique, "predominantly" means more than 50 percent.

(5) With respect to section (1), a city must assume that vacant or partially vacant land in a particular priority category is "suitable" to satisfy a need deficiency identified in OAR 660-024-0050(4) unless it demonstrates that the land cannot satisfy the specified need based on one or more of the conditions described in subsections (a) through (g) of this section: Existing parcelization, lot sizes or development patterns of rural residential land make that land unsuitable for an identified employment need; as follows:

(A) Parcelization: the land consists primarily of parcels 2-acres or less in size, or

(B) Existing development patterns: the land cannot be reasonably redeveloped or infilled within the planning period due to the location of existing structures and infrastructure."

(b) The land would qualify for exclusion from the preliminary study area under the factors in OAR 660-024-0065(4) but the city declined to exclude it pending more detailed analysis.

(c) The land is, or will be upon inclusion in the UGB, subject to natural resources protections under Statewide Planning Goal 5 such that that no development capacity should be forecast on that land to meet the land need deficiency.

(d) With respect to needed industrial uses only, the land is over 10 percent slope, or is an existing lot or parcel that is smaller than 5 acres in size, or both. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals.

(e) With respect to a particular industrial use or particular public facility use described in OAR 660-024-0065(3), the land does not have, and cannot be improved to provide, one or more of the required specific site characteristics.

(f) The land is subject to a conservation easement described in ORS 271.715 that prohibits urban development.

(g) The land is committed to a use described in this subsection and the use is unlikely to be discontinued during the planning period:

(A) Public park, church, school, or cemetery, or

(B) Land within the boundary of an airport designated for airport uses, but not including land designated or zoned for residential, commercial or industrial uses in an acknowledged comprehensive plan.

(6) For vacant or partially vacant lands added to the UGB to provide for residential uses:

(a) Existing lots or parcels one acre or less may be assumed to have a development capacity of one dwelling unit per lot or parcel. Existing lots or parcels greater than one acre but less than two acres shall be assumed to have an aggregate development capacity of two dwelling units per acre.

(b) In any subsequent review of a UGB pursuant to this division, the city may use a development assumption for land described in subsection (a) of this section for a period of up to 14 years from the date the lands were added to the UGB.

(7) Pursuant to subsection (1)(c), if the amount of suitable land in a particular priority category under section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by first applying the boundary location factors of Goal 14 and then applying applicable criteria in the acknowledged comprehensive plan and land use regulations acknowledged prior to initiation of the UGB evaluation or amendment. The city may not apply local comprehensive plan criteria that contradict the requirements of the boundary location factors of Goal 14. The boundary location factors are not independent criteria; when the factors are applied to compare alternative boundary locations and to determine the UGB location the city must show that it considered and balanced all the factors. The criteria in this section may not be used to select lands designated for agriculture or forest use that have higher land capability or cubic foot site class, as applicable, ahead of lands that have lower capability or cubic foot site class.

(8) The city must apply the boundary location factors of Goal 14 in coordination with service providers and state agencies, including the Oregon Department of Transportation (ODOT) with respect to Factor 2 regarding impacts on the state transportation system, and the Oregon Department of Fish and Wildlife (ODFW) and the Department of State Lands (DSL) with respect to Factor 3 regarding environmental consequences. "Coordination" includes timely notice to agencies and service providers and consideration of any recommended evaluation methodologies.

(9) In applying Goal 14 Boundary Location Factor 2 to evaluate alternative locations under section (7), the city must compare relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. For purposes of this section, the term "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities. The evaluation and comparison under Boundary Location Factor 2 must consider:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

(10) The adopted findings for UGB amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325

Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0070
UGB Adjustments

(1) A local government may adjust the UGB at any time to better achieve the purposes of Goal 14 and this division. Such adjustment may occur by adding or removing land from the UGB, or by exchanging land inside the UGB for land outside the UGB. The requirements of section (2) of this rule apply when removing land from the UGB. The requirements of Goal 14 and this division[and ORS 197.298] apply when land is added to the UGB, including land added in exchange for land removed. The requirements of ORS 197.296 may also apply when land is added to a UGB, as specified in that statute. If a local government exchanges land inside the UGB for land outside the UGB, the applicable local government must adopt appropriate rural zoning designations for the land removed from the UGB prior to or at the time of adoption of the UGB amendment and must apply applicable location and priority provisions of OAR 660-024-0060 through 660-020-0067.

(2) A local government may remove land from a UGB following the procedures and requirements of ORS 197.764. Alternatively, a local government may remove land from the UGB following the procedures and requirements of 197.610 to 197.650, provided it determines:

(a) The removal of land would not violate applicable statewide planning goals and rules;

(b) The UGB would provide a 20-year supply of land for estimated needs after the land is removed, or would provide roughly the same supply of buildable land as prior to the removal, taking into consideration land added to the UGB at the same time;

(c) Public facilities agreements adopted under ORS 195.020 do not intend to provide for urban services on the subject land unless the public facilities provider agrees to removal of the land from the UGB and concurrent modification of the agreement;

(d) Removal of the land does not preclude the efficient provision of urban services to any other buildable land that remains inside the UGB; and

(e) The land removed from the UGB is planned and zoned for rural use consistent with all applicable laws.

(3) Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided a basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

(a) The amount of buildable land added to the UGB to meet:

(A) A specific type of residential need is substantially equivalent to the amount of buildable residential land removed, or

(B) The amount of employment land added to the UGB to meet an employment need is substantially equivalent to the amount of employment land removed, and

(b) The local government must apply comprehensive plan designations and, if applicable, urban zoning to the land added to the UGB, such that the land added is designated:

(A) For the same residential uses and at the same housing density as the land removed from the UGB, or

(B) For the same employment uses as allowed on the land removed from the UGB, or

(C) If the land exchange is intended to provide for a particular industrial use that requires specific site characteristics, only land zoned for commercial or industrial use may be removed, and the

land added must be zoned for the particular industrial use and meet other applicable requirements of ORS 197A.320(6).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14
Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0080
LCDC Review Required for UGB Amendments

A metropolitan service district that amends its UGB to include more than 100 acres, or a city with a population of 2,500 or more within its UGB that amends the UGB to include more than 50 acres shall submit the amendment to the Commission in the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175.

Stat. Auth.: ORS 197.040, Other Auth. Statewide Planning Goal 14
Stats. Implemented: ORS 197.626
Hist.: LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09

DIVISION 25

PERIODIC REVIEW

660-025-0010
Purpose

The purpose of this division is to carry out the state policy outlined in ORS 197.010 and 197.628. This division is intended to implement provisions of ORS 197.626 through 197.651. The purpose for periodic review is to ensure that comprehensive plans and land use regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, the commission's rules and applicable land use statutes. Periodic review also is intended to ensure that local government plans and regulations make adequate provision for economic development, needed housing, transportation, public facilities and services, and urbanization, and that local plans are coordinated as described in ORS 197.015(5). Periodic Review is a cooperative planning process that includes the state and its agencies, local governments, and other interested persons.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.010, 197.626 - 197.651
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0020
Definitions

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

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

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

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

(4) "Objection" means a written complaint concerning the adequacy of an evaluation, proposed work program, or completed work task.

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

(6) "Regional Solutions Team" means a team described in ORS 284.754.

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

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.015 & 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0030
Periodic Review Schedule

(1) The commission must approve, and update as necessary, a schedule for periodic review. The schedule must include the date when the department, pursuant to ORS 197.629, must send a local government a letter requesting the local government to commence the periodic review process.

(2) The schedule developed by the commission must reflect the following:

(a) A city with a population of more than 2,500 within a metropolitan planning organization or a metropolitan service district shall conduct periodic review every seven years after completion of the previous periodic review.

(b) A city with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization shall conduct periodic review every 10 years after completion of the previous periodic review.

(c) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(d) Notwithstanding subsection (c) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(3) The commission may establish a schedule that varies from the standards in section (2) of this rule if necessary to coordinate approved periodic review work programs or to account for special circumstances. The commission may schedule a local government's periodic review earlier than provided in section (2) of this rule if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently, but not sooner than five years after completion of the previous periodic review.

(4) The director must maintain and implement the schedule. Copies of the schedule must be provided upon request.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0035
Initiating Periodic Review Outside the Schedule

(1) A local government may request, and the commission may approve, initiation of periodic review not otherwise provided for in the schedule established under OAR 660-025-0030. The request must be submitted to the commission along with justification for the requested action. The justification must include a statement of local circumstances that warrant periodic review and identification of the statewide planning goals to be addressed.

(2) A city may request, and the commission may approve, initiation of periodic review for the limited purpose of completing changes to proposed amendments to a comprehensive plan and

land use regulations required on remand after review by the commission in the manner provided for review of a work task under ORS 197.626(1)(b) and OAR 660-025-0175(1)(b). If periodic review is initiated under this section, the city may adopt, and the director may approve, a work program that includes only the changes required on remand.

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0040
Exclusive Jurisdiction of LCDC

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 195.145, 197.628 - 197.646, 197.825, 197A.325
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0050
Commencing Periodic Review

(1) The department must commence the periodic review process by sending a letter to the local government pursuant to OAR 660-025-0030 or 660-025-0035. The department may provide advance notice to a local government of the upcoming review and must encourage local governments to review their citizen involvement provisions prior to beginning periodic review.

(2) The periodic review commencement letter must include the following information:

(a) A description of the requirements for citizen involvement, evaluation of the plan and preparation of a work program;

(b) The date the local government must submit the evaluation and work program or evaluation and decision that no work program is required;

(c) Applicable evaluation forms; and

(d) Other information the department considers relevant.

(3) The director must provide copies of the materials sent to the local government to interested persons upon written request.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0060
Periodic Review Assistance Team(s)

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

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

(a) Information relevant to the periodic review process;

(b) New and updated information;

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

(d) Coordinated evaluation and comment from state agencies.

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

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

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

(6) In addition to the Periodic Review Assistance Team(s), the department may utilize the Regional Solutions Team or institute an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0070
Need for Periodic Review

(1) The following conditions indicate the need for periodic review of comprehensive plans and land use regulations when periodic review is required under OAR 660-025-0030:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings, or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(b) Decisions based on acknowledged comprehensive plan and land use regulations are inconsistent with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(c) There are issues of regional or statewide significance, intergovernmental coordination, or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization; or

(d) The local government, commission or department determines that the existing comprehensive plan and land use regulations are not achieving the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization.

(2) When a local government requests initiation of periodic review under OAR 660-025-0035, the need for periodic review may be based on factors not contained in section (1) of this rule and the scope of such a periodic review may be more limited than would be the case for scheduled periodic review under section (1) of this rule.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0080
Notice and Citizen Involvement

(1) The local government must use its acknowledged citizen involvement program, or amend the program if necessary consistent with section (2) of this rule, to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government must publish a notice in a newspaper of general circulation within the community informing citizens about the initiation of the local periodic review. The local government must also provide written notice of the initiation of the local periodic review to persons who request, in writing, such notice.

(2) Each local government must review its citizen involvement program at the beginning of its periodic review and, if necessary, amend the program to ensure it will provide adequate opportunities for citizen involvement in all phases of the periodic review process. Citizen involvement opportunities must, at a minimum, include:

(a) Interested persons must have the opportunity to review materials in advance and to comment in writing in advance of or at one or more hearings on the periodic review evaluation. Citizens and other interested persons must have the opportunity to present comments orally at one or more hearings on the periodic review evaluation. Citizens and other interested persons must have the opportunity to propose periodic review work tasks prior to or at one or more hearings. The local government must provide a response to comments at or following the hearing on the evaluation.

(b) Interested persons must have the opportunity to review materials in advance and to comment in writing in advance of or at one or more hearings on a periodic review work task. Citizens and other interested persons must have the opportunity to present comments orally at one or more hearings on a periodic review work task. The local government must respond to comments at or following the hearing on a work task.

(3) A local government proposing to change an acknowledged comprehensive plan or a land use regulation under a work task must provide notice of the proposed change to the department 35 days in advance of the first evidentiary hearing, as provided in ORS 197.610 and OAR 660-018-0020.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0085
Commission Hearings Notice and Procedures

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

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

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

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

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

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

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

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

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

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

(c) Participation in the hearing is limited to:

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

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

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

(D) Other affected local governments.

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0090
Evaluation, Work Program or Decision that No Work Is Necessary

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

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

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

(c) The local government may provide opportunities for participation by the Regional Solutions Team.

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

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

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

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

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

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

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

(4) A decision by the director to deny a request for an extension may be appealed to the commission according to the procedures in OAR 660-025-0110(5), or the director may refer a

request for extension under section (3) of this rule to the commission pursuant to OAR 660-025-0085.

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0100
Notice and Filing of Objections (Work Program Phase)

(1) After the local government approves the evaluation and work program, or the evaluation and decision that no work program is necessary, the local government must notify the department and persons who participated at the local level orally or in writing during the local process. The local government notice must contain the following information:

(a) Where a person can review a copy of the local government's evaluation and work program or the evaluation and decision that no work program is necessary, and how a person may obtain a copy of the decision;

(b) The requirements listed in section (2) of this rule for filing a valid objection to the evaluation, work program or decision that no work program is necessary; and

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

(2) Persons who participated at the local level orally or in writing during the local process leading to the evaluation and work program or decision that no work program is necessary may object to the local government's decision. To be valid, an objection must:

(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the notice was mailed by the local government;

(b) Clearly identify an alleged deficiency in the evaluation, work program or decision that no work program is necessary;

(c) Suggest a specific work task that would resolve the deficiency;

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

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

(4) If the department does not receive any valid objections within the 21-day objection period, the director may approve the evaluation and work program or decision that no work program is required. Regardless of whether valid objections are received, the department must make its own determination of the sufficiency of the evaluation and work program or determination that no work program is necessary.

(5) If the department receives one or more valid objections, the department must issue a report that addresses the issues raised in valid objections. The report must identify specific work tasks to resolve valid objections or department concerns. A valid objection must either be sustained or rejected by the department or commission based on the statewide planning goals and related statutes and administrative rules.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0110
Director and Commission Action (Work Program Phase)

(1) In response to an evaluation and work program submitted to the department pursuant to OAR 660-025-0100, the director may:

(a) Issue an order approving the evaluation and work program or determination that no work program is necessary; or

(b) Issue an order rejecting the evaluation and work program or determination that no work program is necessary and suggest modifications to the local government including a date for resubmittal.

(2) The director may postpone action, pursuant to section (1) of this rule to allow the department, the jurisdiction, objectors or other persons who participated orally or in writing at the local level to reach agreement on specific issues relating to the evaluation and work program or determination that no work program is necessary.

(3) The director must provide written notice of the decision to the local government persons who filed objections, and persons who requested notice of the local government decision.

(4) The director's decision to approve an evaluation and work program or determination that no work program is necessary is final and may not be appealed.

(5) The director's decision to deny an evaluation and work program or determination that no work program is necessary may be appealed to the commission by the local government, or a person who filed an objection, or other person who participated orally or in writing at the local level.

(a) Appeal of the director's decision must be filed with the department within 21 days of the date notice of the director's action was mailed;

(b) A person appealing the director's decision must show that the person participated in the local government decision. The person appealing the director's decision must show a deficiency in the director's decision to deny the evaluation, work program or decision that no work program is necessary. The person appealing the director's decision also must suggest a specific modification to the evaluation, work program or decision that no work program is necessary to resolve the alleged deficiency.

(6) If no such appeal is filed, the director's decision shall be final.

(7) In response to an appeal, the director may prepare and submit a report to the commission. The provisions in OAR 660-025-0160(4) and (5) apply.

(8) The commission shall hear referrals and appeals of evaluations and work programs according to the procedures in OAR 660-025-0085.

(9) Following its hearing, the commission must issue an order that either:

(a) Establishes a work program; or

(b) Determines that no work program is necessary.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0130
Submission of Completed Work Task

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

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

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

(a) If the local record does not exceed 2,000 pages, a submittal must include the entire local record, including but not limited to adopted ordinances and orders, studies, inventories, findings, staff

reports, correspondence, hearings minutes, written testimony and evidence, and any other items specifically listed in the work program;

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0140
Notice and Filing of Objections (Work Task Phase)

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

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

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

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

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

(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the local government sent the notice;

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.626 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0150
Director Action and Appeal of Director Action (Work Task Phase)

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

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

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

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

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

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

(3) The director shall take action on, and the order or referral must be sent, not later than 120 days of the date the department received the task submittal from the local government, unless the

local government waives the 120-day deadline or the commission grants the director an extension. The local government may withdraw the submittal, in which case the 120-day deadline does not apply, provided the withdrawal will not result in the local government passing the deadline for work task submittal in the work program and any extension allowed in OAR 660-025-0130(6).

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

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

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

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

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

(c) Appeals of a director's decision must be filed with the department's Salem office within 21 days of the date the director's action was sent;

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

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

(B) Clearly identify a deficiency in the work task or plan amendment sufficiently to identify the relevant section of the submittal and the statute, goal, or administrative rule the local government is alleged to have violated; and

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

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

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

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.626 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0160
Commission Review of Referrals and Appeals (Work Task Phase)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.626 - 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0170
Modification of an Approved Work Program, Extensions, and Sanctions for Failure to Meet Deadlines

(1) The commission may direct, or, upon request of the local government, the director may authorize, a local government to modify an approved work program when:

(a) Issues of regional or statewide significance arising out of another local government's periodic review requires an enhanced level of coordination;

(b) Issues of goal compliance are raised as a result of completion of a work task resulting in a need to undertake further review or revisions;

(c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or

(d) Issues relating to needed housing, economic development, transportation, public facilities and services, or urbanization were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) Failure to complete a modified work task shall constitute failure to complete a work task by the specified deadline, requiring the director to initiate a hearing before the commission according to the procedures in section (3).

(3) If a local government fails to submit its evaluation and work program, a decision that no work program is necessary, or a work task by the deadline set by the director or the commission, including any extension, the director shall schedule a hearing before the commission. The notice must state the date and location at which the commission will conduct the hearing. The hearing will be conducted pursuant to OAR 660-025-0085 and as follows:

(a) The director shall notify the local government in writing that its submittal is past due and that the commission will conduct a hearing and consider imposing sanctions against the local government as required by ORS 197.636(2);

(b) The director and the local government may prepare written statements to the commission addressing the circumstances causing the local government to miss the deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The written statements must be filed in a manner and according to a schedule established by the director;

(c) The commission shall issue an order imposing one or more of the sanctions listed in ORS 197.636(2) until the local government submits its evaluation and work program or its decision that no work program is required, or its work task required under OAR 660-025-0130, as follows:

(A) Require the local government to apply those portions of the goals and rules to land use decisions as specified in an order issued by the commission,

(B) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task,

(C) Completion of the work program or work task by the department. The commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335(4),

(D) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0175
Review of UGB Amendments and Urban Reserve Area Designations

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

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

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

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

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

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

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

(2) The standards and procedures in this rule govern the local government process and submittal, and department and commission review.

(3) The local government must provide notice of the proposed amendment according to the procedures and requirements for post-acknowledgement plan amendments in ORS 197.610 and OAR 660-018-0020.

(4) The local government must submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

(5) Department and commission review and decision on the submittal from the local government must follow the procedures and requirements for review and decision of a work task submittal in OAR 660-025-0085, and 660-025-0140 to 660-025-0160.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.145, 197.626 – 197.646, 197A.325
Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12; LCDD 2-2016, f. & cert. ef. 2-10-16

660-025-0180
Stay Provisions

(1) When a local government makes a final decision on a work task or portion of a work task that is required by, or carries out, an approved work program, or if the local government is required to submit a final decision to the department under OAR 660-025-0175(1), interested persons may request a stay of the local government's final decision by filing a request for a stay with the commission. In taking an action on a request to stay a local government's final decision on a work task, the commission must use the standards and procedures contained in OAR chapter 660, division 1.

(2) The director may grant a temporary stay of a final decision on a local government decision described in section (1) of this rule. A temporary stay must meet applicable stay requirements of the Administrative Procedures Act. A temporary stay issued by the director shall only be effective until the commission has acted on a stay request pursuant to section (1) of this rule.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0210
Updated Planning Documents

(1) Pursuant to ORS 195.025 and 195.040 and the legislative policy described in ORS 197.010 and 197.633, each local government must file a complete and accurate copy of its comprehensive plan and land use regulations bearing the date of adoption (including plan and zone maps bearing the date of adoption) with the department following completion of periodic review. These materials may be either a new printing or an up-to-date compilation of the required materials, and must include data described in OAR 660-018-0040(4), if applicable.

(2) Local governments that create or alter zoning or comprehensive plan maps as geospatial data are encouraged but not required to share this data with the department, except for geospatial data describing an urban growth boundary or urban or rural reserve that is created or altered under a completed work task, in which case the submission must include electronic geospatial data depicting the boundary change. Geospatial data submitted to the department must comply with the following standards endorsed by the Oregon Geographic Information Council:

(a) The data must be in an electronic format compatible with the State's Geographic Information System software standard described in OAR 125-600-7550; and

(b) The data must be accompanied by metadata that meets at least the minimum requirements of the federal Content Standard for Digital Geospatial Metadata.

(3) Materials described in sections (1) and (2) of this rule must be submitted to the department within six months of completion of the last work task.

(4) The updated plan must be accompanied by a statement signed by a city or county official certifying that the materials are an accurate copy of current planning documents and that they reflect the changes made as part of periodic review.

(5) Jurisdictions that do not file an updated plan on time shall not be eligible for periodic review grants from the department until such time as the required materials are provided to the department.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.190, 197.270 & 197.628 -197.646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0220
Computation of Time

(1) For the purposes of OAR chapter 660, division 25, periodic review rule, unless otherwise provided by rule, the time to complete required tasks, notices, objections, and appeals shall be computed as follows. The first day of the designated period to complete the task, notice, objection or appeal shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday under ORS 187.010 or 187.020. In that event the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday. When the period of time to complete the task is less than seven (7) days, intervening Saturdays, Sundays or legal holidays shall not be counted.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 174.120, 187.010, 187.020, 197.628 - 197.650
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0230
Applicability

(1) Except as otherwise required by law, amendments to this division apply as follows:

(a) Local governments in periodic review that have not submitted an evaluation and work program, or decision that no work program is required, must apply the amendments to the evaluation and work program or decision that no work program is required;

(b) Local governments in periodic review must apply amendments to work tasks not completed or submitted to the department on the effective date of the amendments;

(c) The commission may modify approved work programs to carry out the priorities and standards reflected in amendments;

(d) The procedures and standards in amendments for department and commission review and action on periodic review submittals, requests for extensions, and late submittals apply to all such submittals and requests filed with the department after the effective date of the amendments, as well as any such submittals and requests awaiting initial department action on the effective date of the amendments.

Stat. Auth.: ORS 197.040-197.245
Stats. Implemented: ORS 197.628 - 197.646
Hist.: LCDD 3-2000, f. & cert. ef. 2-14-00; LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12

660-025-0250
Transfer of Matters to the Land Use Board of Appeals

(1) The director may elect to transfer a matter to the Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A), including but not limited to an appeal of the director's decision pursuant to OAR 660-025-0150(6).

(2) The director may transfer matters to the board when:

(a) The matter is an urban growth boundary expansion approved by the local government based on a quasi-judicial land use application and does not require an interpretation of first impression of statewide planning Goal 14, ORS 197.296 or 197.298; or

(b)(A) The matter concerns a provision of law not directly related to compliance with a statewide planning goal;

(B) The matter is an appeal of the director's decision and concerns a clearly identified provision of the work task submittal that is alleged to violate a provision of law and clearly identifies the provision of law that is alleged to have been violated; and

(C) The matter is sufficiently well-defined such that it can be separated from other issues in the work task that are not transferred to the board.

(3) When the director elects to transfer a matter to the board, notice of the decision must be sent to the local jurisdiction, the appellant, any objectors, and the board. The notice shall include identification of the matter to be transferred and explanation of the procedures and deadline for appeal of the matter to the board.

(4) The director's decision under this rule is final and may not be appealed.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.825
Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 4-2012, f. & cert. ef. 2-14-12

DIVISION 27

URBAN AND RURAL RESERVES IN THE PORTLAND METROPOLITAN AREA

660-027-0005
Purpose and Objective

(1) This division is intended to implement the provisions of Oregon Laws 2007, chapter 723 regarding the designation of urban reserves and rural reserves in the Portland metropolitan area. This division provides an alternative to the urban reserve designation process described in OAR chapter 660, division 21. This division establishes procedures for the designation of urban and rural reserves in the metropolitan area by agreement between and among local governments in the area and by amendments to the applicable regional framework plan and comprehensive plans. This division also prescribes criteria and factors that a county and Metro must apply when choosing lands for designation as urban or rural reserves.

(2) Urban reserves designated under this division are intended to facilitate long-term planning for urbanization in the Portland metropolitan area and to provide greater certainty to the agricultural and forest industries, to other industries and commerce, to private landowners and to public and private service providers, about the locations of future expansion of the Metro Urban Growth Boundary. Rural reserves under this division are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features that limit urban devel-

opment or define natural boundaries of urbanization. The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.

Stat. Auth.: ORS 195.141, 197.040.
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

660-027-0010
Definitions

The definitions contained in ORS chapters 195 and 197 and the Statewide Planning Goals (OAR chapter 660, division 15) apply to this division, unless the context requires otherwise. In addition, the following definitions apply:

(1) "Foundation Agricultural Lands" means those lands mapped as Foundation Agricultural Lands in the January 2007 Oregon Department of Agriculture report to Metro entitled "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands."

(2) "Important Agricultural Lands" means those lands mapped as Important Agricultural Lands in the January 2007 Oregon Department of Agriculture report to Metro entitled "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands."

(3) "Intergovernmental agreement" means an agreement between Metro and a county pursuant to applicable requirements for such agreements in ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658, and in accordance with the requirements in this division regarding the designation of urban and rural reserves and the performance of related land use planning and other activities pursuant to such designation.

(4) "Livable communities" means communities with development patterns, public services and infrastructure that make them safe, healthy, affordable, sustainable and attractive places to live and work.

(5) "Metro" means a metropolitan service district organized under ORS chapter 268.

(6) "Important natural landscape features" means landscape features that limit urban development or help define appropriate natural boundaries of urbanization, and that thereby provide for the long-term protection and enhancement of the region's natural resources, public health and safety, and unique sense of place. These features include, but are not limited to, plant, fish and wildlife habitat; corridors important for ecological, scenic and recreational connectivity; steep slopes, floodplains and other natural hazard lands; areas critical to the region's air and water quality; historic and cultural areas; and other landscape features that define and distinguish the region.

(7) "Public facilities and services" means sanitary sewer, water, transportation, storm water management facilities and public parks.

(8) "Regional framework plan" means the plan adopted by Metro pursuant to ORS 197.015(17).

(9) "Rural reserve" means lands outside the Metro UGB, and outside any other UGB in a county with which Metro has an agreement pursuant to this division, reserved to provide long-term protection for agriculture, forestry or important natural landscape features.

(10) "UGB" means an acknowledged urban growth boundary established under Goal 14 and as defined in ORS 195.060(2).

(11) "Urban reserve" means lands outside an urban growth boundary designated to provide for future expansion of the UGB over a long-term period and to facilitate planning for the cost-effective provision of public facilities and services when the lands are included within the urban growth boundary.

(12) "Walkable" describes a community in which land uses are mixed, built compactly, and designed to provide residents, employees and others safe and convenient pedestrian access to schools, offices, businesses, parks and recreation facilities, libraries and other places that provide goods and services used on a regular basis.

Stat. Auth.: ORS 195.141, 197.040.
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

660-027-0020
Authority to Designate Urban and Rural Reserves

(1) As an alternative to the authority to designate urban reserve areas granted by OAR chapter 660, division 21, Metro may designate urban reserves through intergovernmental agreements with counties and by amendment of the regional framework plan to implement such agreements in accordance with the requirements of this division.

(2) A county may designate rural reserves through intergovernmental agreement with Metro and by amendment of its comprehensive plan to implement such agreement in accordance with the requirements of this division.

(3) A county and Metro may not enter into an intergovernmental agreement under this division to designate urban reserves in the county unless the county and Metro simultaneously enter into an agreement to designate rural reserves in the county.

Stat. Auth.: ORS 195.141, 197.040.
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

660-027-0030
Urban and Rural Reserve Intergovernmental Agreements

(1) An intergovernmental agreement between Metro and a county to establish urban reserves and rural reserves under this division shall provide for a coordinated and concurrent process for Metro to adopt regional framework plan provisions, and for the county to adopt comprehensive plan and zoning provisions, to implement the agreement. The agreement shall provide for Metro and the county to concurrently designate urban reserves and rural reserves, as specified in OAR 660-027-0040.

(2) In the development of an intergovernmental agreement described in this division, Metro and a county shall follow a coordinated citizen involvement process that provides for broad public notice and opportunities for public comment regarding lands proposed for designation as urban and rural reserves under the agreement. Metro and the county shall provide the State Citizen Involvement Advisory Committee an opportunity to review and comment on the proposed citizen involvement process.

(3) An intergovernmental agreement made under this division shall be deemed a preliminary decision that is a prerequisite to the designation of reserves by amendments to Metro's regional framework plan and amendments to a county's comprehensive plan pursuant to OAR 660-027-0040. Any intergovernmental agreement made under this division shall be submitted to the Commission with amendments to the regional framework plan and county comprehensive plans as provided in OAR 660-027-0080(2) through (4).

Stat. Auth.: ORS 195.141, 197.040.
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

660-027-0040
Designation of Urban and Rural Reserves

(1) Metro may not designate urban reserves under this division in a county until Metro and applicable counties have entered into an intergovernmental agreement that identifies the lands to be designated by Metro as urban reserves. A county may not designate rural reserves under this division until the county and Metro have entered into an agreement that identifies the lands to be designated by the county as rural reserves.

(2) Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for

which the urban reserves are intended to provide a supply of land, based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of years. The 20 to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OAR 660-027-0030.

(3) If Metro designates urban reserves under this division prior to December 31, 2009, it shall plan the reserves to accommodate population and employment growth for at least 20 years, and not more than 30 years, beyond 2029. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land.

(4) Neither Metro nor a local government may amend a UGB to include land designated as rural reserves during the period described in section (2) or (3) of this rule, whichever is applicable.

(5) Metro shall not re-designate rural reserves as urban reserves, and a county shall not re-designate land in rural reserves to another use, except as provided in OAR 660-027-0070, during the period described in section (2) or (3) of this rule, whichever is applicable.

(6) If Metro designates urban reserves under this division it shall adopt policies to implement the reserves and must show the reserves on its regional framework plan map. A county in which urban reserves are designated shall adopt policies to implement the reserves and must show the reserves on its comprehensive plan and zone maps.

(7) If a county designates rural reserves under this division it shall adopt policies to implement the reserves and must show the reserves on its comprehensive plan and zone maps. Metro shall adopt policies to implement the rural reserves and show the reserves on its regional framework plan maps.

(8) When evaluating and designating land for urban reserves, Metro and a county shall apply the factors of OAR 660-027-0050 and shall coordinate with cities, special districts and school districts that might be expected to provide urban services to these reserves when they are added to the UGB, and with state agencies.

(9) When evaluating and designating land for rural reserves, Metro and a county shall apply the factors of OAR 660-027-0060 and shall coordinate with cities, special districts and school districts in the county, and with state agencies.

(10) Metro and any county that enters into an agreement with Metro under this division shall apply the factors in OAR 660-027-0050 and 660-027-0060 concurrently and in coordination with one another. Metro and those counties that lie partially within Metro with which Metro enters into an agreement shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule.

(11) Because the January 2007 Oregon Department of Agriculture report entitled "Identification and Assessment of the Long-Term Commercial viability of Metro Region Agricultural Lands" indicates that Foundation Agricultural Land is the most important land for the viability and vitality of the agricultural industry, if Metro designates such land as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division.

Stat. Auth.: ORS 195.141, 197.040.
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 10-2010, f. & cert. ef. 10-20-10

660-027-0050
Factors for Designation of Lands as Urban Reserves

Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;

(2) Includes sufficient development capacity to support a healthy economy;

(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;

(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;

(5) Can be designed to preserve and enhance natural ecological systems;

(6) Includes sufficient land suitable for a range of needed housing types;

(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and

(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.

Stat. Auth.: ORS 195.141, 197.040
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

660-027-0060
Factors for Designation of Lands as Rural Reserves

(1) When identifying and selecting lands for designation as rural reserves under this division, a county shall indicate which land was considered and designated in order to provide long-term protection to the agriculture and forest industries and which land was considered and designated to provide long-term protection of important natural landscape features, or both. Based on this choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or both.

(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation.

(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;

(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;

(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and

(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:

(A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;

(B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;

(C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and

(D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.

(3) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to protect important natural landscape features, a county must consider those areas identified in Metro's February 2007 "Natural Landscape Features Inventory" and other pertinent information, and shall base its decision on consideration of whether the lands proposed for designation:

(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described OAR 660-027-0040(2) or (3);

(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;

(c) Are important fish, plant or wildlife habitat;

(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;

(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;

(f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses

(g) Provide for separation between cities; and

(h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks.

(4) Notwithstanding requirements for applying factors in OAR 660-027-0040(9) and section (2) of this rule, a county may deem that Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB qualify for designation as rural reserves under section (2) without further explanation under OAR 660-027-0040(10).

Stat. Auth.: ORS 195.141, 197.040.
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

660-027-0070
Planning of Urban and Rural Reserves

(1) Urban reserves are the highest priority for inclusion in the urban growth boundary when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS 197.298.

(2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB, except as specified in sections (4) through (6) of this rule.

(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may adopt or amend comprehensive plan provisions or land use regulations as they apply to lands in urban reserves, rural reserves or both, unless an exception to Goals 3, 4, 11 or 14 is required, in order to allow:

(a) Uses that the county inventories as significant Goal 5 resources, including programs to protect inventoried resources as provided under OAR chapter 660, division 23, or inventoried cultural resources as provided under OAR chapter 660, division 16;

(b) Public park uses, subject to the adoption or amendment of a park master plan as provided in OAR chapter 660, division 34;

(c) Roads, highways and other transportation and public facilities and improvements, as provided in ORS 215.213 and 215.283, OAR 660-012-0065, and 660-033-0130 (agricultural land) or OAR chapter 660, division 6 (forest lands);

(d) Other uses and land divisions that a county could have allowed under ORS 215.130(5) – (11) or as an outright permitted use or as a conditional use under ORS 215.213 and 215.283 or Goal 4 if the county had amended its comprehensive plan to conform to the applicable state statute or administrative rule prior to its designation of rural reserves;

(5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in an urban or rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the subject property as urban or rural reserves, in order to authorize an alteration or expansion of uses or lot or parcel sizes allowed on the land under the exception provided:

(a) The alteration or expansion would comply with the requirements described in ORS 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;

(b) The alteration or expansion conforms to applicable requirements for exceptions and amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws;

(c) The alteration or expansion would not expand the boundaries of the exception area unless such alteration or expansion is necessary in response to a failing on-site wastewater disposal system; and

(d) An alteration to allow creation of smaller lots or parcels than was allowed on the land under the exception complies with the requirements of OAR chapter 660, division 29.

(6) Notwithstanding the prohibitions in sections (2) through (5) of this rule, a county may amend its comprehensive plan or land use regulations as they apply to lands in urban reserves or rural reserves or both in order to allow establishment of a new sewer system or the extension of a sewer system provided the exception meets the requirements under OAR 660-011-0060(9)(a).

(7) Notwithstanding the prohibition in sections (2) and (4) of this rule, a county may take an exception to a statewide land use planning goal in order to allow:

(a) The establishment of a transportation facility in an area designated as urban reserve; or

(b) Modifications to an unconstructed transportation facility that was authorized in an exception prior to February 13, 2008. In addition to the requirements of OAR 660-012-0070, county approval of an exception authorized in this subsection shall demonstrate that the modifications have an equal or lesser impact than the unconstructed transportation facility on lands devoted to farm or forest use, considering the impacts of the identified alternatives on: farm and forest practices; farm and forest lands, structures and facilities; the movement of farm and forest vehicles and equipment; and access to parcels created on farm and forest lands.

(8) Counties, cities and Metro may adopt and amend conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services, roads, highways and other transportation facilities, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area.

(9) Metro shall ensure that lands designated as urban reserves, considered alone or in conjunction with lands already inside the UGB, are ultimately planned to be developed in a manner that is consistent with the factors in OAR 660-027-0050.

Stat. Auth.: ORS 195.141 & 197.040
Stats. Implemented: ORS 195.137-195.145 & 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 3-2010, f. 4-29-10, cert. ef. 4-30-10; LCDD 10-2010, f. & cert. ef. 10-20-10; LCDD 5-2012, f. & cert. ef. 2-14-12; LCDD 3-2015, f. & cert. ef. 4-27-15; LCDD 5-2016, f. & cert. ef. 2-10-16

660-027-0080
Local Adoption and Commission Review of Urban and Rural Reserves

(1) Metro and county adoption or amendment of plans, policies and other implementing measures to designate urban and

rural reserves shall be in accordance with the applicable procedures and requirements of ORS 197.610 to 197.650.

(2) After designation of urban and rural reserves, Metro and applicable counties shall jointly and concurrently submit their adopted or amended plans, policies and land use regulations implementing the designations to the Commission for review and action in the manner provided for periodic review under ORS 197.628 to 197.650.

(3) Metro and applicable counties shall:

(a) Transmit the intergovernmental agreements and the submittal described in section (2) in one or more suitable binders showing on the outside a title indicating the nature of the submittal and identifying the submitting jurisdictions.

(b) Prepare and include an index of the contents of the submittal. Each document comprising the submittal shall be separately indexed; and

(c) Consecutively number pages of the submittal at the bottom of the page, commencing with the first page of the submittal.

(4) The joint and concurrent submittal to the Commission shall include findings of fact and conclusions of law that demonstrate that the adopted or amended plans, policies and other implementing measures to designate urban and rural reserves comply with this division, the applicable statewide planning goals, and other applicable administrative rules. The Commission shall review the submittal for:

(a) Compliance with the applicable statewide planning goals. Under ORS 197.747 "compliance with the goals" means the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. To determine compliance with the Goal 2 requirement for an adequate factual base, the Commission shall consider whether the submittal is supported by substantial evidence. Under ORS 183.482(8)(c), substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding;

(b) Compliance with applicable administrative rules, including but not limited to the objective provided in OAR 660-027-0005(2) and the urban and rural reserve designation standards provided in OAR 660-027-0040; and

(c) Consideration of the factors in OAR 660-027-0050 or 660-027-0060, whichever are applicable.

Stat. Auth.: ORS 195.141, 197.040.
Stats. Implemented: ORS 195.137 - 195.145
Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

DIVISION 28

OREGON TRANSFER OF DEVELOPMENT RIGHTS PILOT PROGRAM

660-028-0010
Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the Statewide Land Use Planning Goals (OAR chapter 660, division 15) apply. In addition, the following definitions apply:

(1) "Conservation easement" has the meaning provided in ORS 271.715.

(2) "Local Government" means a city, county, metropolitan service district or state agency as defined in ORS 171.133.

(3) "Receiving area" means a designated area of land to which a holder of development rights generated from a sending area may transfer the development rights, and in which additional residential or other uses or development, not otherwise allowed, are allowed by reason of the transfer.

(4) "Sending area" means a designated area of resource land from which development rights generated from forgone development are transferable, for residential uses or development not otherwise allowed, to a receiving area.

(5) "Transferable development right or TDR" means a severable residential development interest in real property that can be transferred from a lot, parcel or tract in a sending area to a lot, parcel or tract in a receiving area. This term has the same meaning as "transferable development credit" under Oregon Laws 2009, chapter 504, section 2(10).

Stat. Auth.: ORS 197.040
Stats. Implemented: 2009 OL Ch 636, § 6
Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10; LCDD 6-2012, f. & cert. ef. 2-14-12

660-028-0020
Selection of Pilot Projects

(1) This rule establishes the process for the commission to select up to three TDR pilot projects from among projects nominated by one or more local governments, as provided in Oregon Laws 2009, chapter 636.

(2) A proposed TDR pilot project will be considered by the department and the commission if the local governments with land use jurisdiction over the proposed sending and receiving areas submit:

(a) A completed application form;

(b) A letter of interest along with the owner(s) of at least fifty percent of the land in the proposed sending area;

(c) A concept plan consistent with the requirements of OAR 660-028-0030 that describes the proposed TDR pilot project and that includes:

(A) Proposed amendments to the local government comprehensive plan and land use regulations necessary to implement the pilot project, a tentative schedule for adoption of the amendments, and a description of any other proposed actions intended to implement the proposed TDR pilot project;

(B) Maps and other pertinent information describing the proposed sending areas and receiving areas;

(C) Proposed transfer ratios as specified in OAR 660-028-0030(5) and other incentives for participation; and

(D) A letter from a qualified entity as defined in ORS 271.715 expressing interest in holding and monitoring any conservation easement or similar restriction to ensure that development rights are transferred off of the proposed sending area.

(3) The commission may extend the deadline in section (2) of this rule if it finds that additional time is necessary to ensure a satisfactory pool of applications for consideration under this program.

(4) The department will review applications and submit its recommendations for review by the commission within 120 days of the deadline established under section (2) or (3) of this rule. The department will base its recommendations on its assessment of:

(a) The beneficial qualities and attributes of the lands in the proposed sending area for forest management and the degree of risk that those qualities and attributes will be lost in the absence of the proposed project based on information in the proposal and other available information provided by the State Forestry Department and others;

(b) The location, attributes, size and configuration of proposed sending and receiving areas, including the quality of the forest land intended to be conserved under the proposed TDR pilot project;

(c) The demonstrated intent and ability of the local government and other participants to implement the proposed TDR pilot project within a reasonable timeframe; and

(d) The likelihood that the proposed TDR pilot project will succeed and achieve the purposes and requirements of the Oregon TDR Pilot Program expressed in Oregon Laws 2009, chapter 636.

(5) Upon review of the applications, the commission may select up to three qualified TDR pilot projects for inclusion in the Oregon TDR Pilot Program. In deciding which TDR pilot projects to select, the commission must consider the department's recommendations, the written applications and concept plans, and any other available and pertinent information it deems relevant to its decision.

(6) When selecting a TDR pilot project the commission must find that the pilot project will comply with the requirements specified in OAR 660-028-0030 and other requirements of law, and that the pilot project is:

(a) Reasonably likely to provide a net benefit to the forest economy or the agricultural economy of this state and achieve the

purposes and requirements of the Oregon TDR Pilot Program expressed in Oregon Laws 2009, chapter 636;

(b) Designed to avoid or minimize adverse effects on transportation, natural resources, public facilities and services, nearby urban areas and nearby farm and forest uses; and

(c) Designed so that new development authorized in a receiving area as a result of the transferred development rights will not conflict with:

(A) Significant Goal 5 resources, including natural, scenic, and historic resources, open spaces and other resources and resource areas inventoried in accordance with Goal 5 and OAR chapter 660, division 23 or chapter 660, division 16; or

(B) Areas identified as conservation opportunity areas in the Oregon Department of Fish and Wildlife's 2006 "Oregon Conservation Strategy."

Stat. Auth.: ORS 197.040
Stats. Implemented: 2009 OL Ch 636, § 6
Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10; LCDD 6-2012, f. & cert. ef. 2-14-12

660-028-0030
Requirements for TDR Pilot Projects

(1) At the time the local government(s) submits an application for a proposed TDR pilot project, the proposed sending area must be planned and zoned for forest use, may not exceed 10,000 acres, and must contain four or fewer dwelling units per square mile.

(2) At the time the local government(s) submits an application for a proposed TDR pilot project, the proposed receiving area or areas may not be located within 10 miles of the Portland metropolitan area urban growth boundary. The receiving area or areas must be only the appropriate size necessary to accommodate the anticipated development rights that will reasonably be generated and transferred from the sending area, with consideration of uses and density to be authorized under the proposed amendments to the local government comprehensive plan and land use regulations to implement the proposed TDR pilot project if it is selected.

(3) In proposing a receiving area for a TDR pilot project, the local government must select the area based on consideration of the following priorities:

(a) First priority is lands within an urban growth boundary.

(b) Second priority is lands that are adjacent to an urban growth boundary and that are subject to an exception to Goal 3 or Goal 4.

(c) Third priority is lands that are:

(A) Within a designated urban unincorporated community or rural community; or

(B) In a resort community, or a rural service center, that contains at least 100 dwelling units at the time the pilot project is approved.

(d) Fourth priority is exception areas approved under ORS 197.732 that are adjacent to urban unincorporated communities or rural communities, if the county agrees to bring the receiving area within the boundaries of the community and to provide the community with water and sewer service.

(4) With respect to the priority of receiving areas described in subsection (3) of this rule, the commission may authorize a local government to select lower priority lands over higher priority lands for a receiving area in a TDR pilot project only if the local government has established, to the satisfaction of the commission, that selecting higher priority lands as the receiving area is not likely to result in the severance and transfer of a significant proportion of the development interests in the sending area within five years after the receiving area is established.

(5) The minimum residential density of development allowed in receiving areas intended for residential development is:

(a) For second priority lands described in subsection (3)(b) of this rule, at least five dwelling units per net acre or 125 percent of the average residential density allowed within the urban growth boundary when the pilot project is approved by the commission, whichever is greater.

(b) For third priority and fourth priority lands described in subsection (3)(c) and (d) of this rule, at least 125 percent of the average residential density allowed on land planned for residential use within the unincorporated community when the pilot project is approved by the commission. If these lands are within one jurisdiction but adjacent to another jurisdiction, the written consent of the adjacent jurisdiction is required for designation of the receiving area.

(6) The ratio of transferable development rights to severed residential development interests in a sending area must be calculated to protect lands planned and zoned for forest use and to create incentives for owners of land in the sending and receiving areas to participate in the TDR pilot project. The maximum ratio:

(a) May not exceed one transferable development right to one severed development interest if the receiving area is outside of urban growth boundaries and outside unincorporated communities, except that this maximum ratio does not apply to an exception area described in subsection (3)(b) of this rule provided the TDR pilot project concept plan ensures the inclusion of the receiving area within an urban growth boundary, either under applicable requirements of Goal 14 and other laws or the alternative provisions in section (12) of this rule. The concept plan may allow the transfer of development rights authorized in this subsection prior to the inclusion of the receiving area in an acknowledged urban growth boundary provided the amended comprehensive plan and land use regulations ensure that the transferred rights cannot be exercised at a higher ratio than specified in this rule until the receiving area is included in the urban growth boundary.

(b) May not exceed two transferable development rights to one severed development interest if the receiving area is in an unincorporated community; and

(c) Must be consistent with plans for public facilities and services in the receiving area.

(7) Within one year after the commission has approved a proposed concept plan, the local governments having land use jurisdiction over the affected sending and receiving areas must adopt overlay zone provisions and corresponding amendments to the comprehensive plan and land use regulations to implement the concept plan and to identify and authorize the additional residential development allowed through participation in the pilot project. The local governments must submit and the commission must review the comprehensive plan and land use regulation amendments in the manner of periodic review under ORS 197.628 to 197.650. Transfer of development interests may not occur prior to the commission's acknowledgment of the comprehensive plan and land use regulation amendments.

(8) The comprehensive plan and land use regulation amendments required by section (7) of this rule must specify the type and density of the additional development to be transferred and allowed in a receiving area through participation in a TDR pilot project, in accordance with the concept plan approved by the commission and other applicable requirements of this rule.

(9) In addition to the requirements of section (7) of this rule, before any development rights may be exercised in the receiving area, the participating owners of land in a sending area must grant a conservation easement pursuant to ORS 271.715 to 271.795 or otherwise ensure on a permanent basis that additional residential development does not occur in the sending area.

(10) If the receiving area for a TDR pilot project is intended for residential development and is within an urban growth boundary expansion area approved under section (12) of this rule, or is in an exception area described in subsection (3)(b) and section (11) of this rule, the amended comprehensive plan and land use regulations required by section (7) of this rule must authorize a residential density of:

(a) For second priority lands described in subsection (3)(b), at least five dwelling units per net acre or 125 percent of the average residential density allowed within the urban growth boundary when the pilot project is approved by the commission, whichever is greater.

(b) For third priority and fourth priority lands described in subsections (3)(c) and (d), at least 125 percent of the average residential density allowed on land planned for residential use within

the unincorporated community when the pilot project is approved by the commission.

(11) Notwithstanding contrary provisions of statewide land use planning Goals 11 and 14 and related rules, and notwithstanding ORS 215.700 to 215.780, if the commission approves a TDR pilot project, a local government may amend its comprehensive plan and land use regulations to allow transferred rights under an approved TDR pilot project to develop as urban level development, with urban levels of public facilities and services, including transportation, in a receiving area that consists of land adjacent to an urban growth boundary or unincorporated community boundary and subject to an exception to Goal 3 or Goal 4, consistent with subsections (3)(b), (c) and (d) and section 10 of this rule. The concept plan described under OAR 660-028-0020(2)(b) must indicate whether a local government intends to change comprehensive plan and land use regulations to allow urban level of development and urban levels of public facilities and services in the receiving area and, where intended for residential development, must include an agreement to rezone the receiving area to authorize a residential density as provided in section (10) of this rule.

(12) Notwithstanding ORS 197.296 and 197.298, statewide land use planning Goal 14 and its implementing rules (OAR chapter 660, division 24), a local government may amend its urban growth boundary or unincorporated community boundary to include land that is in a receiving area of a selected TDR pilot project and that is adjacent to an urban growth boundary and subject to an exception to Goal 3 or Goal 4. The proposed concept plan described under OAR 660-028-0020(2)(c) must indicate whether a local government intends to include adjacent exception lands in a receiving area approved as a pilot project under this program, and, where intended for residential development, must include an agreement to rezone the receiving area to authorize a residential density as provided in section (10) of this rule.

(13) Local governments or other entities may establish a development rights bank or other system to facilitate the transfer of development rights.

(14) When development rights transfers authorized by the pilot project under Oregon Laws 2009, chapter 636, sections 6 to 8, result in the transfer of development rights from the jurisdiction of one local government to another local government and cause a potential shift of ad valorem tax revenues between jurisdictions, the local governments may enter into an intergovernmental agreement under ORS 190.003 to 190.130 that provides for sharing between the local governments of the prospective ad valorem tax revenues derived from new development in the receiving area.

Stat. Auth.: ORS 197.040
Stats. Implemented: 2009 OL Ch 636, § 6
Hist.: LCDD 1-2010, f. & cert. ef. 1-28-10; LCDD 6-2012, f. & cert. ef. 2-14-12

DIVISION 29

MEASURE 49 TRANSFER OF DEVELOPMENT CREDITS SYSTEMS

660-029-0000
Purpose

In 2007, Oregon voters approved Measure 49 (M49), which authorized certain property owners to develop additional home sites. M49 also authorized counties to establish a system for the purchase and sale of severable development interests (known as transferable development credits or TDCs) for the purpose of allowing development to occur in a location that is different from the location in which the M49 development interest arises (Oregon Laws 2007, chapter 424, subsection 11(8) and ORS 94.531). The purpose of this division is to provide a framework for counties to adopt local ordinances to establish these systems. These systems may enable landowners to realize the value of their M49 authorizations without developing the property from which the claims arose. These systems may allow landowners, on a voluntary basis, to transfer their development interests under M49 from one property to another property at a more suitable location, reducing the adverse impact of scattered M49 residential development on farm, forest and other resource land.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist. LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0010
Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the Statewide Land Use Planning Goals (OAR chapter 660, division 15) apply. In addition, the following definitions apply:

(1) "Conservation easement" has the meaning provided in ORS 271.715.

(2) "Measure 49" or "M49" means Oregon Laws 2007, chapter 424 (Ballot Measure 49); Oregon Laws 2009, chapter 855 (also known as House Bill 3225); Oregon Laws 2010, chapter 8 (also known as Senate Bill 1049); Oregon Laws 2011, chapter 612 (also known as House Bill 3620) and OAR 660-041-0000 to 660-041-0180.

(3) "Measure 49 Property" or "M49 property" means the entire property authorized for home site development as described either:

(a) In the final order issued by the Department of Land Conservation and Development (department) for the supplemental review of Measure 37 claims pursuant to Measure 49; or

(b) In a court order issued upon judicial review of a department M49 order described in subsection (a).

(4) "Receiving area" means a county-designated area of land to which a holder of development credits generated from a sending property may transfer the development credits and within which additional residential uses not otherwise allowed are allowed by reason of the transfer.

(5) "Sending property" means a M49 property that qualifies under OAR 660-029-0030, from which development credits generated from forgone M49 home site development are transferable, for residential uses not otherwise allowed, to a receiving area.

(6) "Substantially developed subdivision" means a legal subdivision created prior to acknowledgment of the county comprehensive plan under ORS 197.251 in which more than 50 percent of the lots are developed with a dwelling and at least 50 percent of the undeveloped lots are adjacent to a developed lot.

(7) "Transferable development credit" or "TDC" means a severable development interest in real property that can be transferred from a sending property to a lot, parcel or tract in a receiving area.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336 & 197.015; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0020
County Authority to Establish a M49 TDC System

Counties may establish a system, consistent with this division, to allow for the creation and transfer of TDCs from M49 properties. Counties that choose to adopt a M49 TDC system shall:

(1) Adopt a local ordinance that meets the requirements of this division; and

(2) Amend the comprehensive plan and implementing ordinances to:

(a) Designate M49 properties that are eligible sending properties as provided in OAR 660-029-0030;

(b) Establish bonus credits, if any, that will apply to certain sending properties as provided in OAR 660-029-0040;

(c) Designate receiving areas or create a process for property owners to apply for designation of lands as receiving areas, as provided in OAR 660-029-0080;

(d) Adopt any applicable overlay zones or other measures necessary to implement the TDC system; and

(e) Determine whether the TDC system will provide for transfer to other counties in the region, as provided in OAR 660-029-0100.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0030
Sending Properties

(1) A county may only designate sending properties consisting of M49 properties:

(a) For which new dwellings have been authorized by a M49 final determination;

(b) That have lawful access; and

(c) That are located:

(A) Within a zone or overlay zone adopted pursuant to Goals 3, 4, 15, 16, 17 or 18;

(B) Within a zone or overlay zone explicitly adopted for conservation or preservation of natural areas pursuant to Goals 5 or 8; or

(C) In an area identified in OAR 660-029-0040(3)(b) through (e).

(2) Sending properties exclusions: Notwithstanding section (1), a county may designate areas or types of M49 properties that are not eligible as sending properties because the M49 property is not buildable or for other reasons. If a county excludes some M49 properties, it shall either:

(a) Include mapping of such excluded lands in the ordinance establishing the TDC system; or

(b) Adopt clear and objective standards in the ordinance for case-by-case determinations of sending area exclusions through a ministerial review.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0040
Calculation and Types of Transferable Development Credits

When an applicant submits an application to a county under OAR 660-029-0050, the county shall determine the number of credits that may be transferred from the applicable M49 property consistent with this rule.

(1) One credit is available for each new dwelling authorized in the M49 final order issued by the department, subject to the conditions of approval, court order, or both.

(2) A county may grant bonus credits as provided in section (3) as an additional incentive to relocate potential development from M49 properties that are a high priority for conservation. Bonus credits may only be granted if the M49 property meets all of the requirements in subsections (a) through (c) below.

(a) The M49 property is within a zone or overlay zone described in OAR 660-029-0030(1)(c)(A) or (B);

(b) No dwellings authorized by M49 have been developed on the M49 property. A M49 property with one existing permanent dwelling as of January 1, 2005, may qualify for bonus credits; and

(c) The M49 property in its entirety is subject to a conservation easement or restrictive covenant that prohibits future development in accordance with OAR 660-029-0060.

(3) A county may grant a bonus of up to 0.2 credits for each subsection (a) through (e) for which the M49 property qualifies, regardless of the number of specific attributes listed under each subsection. Bonus credits may be applied to each M49 dwelling authorization transferred. The bonus allowed in this section may not exceed an additional 1.0 credit per dwelling.

(a) The M49 property is high-value farmland or high-value forestland as defined in ORS 195.300 and OAR 660-041-0130.

(b) Recreational and Cultural Areas:

(A) Any portion of the M49 property is within a scenic, historic, cultural or recreational resource identified as significant on a local inventory as part of an acknowledged comprehensive plan or land use regulation.

(B) Any portion of the M49 property is within or shares a boundary with a National Park, National Monument, National Recreation Area, National Seashore, National Scenic Area, Federal Wild and Scenic River and associated corridor established by the federal government, State Scenic Waterway, State Park, State Heritage Area or Site, State Recreation Area or Site, State Wayside, State Scenic Viewpoint, State Trail, or State Scenic Corridor.

(c) Environmentally Sensitive Areas:

(A) Any portion of the M49 property is within an area designated as Willamette River Greenway, estuarine resources, coastal shoreland, or beaches and dunes designated in an acknowledged comprehensive plan or land use regulation implementing Goals 15 to 18.

(B) Any portion of the M49 property is within or shares a boundary with a National Wilderness Area, National Area of Critical Environmental Concern, National Wildlife Refuge or Area, Federal Research Natural Area, National Outstanding Natural Area, State Wildlife Area, State Natural Area or Site, or a natural area or open space identified as significant on a local inventory as part of an acknowledged comprehensive plan or land use regulation as specified in OAR 660-023-0160 and 660-023-0220.

(C) Any portion of the M49 property is within an area designated by the Oregon Department of Fish and Wildlife (ODFW) as a Conservation Opportunity Area as mapped in 2006.

(D) Any portion of the M49 property is within or shares a boundary with a riparian corridor adopted in an acknowledged comprehensive plan as provided in OAR 660-023-0090, or if the local government has not adopted an inventory of riparian corridors, then the riparian corridors defined using the safe harbor provided in OAR 660-023-0090(5).

(E) Any portion of the M49 property is within a wetland that is:

(i) Identified as significant or special interest for protection on a local wetland inventory or other inventory as provided in OAR chapter 141, division 86 or a wetland conservation plan approved by Division of State Lands (DSL);

(ii) A Wetland of Conservation Concern (formerly Special Area of Concern) as designated by DSL;

(iii) In the Wetland Reserve Easement Program of the Natural Resources Conservation Service (NRCS);

(iv) Identified on the Oregon's Greatest Wetlands map or GIS layer by The Wetlands Conservancy as of January 1, 2015;

(v) Identified on the Wetland Priority Sites map or GIS layer by Oregon State University and The Wetlands Conservancy as of January 1, 2015;

(vi) Has a conservation value of 50 or greater as rated on The Wetlands Conservancy and Institute of Natural Resources Wetlands Conservation Significance map or GIS layer as of January 1, 2015; or

(vii) Designated as locally significant in an inventory adopted as part of an acknowledged comprehensive plan or land use regulation as provided in OAR 660-023-0100.

(d) Natural Hazard Areas:

(A) The M49 property is predominantly within the "XXL 1 Tsunami Inundation" zone delineated on the Tsunami Inundation Maps published by the Oregon Department of Geology and Mineral Industries in 2014.

(B) Any portion of the M49 property is within a Special Flood Hazard Area or floodway on the Flood Insurance Rate Maps adopted by a county or on a preliminary map with a Letter of Final Determination (LFD) issued by the Federal Emergency Management Agency, whichever is most recent.

(C) The M49 property is predominantly within an area composed of either or both:

(i) A fire hazard rating of "Very High: 2.2+" on the "Community at Risk: Hazard Rating" map published by the Oregon Department of Forestry (ODF) on October 1, 2006; or

(ii) A fire hazard rating of "High: 1.9-2.1" on the "Community at Risk: Hazard Rating" map published by ODF on October 1, 2006 and that is outside of a local public fire protection district or agency.

(D) The M49 property is predominantly within a landslide deposit or scarp flank on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 29, 2014, provided the deposit or scarp flank is from a data source mapped at a scale of 1:40,000 or finer.

(E) The M49 property is predominantly within an area designated as a natural hazard in an acknowledged comprehensive plan or land use regulation.

(e) The M49 property is predominantly within an area designated as a critical ground water area or as a ground water limited area by the Oregon Water Resources Department or Water Resources Commission before January 1, 2015, unless water can be provided by an existing community or public water system.

(4) If a M49 property qualifies for bonus credits under sections (2) and (3), a county may additionally grant bonus credits based on the size of the property protected from development as follows:

(a) Fewer than 80 acres: No additional credit

(b) 80 acres or more, and fewer than 120 acres: 0.2 credits;

(c) 120 acres or more, and fewer than 160 acres: 0.4 credits;

(d) 160 acres or more, and fewer than 200 acres: 0.6 credits;

(e) 200 acres or more, and fewer than 240 acres: 0.8 credits;

(f) 240 acres or more: 1.0 credit.

(5) A TDC system adopted by Clackamas, Multnomah, or Washington County must establish two types of credits.

(a) TDCs from sending properties within a rural reserve designated under OAR 660-027-0020(2) shall be known as type A credits and may be used in any receiving area.

(b) TDCs from sending properties outside rural reserves designated under OAR 660-027-0020(2) shall be known as type B credits and may only be used in receiving areas outside of rural reserves.

(6) A TDC system adopted by Douglas or Lane County must establish two types of credits.

(a) TDCs from sending properties within the Oregon Coastal Zone as defined in OAR 660-035-0010(1) shall be known as type A credits and may be used in any receiving area.

(b) TDCs from sending properties outside of the Oregon Coastal Zone shall be known as type B credits and may only be used in receiving areas outside of the Oregon Coastal Zone.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0050
Process for Creating Transferable Development Credits

(1) An applicant may apply to a county that has established a M49 TDC system under OAR 660-029-0020 to convert dwelling authorizations under M49 into TDCs. The county shall evaluate the application based on the locally-adopted M49 TDC ordinance and this division to determine whether the dwelling authorizations under M49 are eligible for conversion to TDCs, and how many credits will be created, including any bonus credits.

(2) When a county preliminarily approves an application, the county will:

(a) Send notice to the department, including the application, the preliminary approval, any proposed restrictive covenant and any proposed conservation easement; and

(b) Request an Amended Final Order and TDC certificates from the department.

(3) The department will review the county request and determine its consistency with this division. If consistent, the department will:

(a) Issue an Amended Final Order documenting the number of dwelling authorizations under M49 that have been converted to TDCs and the number that remain; and

(b) Issue the applicable number of TDC certificates to the county.

(4) If an applicant applies to convert dwelling authorizations under M49 to TDCs from a property that has already been divided pursuant to M49, then the partition or subdivision must be vacated by the county prior to final approval.

(5) If an applicant receives preliminary approval for bonus credits under OAR 660-029-0040, the applicant must convey a conservation easement or place a restrictive covenant on the property that meets the requirements of OAR 660-029-0060, record it with the county clerk and provide a copy to the county, prior to final approval.

(6) The Amended Final Order must be recorded in the deed records of the county.

(7) When all of the requirements of this rule have been met, the county shall give final approval, issue the TDC certificates to the applicant and provide the complete record of the decision to the department.

(8) The county will keep a permanent record of amended final orders, vacations, restrictive covenants and conservation easements that apply to M49 sending properties to ensure that unauthorized development does not occur.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0060
Protection of Sending Properties

(1) To qualify for bonus credits under OAR 660-029-0040, the M49 property must be permanently restricted from future development or land division for any purpose other than:

(a) Farm use as defined in ORS 215.203;

(b) Agricultural buildings as defined in ORS 455.315;

(c) Replacement dwellings as provided in OAR 660-033-0130(8) and 660-006-0025(3)(p);

(d) Farm stands as provided in OAR 660-033-0130(23);

(e) Forest operations as defined in OAR 660-006-0005;

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

(g) Conservation areas or natural resource uses that do not require a land use decision; and

(h) Home occupations as provided in OAR 660-033-0120, 660-006-0025(4)(s) and local regulations.

(2) If the M49 property is fewer than 20 acres, then the restriction required by section (1) may be accomplished by either a restrictive covenant or a conservation easement.

(3) If the M49 property is 20 acres or more, then the restriction required in section (1) must be accomplished by a conservation easement conveyed to a willing holder identified in ORS 271.715(3). Exception: The restriction required by section (1) on a M49 property 20 acres or more may be accomplished with a restrictive covenant if the county provides notice to the department 60 days prior to final approval, and no eligible holder has been found to accept a conservation easement.

(4) A restrictive covenant must:

(a) Be reviewed by the department for compliance with this rule as provided in OAR 660-029-0050;

(b) Authorize the county and the department to independently enforce the restrictive covenant;

(c) Be accompanied by a title search and a legal description of the property sufficient to determine all owners of the property and all lienholders; and

(d) Be recorded in the deed records for the county in which the M49 property is located.

(5) A conservation easement must:

(a) Be reviewed by the department for compliance with this rule as provided in OAR 660-029-0050;

(b) Authorize the department to independently enforce the conservation easement;

(c) Be accompanied by a title search and a legal description of the property sufficient to determine all owners of the property and all lienholders; and

(d) Be recorded in the deed records for the county in which the M49 property is located.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0070
Conveyance of TDC Ownership

(1) Prior to conveying ownership of a TDC, the owner of the TDC must submit notice of the conveyance to the department, using an online form provided by the department.

(2) On receipt of a notice of conveyance, the department shall acquire verification of the conveyance from the previous owner.

(3) Conveyance of a TDC is a conveyance for the purposes of Oregon Laws 2007, chapter 424, subsection 11(6),. Upon transfer of the TDC to a person other than the spouse of the owner who obtained the authorization or the trustee of a revocable trust in which the owner who obtained the authorization is the settlor, the person receiving the TDC must use the TDC within 10 years of the conveyance. If the M49 property was conveyed prior to creation of the TDCs, the owner must use the TDCs within 10 years of the first conveyance.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0080
Designation of Receiving Areas

A county may only designate receiving areas as provided in sections (1) and (2) of this rule, subject to the limitations of sections (3) and (4).

(1) Rural Residential exceptions areas may be designated as receiving areas. A local TDC system may authorize a higher density of residential development on all or portions of such areas than is allowable by OAR 660-004-0040, as provided in OAR 660-029-0090(2).

(2) Substantially developed subdivisions in areas that are planned and zoned for farm or forest use outside rural reserves may be designated as receiving areas. A local TDC system may authorize residential development not otherwise allowable in the underlying farm or forest zone, provided:

(a) The subdivision was approved prior to January 1, 1985;

(b) All existing lots in the subdivision are five acres or smaller if the property is in western Oregon as defined in ORS 321.257 or 10 acres or smaller if the property is in eastern Oregon as defined in ORS 321.805;

(c) At least 50 percent of the lots in the subdivision are developed with a dwelling and at least 50 percent of the undeveloped lots are adjacent to a developed lot;

(d) One dwelling per lot is permitted, with no new land divisions allowed; and

(e) The county approves a reasons exception pursuant to OAR chapter 660, division 4.

(3) Receiving areas must:

(a) Meet the requirements of ORS 215.296; and

(b) Be selected so as to minimize conflicts with nearby commercial agricultural and forest operations. Methods for the county to minimize conflicts may include but are not limited to:

(A) Minimizing the selection of receiving areas that are adjacent to high-value farmland; and

(B) Restricting increases in allowed density to the interior of applicable exceptions areas.

(4) Receiving areas may not include any land:

(a) That meets the conditions in OAR 660-029-0040(3)(b) through (e), except that the term "M49 property" is replaced with "land";

(b) That is a sending property designated as provided in OAR 660-029-0010;

(c) Within urban reserves designated under OAR chapter 660, divisions 21 or 27;

(d) Within 100 feet of a riparian corridor as provided in OAR 660-029-0040(3)(c)(D);

(e) Within 100 feet of a wetland as provided in OAR 660-029-0040(3)(c)(E) or subject to state jurisdiction as determined by DSL as provided in OAR chapter 141, divisions 85, 89, 90 and 102;

(f) Within any significant Goal 5 resource site documented and adopted by a local government as a part of a comprehensive plan or land use regulation as defined in OAR 660-023-0010(9);

(g) Within one mile of the "XXL 1 Tsunami Inundation" zone delineated on the Tsunami Inundation Maps published by DOGAMI in 2014;

(h) Within a Special Flood Hazard Area or within an area mapped as "shaded X" or designated "500 year flood plain" on the Flood Insurance Rate Maps adopted by a county or on a preliminary map with a Letter of Final Determination (LFD) issued by the Federal Emergency Management Agency, whichever is most recent;

(i) Within an area of five acres or greater with a fire hazard rating of "High: 1.9-2.1" or "Very High: 2.2+" as designated on the "Community at Risk: Hazard Rating" map published by ODF on October 1, 2006;

(j) Within an area in which a detailed geotechnical report would be required to site a dwelling as specified in the acknowledged comprehensive plan or land use regulation;

(k) Within a landslide deposit or scarp flank on the SLIDO Release 3.2 Geodatabase published by DOGAMI on December 29, 2014, provided the deposit or scarp flank is from a data source mapped at a scale of 1:63,500 or finer; or

(l) Within an area designated as a natural hazard in an acknowledged comprehensive plan or land use regulation.

(5) A county may exclude any additional land from receiving areas.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0090
Process for Using Transferable Development Credits

(1) A person who proposes to use TDCs within a receiving area shall submit an application to the county accompanied by TDC certificates sufficient to permit the proposed development.

(2) If TDCs are used in a rural residential receiving area under the provisions of OAR 660-029-0080(1), then the lot or parcel may be divided to site the additional dwelling or dwellings. The lots or parcels resulting from the division must have sufficient area within the receiving area for the dwelling and all supporting infrastructure. New lots or parcels may be as small as five acres in all cases. New lots or parcels may be smaller than five acres if the proposed size is equal to or greater than the average size of lots and parcels within exception areas within one-half mile of the edge of the subject property. The new lots or parcels may not be smaller than two acres in any case.

(3) If an applicant proposes to use a TDC on a lot or parcel that is partially within the receiving area and partially outside of the receiving area, then the dwelling and all supporting infrastructure authorized by the TDC must be located entirely within the receiving area.

(4) The county shall evaluate the application based on the locally-adopted TDC ordinance and the provisions of this division in order to determine the type and number of credits that are required to be submitted. Based on this evaluation, the county may preliminarily approve the application and shall request verification from the department of the type and number of credits that belong to the applicant, using an online form provided by the department.

(5) The department shall verify the type and number of credits that belong to the applicant.

(6) Following department verification, the county may approve the application and shall notify the department within 30 days of any approval.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0100
Interjurisdictional Transfer of Development Credits

(1) Counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the transfer of TDCs between the counties that are parties to the agreement, subject to the limitations in section (2).

(2) TDCs may only be transferred within the regions described below:

(a) Metro, including Clackamas, Multnomah and Washington counties.

(b) Willamette Valley, including Benton, Linn, Marion, Polk and Yamhill counties, and that portion of Lane County outside of the Coastal Zone defined in OAR 660-035-0010(1).

(c) Coastal, including Clatsop, Columbia, Coos, Curry, Lincoln and Tillamook counties and those portions of Douglas and Lane counties in the Coastal Zone defined in OAR 660-035-0010(1).

(d) Southern, including Jackson and Josephine counties, and that portion of Douglas County outside the Coastal Zone defined in OAR 660-035-0010(1).

(e) Central, including Crook, Deschutes, Hood River, Jefferson, Klamath and Wasco counties.

(f) Eastern, including Baker, Gilliam, Grant, Harney, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler counties.

(3) Interjurisdictional TDC programs that involve two types of credits may authorize the transfer of credits to another jurisdiction within the same region, in accordance with this rule and the provisions of OAR 660-029-0040(5) and (6).

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0110
TDC Bank Option

A county or regional or state agency may establish a TDC bank to facilitate:

(1) Buying TDCs from M49 sending properties;

(2) Selling TDCs for potential use in receiving areas;

(3) Managing funds available for the purchase and sale of TDCs;

(4) Serving as a clearinghouse and information source for buyers and sellers of TDCs; and

(5) Accepting donations of TDCs from M49 sending properties.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

660-029-0120
Amending or Abolishing a TDC System

If a county amends or abolishes a TDC system, the county shall notify the owners of all TDCs that have not been used. The county must allow at least 12 months for an owner of TDCs to use them under the prior system.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336; 2007 OL, ch. 424
Hist.: LCDD 3-2015, f. & cert. ef. 4-27-15

DIVISION 30

REVIEW AND APPROVAL OF STATE AGENCY COORDINATION PROGRAMS

660-030-0000
Purpose

The purpose of this division is to respond to the legislative findings and policy in ORS 197.005 and 197.010. This division implements provisions in Statewide Planning Goal 2, ORS 197.040(2)(e), 197.090(1)(b) and 197.180 and explains the relationship between OAR chapter 660, divisions 30 and 31. The purpose of Commission certification of agency coordination programs is to assure that state agency rules and programs which affect land use comply with the statewide goals and are compatible with acknowledged city and county comprehensive plans.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCD 14, f. & ef. 12-15-77; LCDC 1-1982(Temp), f. & ef. 4-20-82; LCDC 6-1982, f. & ef. 7-22-82; LCDC 5-1986, f. & ef. 12-24-86

660-030-0005
Definitions

For the purpose of this division, the definitions in ORS 197.015 and the following definitions shall apply:

(1) "Acknowledged Comprehensive Plan" means a comprehensive plan and land use regulations or plan or regulation amendment which complies with the goals as provided in ORS 197.251, 197.625 and 197.626 through 197.650.

(2) "Rules and Programs Affecting Land Use":

(a) Are state agency's rules and programs (hereafter referred to as "land use programs") which are:

(A) Specifically referenced in the statewide planning goals; or

(B) Reasonably expected to have significant effects on:

(i) Resources, objectives or areas identified in the statewide planning goals; or

(ii) Present or future land uses identified in acknowledged comprehensive plans.

(b) Do not include state agency rules and programs, including any specific activities or functions which occur under the rules and programs listed in paragraph (2)(a)(A) of this rule, if:

(A) An applicable statute, constitutional provision or appellate court decision expressly exempts the requirement of compliance with the statewide goals and compatibility with acknowledged comprehensive plans; or

(B) The rule, program, or activity is not reasonably expected to have a significant effect on:

(i) Resources, objectives or areas identified in the statewide goals; or

(ii) Present or future land uses identified in acknowledged comprehensive plans; or

(C) A state agency transfers or acquires ownership or an interest in real property without making any change in the use or area of the property. Action concurrent with or subsequent to a change of ownership that will affect land use or the area of the property is subject to either the statewide goals or applicable city or county land use regulations.

(c) A final determination of whether or not an agency rule or program affects land use will be made by the Commission pursuant to ORS 197.180 and OAR chapter 660, division 30.

(3) "Agency Coordination Program" is the submittal made by a state agency to the Department pursuant to ORS 197.180(2)(a)–(d) and OAR 660-030-0060.

(4) "Certification" is an order issued by the Commission which finds that a state agency's coordination program satisfies the requirements of ORS 197.180(2)(a)–(d) and OAR chapter 660, division 30.

(5) "Compatibility with Comprehensive Plans" as used in ORS 197.180 means that a state agency has taken actions pursuant to OAR 660-030-0070, including following procedures in its coordination program where certified, and there are no remaining land use conflicts between the adoption, amendment or implementation of the agency's land use program and an acknowledged comprehensive plan.

(6) "Compliance with the Goals" means that the state agency land use programs and actions must comply with the applicable requirements of the statewide planning goals as provided in OAR 660-030-0065.

(7) "Agency Consistency with Comprehensive Plans" as used in Statewide Goal 2 shall have the same meaning as the term "compatibility" as provided in section (5) of this rule and OAR 660-030-0070.

(8) "Coordination" as used in ORS 197.015(5) means the needs of all levels of government, semipublic and private agencies and the citizens of the State of Oregon have been considered and accommodated as much as possible.

(9) "Commission" means the State Land Conservation and Development Commission.

(10) "Department" means the Department of Land Conservation and Development.

(11) "Director" means the Director of Land Conservation and Development.

(12) "Goals" means the mandatory statewide planning standards adopted by the Commission pursuant to ORS 197.005 to 197.855.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCD 12, f. & ef. 10-14-77; LCDC 6-1982, f. & ef. 7-22-82; LCDC 5-1986, f. & ef. 12-24-86; LCDD 3-2004, f. & cert. ef. 5-7-04

660-030-0045
Submittal of Agency Coordination Programs

(1) Upon a request by the Commission pursuant to a schedule developed by the Director, each state agency shall submit a coordination program to the Department. The agency shall provide the Department with seven copies of its coordination program unless the agency and the Director mutually agree to a different number of copies. Copies of the program shall be available for public review during regular business hours at the Department's Salem office and the central office of the submitting agency. Copies shall also be available during scheduled business hours at the Department's field offices and any regional offices of the submitting agency.

(2) Upon receipt of an agency coordination program, the Director shall review the submittal to determine whether the agency's request contains the information and documents required by OAR 660-030-0060.

(3) If the submittal is not complete, the Director shall, in writing, request any additional documents or information needed to make the submittal complete.

(4) The 90-day review period in ORS 197.180(3) shall commence upon notification in writing by the Director that the agency's submittal is complete.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0050
Notice of Review of Agency Coordination Programs

(1) After informing a state agency in writing that its submittal is complete, the Director shall provide an opportunity for interested persons to submit written comments and objections to the Department regarding certification of the agency's coordination program. The notice shall identify the agency program to be reviewed, the time and places where the agency's program may be inspected and the date by which comments and objections must be received at the Department's Salem office.

(2) The length of the notice period shall be determined by the Director based on the nature of the agency program being reviewed, but shall be at least 30 days.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0055
Review of Agency Coordination Programs

(1) An agency coordination program found to be complete pursuant to OAR 660-030-0045(4) shall be evaluated by the Director. The results of this evaluation, including responses to timely objections, together with a recommendation regarding certification, shall be set forth in a written report.

(2) If the Director recommends that the agency's program be certified, the Department shall mail copies of the Director's report to the submitting agency, all commenters and objectors, any person who in writing requests a copy, and the Commission. The report shall be considered by the Commission at a date determined by the Director in the following manner:

(a) The submitting agency or persons who have submitted timely comments or objections as described in OAR 660-030-0050 shall have 20 days from the date of mailing of the Director's report to file written exceptions to that report;

(b) The Director may comment to the Commission in writing or orally regarding any materials, comments, objections or exceptions submitted to the Commission concerning any agency certification request;

(c) The Commission may allow any person who has filed a timely written comment or objection as provided in OAR 660-030-0050 to appear before the Commission within time limits established by the Commission to present oral statements on the person's written comments, objections or exceptions. The Commission shall not consider any new or additional information or testimony that could have been presented to the Director within the timelines required by OAR 660-030-0050 or by section (3) of this rule, but was not;

(d) Following its review of the Director's report and such additional comments and information provided under subsections (2)(a)–(c) of this rule, the Commission shall adopt an order which:

(A) Certifies the agency's coordination program; or

(B) Denies certification and identifies the needed corrections and date by which the agency is to amend its program and resubmit to the Department in the same manner as provided in OAR 660-030-0045; or

(C) Postpones final action on the agency's coordination program to a future date as determined by the Commission; and

(e) Commission orders adopted under subsection (2)(d) of this rule shall be provided to the affected state agency, commenters, objectors, and other persons requesting a copy in writing.

(3) If the Director finds, pursuant to ORS 197.180(3)–(5), that the agency's program should not be certified, the Director shall mail copies of a draft of the Director's report including needed corrections to the submitting agency, to all commenters and objectors and to any person who requests a copy in writing. The submitting agency and those persons filing timely comments and objections shall have 20 days from the date of mailing to file written exceptions to the draft of the Director's report.

(4) The Director shall evaluate exceptions to the draft filed within the 20 day period provided in section (3) of this rule. In a timely manner following the exception deadline, the Director shall in writing notify and provide supporting documents as appropriate to the submitting agency, all commenters, objectors, persons filing exceptions and any person who requests a copy in writing that:

(a) The report is unchanged from the draft and the director's recommendation that the agency's coordination program not be certified is now final; or

(b) The Director's recommendation that the agency's coordination program not be certified is now final but the report has been changed from the draft; or

(c) The Director's recommendation that the agency's program not be certified has been referred, along with all supporting documents and comments, objections and exceptions timely filed, to the Commission for its review and action in the manner provided by section (2) of this rule; or

(d) The Director's report has been changed to recommend that the agency's coordination program be certified and the report, along with all supporting documents and comments, objections and exceptions timely filed have been referred to the Commission for its review and action as provided by section (2) of this rule.

(5) A state agency which disagrees with the Director's finding and recommendation under subsection (4)(a) or (b) of this rule may request Commission review of the Director's report.

(6) Within the time period specified in the notice issued under paragraph (2)(d)(B) or subsection (4)(a) or (b) of this rule, but not greater than 90 days, the affected state agency shall amend and resubmit its coordination program to the Department. Resubmittal of a program by an agency shall be done in the same manner as described in OAR 660-030-0045.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0060
Required Elements of an Agency Coordination Program

(1) An agency coordination program must satisfy the requirements specified in ORS 197.180(2)(a)–(d) and OAR 660-030-0060(2) and (3).

(2) The four required elements of a state agency coordination program listed in ORS 197.180(2)(a)–(d) are as follows:

(a) Agency rules and summaries of programs affecting land use;

(b) A program of coordination pursuant to ORS 197.040(2)(e);

(c) A program for coordination pursuant to ORS 197.090(1)(b); and

(d) A program for cooperation with and technical assistance to local governments.

(3) To satisfy the requirement under subsection (2)(a) of this rule, a state agency must complete the following:

(a) Submit copies of all agency rules and list and briefly describe all agency programs authorized by law. Such description may be satisfied by provision of agency budget narratives or other similar explanatory information;

(b) Using the definitions in OAR 660-030-0005(2), indicate which of the agency's rules and programs are land use programs;

(c) For each land use program provide a copy or summary of the applicable enabling statutes or constitutional authority, complete copies of administrative rules and procedures and an analysis of the relationship between the program and land use;

(d) Identify any agency land use programs subject to the requirements and procedures of the Commission's state permit compliance and compatibility rule, OAR chapter 660, division 31, as described in 660-030-0090(2); and

(e) For rules and programs determined not to be agency land use programs, the agency is not required to demonstrate compliance with the statewide planning goals and compatibility with acknowledged comprehensive plans. However, specific actions undertaken in conjunction with such rules or programs may require a local permit or approval.

(4) To satisfy the requirement under subsection (2)(b) of this rule, a state agency must complete the following:

(a) Compile agency land use programs into the following categories:

(A) Exempt Land Use Programs. In this category the agency shall place any land use program for which there is an applicable statute, constitutional provision or appellate court decision which expressly exempts the agency from the requirements in ORS 197.180 to be compatible with acknowledged comprehensive plans, but does not exempt the program from compliance with the statewide goals; and

(B) Compatible Land Use Programs. In this category the agency shall place those remaining land use programs not listed under paragraph (4)(a)(A) of this rule.

(b) Adopt or amend agency rules to implement procedures for assuring the agency's goal compliance described in OAR 660-030-0065 for the land use programs listed under subsection (4)(a) of this rule;

(c) Adopt or amend agency rules to implement procedures for assuring the agency's compatibility with acknowledged comprehensive plans, including the resolution of disputes, as provided in OAR 660-030-0070 for land use programs listed under paragraph (4)(a)(B) of this rule;

(d) Rules and procedures adopted by the agency to satisfy the requirements of goal compliance and plan compatibility must also be designed to address new or amended agency land use programs enacted subsequent to Commission certification pursuant to OAR 660-030-0075; and

(e) Agency procedures for assuring goal compliance and comprehensive plan compatibility may be specific to individual land use programs or may be established to apply to more than one land use program where appropriate.

(5) To satisfy the requirements under subsection (2)(c) of this rule, a state agency must complete the following:

(a) Describe the procedures it will utilize to coordinate its land use programs with the Department and affected state and federal agencies and special districts; and

(b) Designate a unit within the agency to be responsible for the coordination of the agency's land use programs.

(6) To satisfy the requirement under subsection (2)(d) of this rule, a state agency must provide all of the following:

(a) A description of the agency's program for cooperation with and technical assistance to local governments. This description shall identify how the agency will participate in and coordinate with the local planning process (i.e., plan amendment, periodic review and plan implementation) regarding implementation of the agency's land use programs;

(b) a listing of the agency section(s) to contact for obtaining cooperation and technical assistance;

(c) A description of the kinds of technical assistance, information and other services available from the agency and the process used to provide such assistance, information and services to local government;

(d) A description of how the agency shall assure that new or updated agency plans or programs mandated by state statute or federal law enacted after acknowledgment of comprehensive plans will be incorporated into these plans and how the agency will participate in periodic review in accordance with ORS 197.640(3) and OAR 660-019-0055;

(e) A description, if applicable, of any special procedures or programs to cooperate and provide technical assistance to acknowledged coastal cities and counties recognized under the state's coastal zone management program; and

(f) A description, if applicable, of agency procedures to coordinate with other state agencies and local governments and provide technical assistance to local governments on public facility funding, local public facility plans, permit issuance and economic development as required by ORS 197.712(2)(f) and 197.717(1) and (2).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0065
Agency Compliance with the Statewide Planning Goals

(1) A state agency shall adopt as part of its coordination program under OAR 660-030-0060 appropriate rules and procedures as required under this rule to assure that the agency's land use programs comply with the statewide planning goals.

(2) Except as provided in section (3) of this rule, a state agency shall comply with the statewide goals by assuring that its land use program is compatible with the applicable acknowledged comprehensive plan(s) as provided in OAR 660-030-0070.

(3) A state agency shall adopt findings demonstrating compliance with the statewide goals for an agency land use program or action if one or more of the following situations exists:

(a) An agency's program or action specifically relates to or occurs in an area that is not subject to an acknowledged comprehensive plan; or

(b) An agency takes an action that is not compatible with an acknowledged comprehensive plan after exhausting efforts to be compatible as described in OAR 660-030-0070; or

(c) An acknowledged plan pursuant to OAR 660-030-0070(2)(c) does not contain either:

(A) Requirements or conditions specifically applicable to the agency's land use program or action thereunder; or

(B) General provisions, purposes, or objectives which would be substantially affected by the agency's action.

(d) A statewide goal or interpretive rule adopted by the Commission under OAR chapter 660 establishes a compliance requirement directly applicable to the state agency or its land use program; or

(e) An acknowledged comprehensive plan permits a use or activity contained in or relating to the agency's land use program contingent upon case-by-case goal findings by the agency; or

(f) The agency's land use program or action is expressly exempt by reason of applicable statute, constitutional provision or appellate court decision from compatibility with acknowledged comprehensive plans; or

(g) The agency carries out, in accordance with OAR 660-030-0085, specified goal compliance requirements on behalf of certain applicable local governments.

(4) A state agency which is in one of the compliance situations described in section (3) of this rule shall address directly only those goals that have not otherwise been complied with by the local government. To assist in identifying which statewide goals may be directly applicable to the agency's land use program, the agency may:

(a) Utilize its agency coordination program, where certified;

(b) Consult directly with the affected local government;

(c) Request interpretive guidance from the Department; and

(d) Rely on any applicable goal interpretations for state agencies adopted by the commission under OAR chapter 660.

(5) State agencies shall include the following elements in their goal compliance procedures adopted under sections (1) and (3) of this rule:

(a) Identification of the specific statewide goals which are most likely to be addressed directly by the agency;

(b) Commitment to address directly other applicable goals if requested or required; and

(c) Description of the most likely situations in which the agency will address statewide goal requirements in addition to any compatibility findings regarding the acknowledged comprehensive plan.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0070
Agency Compatibility with Acknowledged Comprehensive Plans

(1) A state agency shall be as part of its coordination program under OAR 660-030-0060 adopt appropriate rules and procedures to assure that the agency's land use programs are compatible with acknowledged comprehensive plans. Such procedures also shall identify the steps the agency will utilize to resolve any land use disputes between the agency and a local government.

(2) An agency can achieve compatibility in several ways depending upon the nature of its land use program and the organization and specificity of the acknowledged comprehensive plan in question. Each agency shall incorporate one or more of the following approaches as appropriate into its own compatibility procedures pursuant to section (4) of this rule. An agency program or action is compatible when the agency:

(a) Receives land use approval from the local government where the acknowledged comprehensive plan contains requirements or conditions specifically applicable to the agency's land use program or action thereunder; or

(b) Determines, based on the response to written notice provided to local government, the results of meetings held pursuant to subsection (4)(a) of this rule, or other equivalent steps as described in the agency's certified coordination program, that the acknowledged comprehensive plan's general provisions will not be substantially affected by the agency's program or action; or

(c) Determines based on the results of steps taken under subsection (2)(b) of this rule, that the acknowledged comprehensive plan contains no specific or general provisions applicable to the agency's program or action. In this situation, however, an agency shall comply with the statewide planning goals as provided in OAR 660-030-0065(3)(c); or

(d) Utilizes in conjunction with a local government, the provisions of this division and the agency's coordination program, where certified, to resolve a land use dispute involving the agency's land use program or action and the acknowledged comprehensive plan; or

(e) Issues a permit in accordance with the requirements of OAR chapter 660, division 31.

(3) In carrying out the compatibility requirements of this rule, a state agency is not compatible if it approves or implements a land use program or action that is not allowed under an acknowledged comprehensive plan. However, a state agency may apply statutes and rules which the agency is required by law to apply, to deny, condition or further restrict an action or program, provided it applies those statutes and rules to the uses planned for in the acknowledged comprehensive plan.

(4) Each state agency's compatibility procedures for assuring compatibility with acknowledged comprehensive plan, including the resolution of land use disputes, shall at a minimum provide for the following actions:

(a) Meetings between the agency and the local government's planning representatives to discuss ways to make the agency's land use program or action compatible;

(b) Identification by the agency of alternative actions or modifications to the agency's program or action;

(c) Application by the agency for the necessary local land use approval, including any needed plan and land use regulation amendments;

(d) Pursuit of appropriate appeal by the agency of a denial of its request for local land use approval; and

(e) Request by the agency for the needed local land use approval during periodic review (OAR chapter 660, division 19) or an explanation by the agency why periodic review is not available or sufficient to respond to the agency's request.

(5) A state agency, or a local government may request informal LCDC mediation if the agency determines after pursuing procedures as appropriate under section (4) of this rule that there is a need to proceed with its proposed action or program which would be incompatible with the acknowledged comprehensive plan. LCDC mediation may proceed as mutually agreed by LCDC, the affected state agency and the local government.

(6) If, after pursuing any of the procedures required by section (4) of this rule that are appropriate under the circumstances, an agency contends that its proposed program or action would be compatible with an acknowledged comprehensive plan, but the local government contends that the program or action would not be compatible, the agency shall proceed as provided in sections (7) through (12) of this rule.

(7) Each agency's compatibility procedure shall provide for Commission compatibility determination as a means for resolving disagreement between the agency and a local government regarding compatibility of the agency's proposed land use program or action with an acknowledged comprehensive plan.

(8) Commission compatibility determination shall only be requested if the state agency and local government remain in dispute after taking any steps in section (4) of this rule that are appropriate under the circumstances.

(9) The Commission may commence a compatibility determination upon written request from the chief official or governing authority of the agency, the local government or both. Compatibility determination shall include the following:

(a) The Commission may designate a hearings officer. The hearings officer shall compile a written assessment of the compatibility dispute. The assessment shall document the positions of each party, including a summary of the background of the dispute, identification of major issues and contentions and any other facts relevant to the case. The hearings officer shall conduct hearings as he or she determines are appropriate under the circumstances to aid in preparation of the report on the compatibility dispute;

(b) The hearings officer's report shall be provided to the Commission, the affected state agency, the local government and other persons who request a copy in writing;

(c) The Commission shall review the hearings officer's report at a regular or special meeting after providing a reasonable amount of time for review by the agency, the local government and other persons wishing to examine the report. Following any allowed testimony from the parties or other interested persons, the Commission shall determine whether the agency's proposed program or action is compatible with the acknowledged comprehensive plan; and

(d) The Department shall prepare a written record of the Commission's determination of compatibility. The record of the Commission's compatibility determination together with supporting findings and documents shall be provided to the state agency, the local government and any person requesting a copy in writing.

(10) The Department shall provide notice of opportunity for participation in and obtaining the results of all Commission determinations of compatibility to those who request such notice in writing.

(11) A compatibility determination shall have no final effect unless the affected agency proceeds and adopts the Commission's compatibility determination as its own. If the compatibility determination adopted by the affected agency is not the same as the Commission's determination, under subsection (9)(c) of this rule, the Commission's determination, findings and record shall be included in the record of the agency's action.

(12) If the agency's proposed program or action would be incompatible with the acknowledged comprehensive plan or the agency elects not to proceed as provided in sections (7) through (12) of this rule, the agency may pursue any of the following options:

(a) Take no action; or

(b) Modify its proposal to the extent needed to achieve compatibility with the acknowledged comprehensive plan.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0075
Review of Amendments to Agency Rules and Programs

(1) The purpose of this rule is to assure that new agency rules and programs or amendments to existing land use programs of certified state agencies comply with the requirements of ORS 197.180 and OAR chapter 660, division 30. This rule shall not apply to the adoption of temporary agency rules or programs.

(2) A notice from a certified agency shall provide information sufficient to demonstrate that the proposed new or amended rule or program is one of the following:

(a) Is not an agency land use program; or

(b) Is an agency land use program and is covered under the agency's procedures pursuant to OAR 660-030-0060(4)(d) for assuring goal compliance and comprehensive plan compatibility for new or amended agency land use program; or

(c) Is an agency land use program but is not covered under the agency's procedures under OAR 660-030-0060(4)(d). An agency's notice must explain how the agency shall assure goal compliance and comprehensive plan compatibility for the proposed new or amended land use program.

(3) Department review in response to a notice from a certified agency under section (2) of this rule shall be as follows:

(a) The agency shall submit to the Department, pursuant to agency rule-making under ORS 183 or other applicable adoption procedures, a written notice of the agency's pending action. Such notice shall be received by the department not less than 45 days before the agency's action is to occur and shall:

(A) Identify the specific date, time and location of anticipated agency action;

(B) Describe the manner in which written and oral comment on the proposed action can be submitted to the agency;

(C) Provide a copy or a description of the proposed new or amended rule or program; and

(D) Describe how the proposed action addresses subsection (2)(a), (b), or (c) of this rule, as appropriate.

(b) Upon receipt of a notice from an agency as described under subsection (3)(a) of this rule, the Department shall review the proposed action. In accordance with paragraph (3)(a)(A) of this rule, the Department in writing may provide comments to the agency that the proposed action either:

(A) Satisfies subsection (2)(a), (b), or (c) of this rule; or

(B) Does not satisfy subsection (2)(a), (b), or (c) of this rule until more information is provided by the agency or until the proposed rule or program adequately incorporates the Department's suggested revision or modification.

(4) An agency proposing to adopt a new or amended rule or program under this rule shall provide written notice of the same type given to the Department under subsection (3)(a) of this rule to the following:

(a) Persons who in writing to the agency request notice about proposed rule or program actions pursuant to this rule; and

(b) Local governments who rely upon the certified agency's rule or program for compliance under OAR 660-030-0085 and are affected by the proposed action.

(5) Except as provided in section (6) of this rule, any agency which does not receive any comment from the Director under paragraph (3)(b)(B) of this rule prior to taking its action, may deem that the Department finds the new or amended rule or program to have satisfied ORS 197.180 and OAR chapter 660, division 30. Such adopted new or amended rules or programs need not be submitted for certification review.

(6) If an agency adopts a new or amended rule or program without supplying the information including any suggested modifications identified pursuant to paragraph (3)(b)(B) of this rule, the Department may require that the amended rule or program be submitted for certification review in the same manner as provided in OAR 660-030-0045 through 660-030-0055.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0080
Agency Requirements to Assure Compliance with the State Goals and Compatibility with Acknowledged Comprehensive Plans Prior to Certification by the Commission

(1) Until an agency's rules and programs are certified by the Commission, the agency shall make findings pursuant to ORS 197.180(6) when adopting or amending its rules and programs as to the applicability and application of the goals or acknowledged comprehensive plans, as appropriate.

(2) Previous Commission approvals of agency coordination programs remain effective until the Commission certifies agency programs pursuant to ORS 197.180 and OAR chapter 660, division 30; however, prior Commission approval shall not constitute certification. Agencies may rely on existing coordination programs as appropriate and may utilize applicable provisions of OAR chapter 660, division 30, in developing interim procedures to address ORS 197.180(6).

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0085
Local Government Reliance on State Agency Land Use Programs

(1) As an alternative method for achieving compliance, a local government may rely on a state agency land use program for the purpose of meeting one or more statewide goals or individual goal requirements.

(2) A local government's decision to rely on a certified agency land use program after the effective date of the amendments to this division must satisfy all of the following conditions:

(a) The affected comprehensive plan must be acknowledged and shall:

(A) Identify the specific goals or goal requirements the local government wishes to comply with through reliance on the certified agency's land use program;

(B) Identify through plan policy the particular certified state agency land use program which will be relied on to comply with the goal requirements listed in paragraph (2)(a)(A) of this rule;

(C) Document in the plan that the Commission has expressly certified the agency's land use program as sufficient to satisfy the goal requirement's listed under paragraph (2)(a)(A) of this rule without supplemental regulation by the affected local government;

(D) Delete or otherwise remove any conflicting provisions of the comprehensive plan and land use regulations which are being replaced by reliance on the certified state agency's program; and

(E) Adopt mandatory plan policies which commit the local government to amend its acknowledged comprehensive plan as necessary in the event that a future change or deletion of an agency land use program no longer enables the local government to continue to rely on the certified agency's program for compliance with the goals. The local government shall take action under this subsection upon written notification from the Department following a determination made under OAR 660-030-0075 that the agency's program can no longer be relied upon for goal compliance by the local government.

(b) In advance of making a formal request under subsection (2)(c) of this rule, a local government shall notify in writing the applicable state agency of its intent to rely on the agency's land use program for compliance with the goals; and

(c) The local government shall incorporate the items referenced under subsection (2)(a) of this rule into the acknowledged comprehensive plan either through the post-acknowledgment plan amendment procedure or through periodic review as required by ORS 197.610–197.650 and OAR chapter 660, divisions 18 and 19, respectively.

(3) A local government's decision to rely on an uncertified agency land use program after the effective date of the amendments to this division must satisfy all of the following conditions:

(a) the affected comprehensive plan must be unacknowledged for the geographic area which the local government intends the agency's program to address;

(b) The comprehensive plan shall:

(A) Identify the specific goals or goal requirements the local government wishes to comply with through reliance on the uncertified agency's program;

(B) Identify through plan policy the particular uncertified state agency program which will be relied on to comply with the goal requirements listed in paragraph (3)(b)(A) of this rule;

(C) Contain adopted findings of fact and a statement of reasons which demonstrate that the agency's program does comply with the goal requirement(s) identified under paragraph (3)(b)(A) of this rule and the agency's program is at least equivalent to what the local government would otherwise provide to comply with the goal(s);

(D) Delete or otherwise remove any conflicting provisions of the comprehensive plan and land use regulations which are being replaced by reliance on the uncertified state agency's program; and

(E) Adopt mandatory plan policies which commit the local government to amend its comprehensive plan as necessary in the event that the local government is no longer able to rely on the agency's program for compliance as a result of:

(i) A change or deletion of the agency's program prior to certification by the Commission;

(ii) Certification of the agency's program pursuant to this division; or

(iii) Receipt of written notice from the Department following a determination under OAR 660-030-0075 that the agency's program can no longer be relied upon for goal compliance by local government.

(c) In advance of submitting its acknowledgment request to the Commission for compliance as provided under section (3) of this rule, a local government shall notify in writing the applicable state agency of its intent to rely on the agency's uncertified program for compliance with the goals.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0090
Relationship Between OAR chapter 660, divisions 30 and 31

(1) The purpose of OAR chapter 660, division 31 (entitled "State Permit Compliance and Compatibility") pursuant to ORS 197.180(7), is to specify state agency responsibilities for goal compliance and comprehensive plan compatibility for agency land use programs which involve the issuance of state permits. For certain permits, OAR chapter 660, division 31 also establishes a process for a state agency to rely on a local government's determination of goal compliance and comprehensive plan compatibility obligation under ORS 197.180.

(2) A state agency in its agency coordination program, pursuant to OAR 660-030-0060(3)(d) shall provide the following:

(a) A list of the agency's Class A and B permits affecting land use, including those permits listed in OAR 660-031-0012;

(b) A description as required by OAR 660-031-0026 of the process the agency will use to assure that permit approvals are in compliance with the goals and compatible with acknowledged comprehensive plans; and

(c) Definitions, as appropriate, of the terms "substantial modifications" of "intensification" as required by OAR 660-031-0040 involving renewal permits.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

660-030-0095
Application

(1) These amendments to OAR chapter 660, division 30 shall be effective upon state agencies and other affected persons upon filing of the adopted amendments with the Secretary of State.

(2) Any state agency with a coordination program certified by the Commission prior to the effective date of these amendments shall modify as necessary and submit to the Department in accordance with OAR 660-030-0045(1) amendments to its coordination program to address the revised requirements of OAR chapter 660, division 30.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.040 & 197.180
Hist.: LCDC 5-1986, f. & ef. 12-24-86

DIVISION 31

STATE PERMIT COMPLIANCE AND COMPATIBILITY

660-031-0005
Introduction Purpose

The purpose of this rule is to clarify state agency responsibilities to apply the Statewide Planning Goals and acknowledged Comprehensive Plans during permit reviews (ORS 197.180(1) through (7)). The rule establishes procedures and standards which require consideration of Goals and Acknowledged Plans prior to approval of state permits. The rule establishes a process for state agencies to rely on a local determination of compliance with the State Planning Goals and the Acknowledged Comprehensive Plan when issuing certain permits. The rule also requires that affected state agencies develop and submit to LCDC procedures for consistency review.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 2-1984, f. & ef. 2-27-84

660-031-0010
Definitions

(1) "Acknowledged Comprehensive Plan" means a comprehensive plan and implementing ordinances that have been adopted by a city or county and have been found by the Land Conservation and Development Commission to be in compliance with the Statewide Planning Goals pursuant to ORS 197.251.

(2) "Affected Local Government" means the unit of general purpose local government that has comprehensive planning authority over the area where the proposed activity and use would occur.

(3) "Class A Permits" are state permits affecting land use that require public notice and public hearing at the agency's discretion prior to permit approval, including those permits identified as Class A permits in OAR 660-031-0012(1).

(4) "Class B Permits" are those state permits affecting land use which do not require public notice or an opportunity for public hearing before permit issuance, including those permits identified as Class B permits in OAR 660-031-0012(2).

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 2-1984, f. & ef. 2-27-84

660-031-0012
Listing of Class A and Class B State Agency Permits Affecting Land Use

(1) Class A Permits:

(a) Department of Energy (DOE) — Energy Facility Site Certificates;

(b) Department of Fish and Wildlife (DFW) — Salmon Hatchery Permit;

(c) Division of State Lands (DSL) — Fill and Removal Permit;

(d) Department of Transportation (DOT) — Ocean Shore Improvement Permit;

(e) Department of Environmental Quality — Hazardous Waste Disposal, Collection or Storage Permit.

(2) Class B Permits:

(a) Department of Agriculture — Oyster plat application;

(b) Department of Environmental Quality:

(A) Air Contaminant Discharge Permit;

(B) Waste Discharge Permit (National Pollution Discharge Elimination System — NPDES);

(C) Indirect Source Permit;

(D) Water Pollution Control Permit;

(E) Solid Waste Disposal Permit.

(c) Department of Fish and Wildlife — Placing Explosives or Harmful Substances in Waters Permit;

(d) Department of Geology and Mineral Industries:

(A) Surface Mining Operation Permit;

(B) Permit to Drill — Geothermal Well;

(C) Permit to Drill — Oil or Gas Well.

(e) Protective Health Services Section, Health Division, Department of Human Resources:

(A) Public Water Supply Plan;

(B) Organization Camp Plan Review;

(C) Recreational Vehicle Park Plan Review.

(f) Water Resources Department:

(A) Appropriate Groundwater;

(B) Appropriate Surface Water;

(C) Water Storage;

(D) Hydroelectric.

(g) Department of Transportation (DOT):

(A) Road Approach;

(B) Airport Site Approval;

(C) On and Off-Premise Signs.

(h) Division of State Lands — Geophysical and Geological Survey Permits;

(i) Public Utility Commissioner (PUC) — Railroad Highway Crossing Project.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 2-1984, f. & ef. 2-27-84

Consistency Review Requirements

660-031-0015
Identification of Class A and Class B Permits

Affected state agencies shall upon request of the Commission submit a program for permit consistency listing their Class A and Class B permits affecting land use including those set forth in **Appendix 1**. Upon submitting its program to the Commission, an agency may request a change in the designation of Class A and Class B permits.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

660-031-0025
Review Criteria for Class A and B Permits

(1) Where the affected local government does not have an Acknowledged Comprehensive Plan, the state agency's or local government's review shall assess whether or not the proposed activity and use are in compliance with the Statewide Planning Goals.

(2) Where the affected local government has an Acknowledged Comprehensive Plan, the state agency or local government review shall address compatibility with the Acknowledged Comprehensive Plan when the activity or use is:

(a) Prohibited by the plan;

(b) Allowed outright by the plan;

(c) Allowed by the plan but subject to standards regarding siting, design, construction and/or operation; or

(d) Allowed by the plan but subject to future goal considerations by the local jurisdiction.

(3) Where the affected local government has an Acknowledged Comprehensive Plan the Statewide Planning Goals shall be a criteria for permit review after acknowledgment when the state agency finds one of the following exists:

(a) Local government or the Director has determined during periodic review that one or more factors under ORS 197.640(3)(a)(b) or (d) apply;

(b) The Acknowledged Comprehensive Plan and implementing ordinances do not address or control the activity under consideration;

(c) The Acknowledged Comprehensive Plan allows the activity or use but subject to future goal considerations by an agency; or

(d) The comprehensive plan or land use regulations are inconsistent with a state agency plan or program relating to land use that was not in effect at the time that the local government's plan was acknowledged; and, the plan or program is mandated by state statute or federal law, is consistent with the Goals and has objectives that cannot be achieved consistent with the comprehensive plan or land use regulations.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

660-031-0026
Compliance and Compatibility Review Procedures for Class A and B Permits

State Agency Coordination Agreements shall describe the process the agency will use to assure that permit approvals are in compliance with Statewide Planning Goals and compatible with Acknowledged Comprehensive Plans:

(1) Class A Permits: In their review of Class A permits state agencies shall:

(a) Include in the notice for the proposed permit a statement that the proposed activity and use are being reviewed for compliance with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan as part of the permit review;

(b) Insure that the notice for the proposed permit is distributed to the affected city(ies) or county(ies) and its citizen advisory committee;

(c) When there is a public hearing on a proposed permit, consider testimony on compliance of the proposed activity and use with the Statewide Planning Goals and compatible with the Acknowledged Comprehensive Plan;

(d)(A) Based on comments received from the public and other agencies, determine whether or not the proposed permit complies with the Statewide Planning Goals and is compatible with the Acknowledged Comprehensive Plan;

(B) If a state agency's existing process for administration of Class A permits is substantially equivalent to the process required by this section, the agency may request LCDC approval of its existing process as described in its agency coordination agreement.

(2) Class B Permits: In accordance with OAR 660-031-0020 and 660-031-0035(2), the review process shall assure either:

(a) That prior to permit issuance, the agency determines that the proposed activity and use are in compliance with Statewide Planning Goals and compatible with the applicable Acknowledged Comprehensive Plan; or

(b) That the applicant is informed that:

(A) Issuance of the permit is not a finding of compliance with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan; and

(B) The applicant must receive a land use approval from the affected local government. The affected local government must include a determination of compliance with the Statewide Planning Goals or compatibility with the Acknowledged Comprehensive Plan which must be supported by written findings as required in ORS 215.416(6) or 227.173(2). Findings for an activity or use addressed by the acknowledged comprehensive plan in accordance with OAR 660-031-0020, may simply reference the specific plan policies, criteria, or standards which were relied upon in rendering

the decision and state why the decision is justified based on the plan policies, criteria or standards.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 2-1984, f. & ef. 2-27-84

660-031-0030
Effect of a Determination of Noncompliance or Incompatibility

In accordance with OAR 660-031-0020 when a state agency or local government determines that a proposed activity or use is not in compliance with an applicable Statewide Planning Goal or not compatible with the Acknowledged Comprehensive Plan, the state agency shall deny the state permit and cite the inconsistency as the basis for denial. State agencies may defer approval or conditionally approve a permit when compliance with a Statewide Planning Goal or the Acknowledged Comprehensive Plan requires an action that can only be taken by the affected local government.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

660-031-0035
Reliance on the Local Government's Determination

(1) Class A Permits: When making findings, state agencies may use the affected local government's compatibility determination when the agency finds the affected local government has determined that the proposed activity and use are compatible or incompatible with its Acknowledged Comprehensive Plan.

(2) Class B Permits: State agencies may rely on the affected local government's determination of consistency with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan when the local government makes written findings demonstrating compliance with the goals or compatibility with the acknowledged plan in accordance with OAR 660-031-0026(2)(b)(B).

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

660-031-0040
Renewal Permits

A determination of compliance with the Statewide Planning Goals or compatibility with Acknowledged Comprehensive Plan is not required if the proposed permit is a renewal of an existing permit except when the proposed permit would allow a substantial modification or intensification of the permitted activity. Substantial modifications or intensification shall be defined in an agencies' State Agency Coordination Agreement under ORS 197.180.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.180
Hist.: LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

DIVISION 32

POPULATION FORECASTS

660-032-0000
Purpose and Applicability

(1) The rules in this division provide standards and procedures to implement ORS 195.033 to 195.036 and statewide planning Goals regarding population forecasts for land use planning purposes.

(2) The rules in this division do not apply to a review of a final land use decision or periodic review work task adopted by a local government and submitted to the Department of Land Conservation for review under ORS 197.626 or 197.633 prior to the effective date of this rule.

Stat. Auth.: ORS 197.040 &195.033(10)
Stats. Implemented: ORS 195.033, 195.036 & OL 2013 Ch. 574, Sec. 3
Hist.: LCDD 1-2015, f. & cert. ef. 3-25-15

660-032-0010
Definitions

(1) For purposes of this division, the definitions in ORS 197.015 and the Statewide Land Use Planning Goals (OAR chapter 660, division 15) apply, except as provided in sections (4) and (8) of this rule.

(2) "Final Forecast" means the final population forecast issued by the Portland State University Population Research Center (PRC) for land use purposes as required by ORS 195.033 and as provided in OAR 577-050-0030 to 577-050-0060.

(3) "Initiates" means that the local government either:

(a) Issues a public notice specified in OAR 660-018-0020, including a notice to the department, for a proposed plan amendment that concerns a subject described in 660-032-0040(2); or

(b) Receives the Director's approval, as provided in OAR 660-025-0110, of a periodic review work program that includes a work task concerning a subject described in 660-032-0040(2).

(4) "Local Government" means a city, county or Metro.

(5) "Metro" means a metropolitan service district organized under ORS chapter 268.

(6) "Metro boundary" means the boundary of a metropolitan service district.

(7) "PRC" means the Portland State University Population Research Center.

(8) "Special district" means any unit of local government, other than a city, county or metropolitan service district formed under ORS chapter 268, authorized and regulated by statute and includes but is not limited to water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(9) "Urban area" means the land within an urban growth boundary.

(10) "Urban Growth Boundary" shall have the meaning provided in ORS 197.295(7).

Stat. Auth.: ORS 197.040 &195.033(10)
Stats. Implemented: ORS 195.033, 195.036 & OL 2013 Ch. 574, Sec. 3
Hist.: LCDD 1-2015, f. & cert. ef. 3-25-15

660-032-0020
Population Forecasts for Land Use Planning

(1) A local government with land use jurisdiction over land that is outside the Metro boundary shall apply the most recent final forecast issued by the PRC under OAR 577-050-0030 through 577-050-0060, when changing a comprehensive plan or land use regulation that concerns such land, when the change is based on or requires the use of a population forecast, except that a local government may apply an interim forecast as provided in 660-032-0040.

(2) A local government within the Metro boundary shall apply the Metro forecast described in OAR 660-0032-0030 when changing a regional framework plan, comprehensive plan or land use regulation of the local government, when the change is based on or requires the use of a population forecast.

(3) When a state agency or special district adopts or amends a plan or takes an action which, under Statewide Planning Goal 2 or other law, must be consistent with the comprehensive plan of a local government described in section (1) of this rule, and which is based on or requires the use of a population forecast, and if the local government has not adopted the most recent PRC final forecast as part of the plan, the most recent PRC final forecast shall be considered to be the long range forecast in the comprehensive plan, except as provided in OAR 660-032-0040.

(4) When applying a PRC forecast for a particular planning period, the local government shall use the annual increments provided in the applicable forecast, and shall not adjust the forecast for the start-year or for other years of the planning period except as provided in PRC's interpolation template described in OAR 577-050-0040.

(5) If a local government outside the Metro boundary initiates a periodic review or any other legislative review of its comprehensive plan that concerns an urban growth boundary or other matter

authorized by OAR 660-032-0040(2) after the Portland State University Population Research Center issues a final population forecast for the local government, but prior to the issuance of a final forecast by PRC in the subsequent forecasting cycle described in OAR 577-050-0040(7), the local government may continue its review using the forecast issued in PRC's previous forecasting cycle.

Stat. Auth.: ORS 197.040 &195.033(10)
Stats. Implemented: ORS 195.033, 195.036 & OL 2013 Ch. 574, Sec. 3
Hist.: LCDD 1-2015, f. & cert. ef. 3-25-15

660-032-0030
Metro Area Population Forecasts

(1) Metro, in coordination with local governments within its boundary, shall issue a coordinated population forecast for the entire area within its boundary, to be applied by Metro and local governments within the boundary as the basis for a change to a regional framework plan, comprehensive plan or land use regulation, when such change must be based on or requires the use of a population forecast.

(2) Metro shall allocate the forecast to the cities and portions of counties within the Metro boundary for land use planning purposes.

(3) In adopting its coordinated forecast, Metro must follow applicable procedures and requirements in this rule and ORS 197.610 to 197.650, and must provide notice to state agencies and all local governments in the Metro area. The forecast must be adopted as part of the applicable regional or local plan.

(4) The Metro forecast must be developed using commonly accepted practices and standards for population forecasting used by professional practitioners in the field of demography or economics. The forecast must be based on current, reliable and objective sources and verifiable factual information, and must take into account documented long-term demographic trends as well as recent events that have a reasonable likelihood of changing historical trends. Metro must coordinate with the PRC in the development and allocation of its forecast.

(5) The population forecast developed under the provisions of (1) through (4) of this rule is a prediction which, although based on the best available information and methodology, should not be held to an unreasonably high level of precision. For a forecast used as a basis for a decision adopting or amending the Metro regional urban growth boundary submitted to the Department of Land Conservation and Development (DLCD) under ORS 197.626, the director of DLCD or the Land Conservation and Development Commission may approve the forecast provided it finds that any failure to meet a particular requirement of this rule is insignificant and is unlikely to have a significant effect on the determination of long term needs for the Metro urban area under OAR 660-024-0040.

Stat. Auth.: ORS 197.040 &195.033(10)
Stats. Implemented: ORS 195.033, 195.036 & OL 2013 Ch. 574, Sec. 3
Hist.: LCDD 1-2015, f. & cert. ef. 3-25-15

660-032-0040
Interim Forecasts

(1) If a local government outside the Metro boundary initiates a periodic review or other legislative review of its comprehensive plan that concerns an urban growth boundary or a matter authorized by section (2) of this rule before the date the PRC issues a final population forecast for the local government in the first forecasting cycle described in OAR 577-050-0040(7), the local government may continue its review using the population forecast that was acknowledged before the review was initiated, provided the forecast was:

(a) Adopted by the local government not more than 10 years before the date of initiation, as a part of the comprehensive plan, consistent with the requirements of ORS 195.034 and 195.036 as those sections were in effect immediately before July 1, 2013, and

(b) Acknowledged as provided in ORS 197.251 or 197.625 prior to the effective date of this rule.

(2) The authorization to use the forecast described in section (1) applies only to a periodic review or a legislative review of the comprehensive plan that concerns:

(a) An urban growth boundary review or amendment as provided in Goal 14 and OAR 660, div 24;

(b) Economic development (Goal 9);

(c) Housing needs (Goal 10);

(d) Public facilities (Goal 11); or

(e) Transportation (Goal 12).

(3) For purposes of section (1) of this rule, if the acknowledged forecast was adopted by the applicable county, and if the forecast allocates population forecasts to the urban areas in the county but has not been adopted by a particular city in that county, the city may apply the allocated forecast as necessary for the purposes described in section (2) of this rule.

(4) If the forecast is consistent with sections (1)(a) and (1)(b) of this rule but does not provide a forecast for the entire applicable planning period for a purpose described in section (2), the local government may apply an extended forecast for such purpose. The extended forecast shall be developed by applying the long term growth trend that was assumed in the acknowledged forecast, for the particular planning area, to the current population of the planning area.

(5) If the local government initiates a periodic review or other legislative review that concerns an urban growth boundary or other matter authorized by section (2) of this rule before the issuance by PRC of a final population forecast for the local government, and if that review would be based on a population forecast that was adopted and submitted to the department prior to the effective date of this rule as provided in OAR 660-032-0000 (2), but which is not acknowledged by the effective date of this rule, the local government may continue its review using that forecast provided the forecast is acknowledged prior to the local government's adoption of any final land use decision or periodic review task resulting from such review.

(6) If the local government does not have a forecast that meets the requirements of sections (1)(a) and (1)(b) or section (5) of this rule, the local government may adopt an interim forecast for purposes described in section (2) of this rule. The interim forecast must be based on the average annual (annualized) growth rate for the planning period in the most recent population forecast for the county issued by the Oregon Office of Economic Analysis (OEA), consistent with section (7) of this rule. The local government shall adopt the interim forecast following the procedures and requirements in ORS 197.610 to 197.650 and shall provide notice to all local governments in the county.

(7) The interim forecast described in section (6), for a particular planning area, must be developed by applying the annualized growth rate in the most recent OEA forecast, to the current population of the planning area.

(8) For purposes of this rule:

(a) "Annualized growth rate" means the forecasted average annual (annualized) growth rate determined from the most recent published OEA forecast, calculated from 2015 to the 5-year time interval nearest the end of the planning period.

(b) "Apply the annualized growth rate to the current population of the planning area" means to multiply the current population of the planning area by annualized growth rate.

(c) "Current population of the planning area" for a county means the estimated population of the county issued by PRC for the year that the review described in section (1) of this rule is initiated.

(d) "Current population of the planning area" for an urban area means the PRC estimate of population of the city at the time the review is initiated, plus the population for the area between the urban growth boundary and the city limits as determined by the most recent Decennial Census published by the U.S. Census Bureau.

Stat. Auth.: ORS 197.040 &195.033(10)
Stats. Implemented: ORS 195.033, 195.036 & OL 2013 Ch. 574, Sec. 3
Hist.: LCDD 1-2015, f. & cert. ef. 3-25-15

DIVISION 33

AGRICULTURAL LAND

660-033-0010
Purpose

The purpose of this division is to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799.

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0020
Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR chapter 660 shall apply. In addition, the following definitions shall apply:

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

(c) "Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

(2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:

(A) Contribute in a substantial way to the area's existing agricultural economy; and

(B) Help maintain agricultural processors and established farm markets.

(b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

(3) "Contiguous" means connected in such a manner as to form a single block of land.

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

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

(6) "Exception Area" means an area no longer subject to the requirements of Goal 3 or 4 because the area is the subject of a site specific exception acknowledged pursuant to ORS 197.732 and OAR chapter 660, division 4.

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

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

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

(B) "Products or by-products raised on such land" means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.

(8)(a) "High-Value Farmland" means land in a tract composed predominantly of soils that are:

(A) Irrigated and classified prime, unique, Class I or II; or

(B) Not irrigated and classified prime, unique, Class I or II.

(b) In addition to that land described in subsection (a) of this section, high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa;

(c) In addition to that land described in subsection (a) of this section, high-value farmland, if in the Willamette Valley, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hult, Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill;

(B) Subclassification IIIw, specifically, Concord, Conser, Cornelius Variant, Dayton (thick surface) and Sifton (occasionally flooded);

(C) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and

(D) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti and Whiteson.

(d) In addition to that land described in subsection (a) of this section, high-value farmland, if west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;

(B) Subclassification IIIw, specifically, Brenner and Chitwood;

(C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and

(D) Subclassification IVw, specifically, Coquille.

(e) In addition to that land described in subsection (a) of this section, high-value farmland includes tracts located west of U.S. Highway 101 composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIw, specifically, Ettersburg Silt Loam and Crofland Silty Clay Loam;

(B) Subclassification IIIe, specifically, Klooqueh Silty Clay Loam and Winchuck Silt Loam; and

(C) Subclassification IVw, specifically, Huffling Silty Clay Loam.

(f) Lands designated as "marginal lands" according to the marginal lands provisions adopted before January 1, 1993, and according to the criteria in former ORS 215.247 (1991), are excepted from this definition of "high-value farmlands";

(9) "Irrigated" means watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For the purposes of this division, an area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.

(10) "Lot" shall have the meaning set forth in ORS 92.010.

(11) "Manufactured dwelling" and "manufactured home" shall have the meaning set forth in ORS 446.003(26).

(12) "NRCS Web Soil Survey" means the official source of certified soils data available online that identifies agricultural land capability classes, developed and maintained by the Natural Resources Conservation Service as of January 1, 2016, for agricultural soils that are not high-value, and as of December 6, 2007, for high-value agricultural soils.

(13) "Parcel" shall have the meaning set forth in ORS 215.010.

(14) "Tract" means one or more contiguous lots or parcels under the same ownership.

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

(16) "Willamette Valley" is Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Benton and Lane Counties lying east of the summit of the Coast Range.

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

Stat. Auth.: ORS 197.040

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

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 6-2016, f. 3-22-16, cert. ef. 3-24-16; LCDD 6-2016, f. 3-22-16, cert. ef. 3-24-16

660-033-0030
Identifying Agricultural Land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040

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

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 10-2011, f. & cert. ef. 12-20-11; LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14; LCDD 3-2016, f. & cert. ef. 2-10-16; LCDD 6-2016, f. 3-22-16, cert. ef. 3-24-16

660-033-0045
Soils Assessments by Professional Soil Classifiers

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

(a) Certified Professional Soil Classifier; or

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

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

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

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

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

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

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

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

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

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

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

(3) A person requesting a soils assessment shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Such panel shall consist of:

(A) A member of the SSSA;

(B) The Oregon State Soil Scientist; and

(C) An Oregon college or university soils professional.

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

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

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

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

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

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

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

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.211, 215.212, 215.243 & 215.700 - 215.710
Hist.: LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 3-2016, f. & cert. ef. 2-10-16

660-033-0080
Designation of High-Value Farmland

(1) The commission may review comprehensive plan and land use regulations related to the identification and designation of high-value farmland under procedures set forth in ORS 197.251 or 197.628 through 197.644.

(2) Counties shall submit maps of high-value farmland described in OAR 660-033-0020(8) and such amendments of their plans and land use regulations as are necessary to implement the requirements of this division to the commission for review. Counties shall submit high-value farmland maps no later than the time of the first periodic review after December 31, 1994. The submittal shall include the notice required by OAR chapter 660, division 18 or 25, whichever applies.

Stat. Auth.: 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 - 215.710
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94

660-033-0090
Uses on High-Value and Non High-Value Farmland

(1) Uses on land identified as high-value farmland and uses on land not identified as high-value farmland shall be limited to those specified in OAR 660-033-0120. Except as provided for in section (2) of this rule, counties shall apply zones that qualify as exclusive farm use zones under ORS Chapter 215 to "agricultural land" as identified under OAR 660-033-0030, which includes land identified as high-value farmland and land not identified as high-value farmland.

(2) "Abandoned mill sites" may be zoned for industrial use as provided for by ORS 197.719.

Stat. Auth.: ORS 197.040 & 215
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 197.719, 215.203, 215.243, 215.283 & 215.700 - 215.710
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2004, f. & cert. ef. 4-30-04

660-033-0100
Minimum Parcel Size Requirements

(1) Counties shall establish minimum sizes for new parcels for land zoned for exclusive farm use. For land not designated rangeland, the minimum parcel size shall be at least 80 acres. For land designated rangeland, the minimum parcel size shall be at least 160 acres.

(2) A county may adopt a minimum parcel size lower than that described in section (1) of this rule by demonstrating to the Commission that it can do so while continuing to meet the requirements of ORS 215.243 and that parcel sizes below the 80 or 160 acre minimum sizes are appropriate to maintain the existing commercial agricultural enterprise within an area. This standard is intended to prevent division of farmland into parcels that are too small to contribute to commercial agriculture in an area. This standard does not require that every new parcel created be as large as existing farms or ranches in an area. The minimum parcel size may allow creation of parcels smaller than the size of existing farms or ranches. However, the minimum parcel size shall be large enough to keep commercial farms and ranches in the area successful and not contribute to their decline. Lots or parcels used, or to be used, for training or stabling facilities shall not be considered appropriate to maintain the existing commercial agricultural enterprise in any area where other types of agriculture occur.

(a) To determine a minimum parcel size under this section, the county shall complete the following steps:

(A) Identify different agricultural areas within the county, if any;

(B) Determine the nature of the commercial agricultural enterprise in the county, or within areas of the county;

(C) Identify the type(s) and size(s) of farms or ranches that comprise this commercial agricultural enterprise; and

(D) Determine the minimum size for new parcels that will maintain this commercial agricultural enterprise.

(b) To determine whether there are distinct agricultural areas in a county, the county should consider soils, topography and land forms, land use patterns, farm sizes, ranch sizes and field sizes, acreage devoted to principal crops, and grazing areas and accepted farming practices for the principal crops and types of livestock.

(c) To determine the nature of the existing commercial agricultural enterprise within an area, a county shall identify the following characteristics of farms and ranches in the area: Type and size of farms and ranches, size of fields or other parts, acreage devoted to principal crops, the relative contribution of the different types and sizes of farms and ranches to the county's gross farm sales, and their contribution to local processors and established farm markets. The following sources may assist in a county's analysis: The most recent Census of Agriculture and special tabulations from the census developed by Oregon State University, the Oregon Department of Agriculture, the United States Department of Agriculture's Agricultural Stabilization and Conservation Service (AACS), Soil and Water Conservation Districts, the Oregon State University Extension Service and the county assessor's office.

(d) To determine the minimum parcel size, a county shall evaluate available data and choose a size that maintains the existing commercial agricultural enterprise within the county or within each area of the county. In areas where the size of commercial farms and ranches is mixed, and the size of parcels needed to maintain those commercial farms and ranches varies, the county shall not choose a minimum parcel size that allows larger farms, lots or parcels to be divided to the size of the smallest farms, lots or parcels in the area. The activities of the larger as well as smaller holdings must be maintained.

(3) A minimum size for new parcels for farm use does not mean that dwellings may be approved automatically on parcels that satisfy the minimum parcel size for the area. New dwellings in conjunction with farm use shall satisfy the criteria for such dwellings set forth in OAR 660-033-0130(1).

(4) A minimum size for new parcels may be appropriate to maintain the existing agricultural enterprise in the area, but it may not be adequate to protect wildlife habitat pursuant to Goal 5. When farmland is located in areas of wildlife habitat, the provisions of Goal 5 continue to apply.

(5) A county may choose to establish a different minimum parcel size for distinct commercial agricultural areas of the county. The appropriate minimum lot or parcel size for each area shall reflect the type of commercial agriculture in the area, consistent with section (2) of this rule.

(6) Counties may allow the creation of new parcels for nonfarm uses only as authorized by ORS 215.263. Such new parcels shall be the minimum size needed to accommodate the use in a manner consistent with other provisions of law except as required for the nonfarm dwellings authorized by section (7) of this rule.

(7)(a) Counties may allow the creation of new lots or parcels for dwellings not in conjunction with farm use pursuant to ORS 215.263(4) or (5), whichever is applicable.

(b) In the Willamette Valley, a new lot or parcel may be allowed if the originating lot or parcel is equal to or larger than the applicable minimum lot or parcel size, and:

(A) Is not stocked to the requirements under ORS 527.610 to 527.770;

(B) Is composed of at least 95 percent Class VI through VIII soils; and

(C) Is composed of at least 95 percent soils not capable of producing 50 cubic feet per acre per year of wood fiber; and

(D) The new lot or parcel will not be smaller than 20 acres.

(c) No new lot or parcel may be created for this purpose until the county finds that the dwelling to be sited on the new lot or

parcel has been approved under the requirements for dwellings not in conjunction with farm use in ORS 215.284(3) or (4), 215.236 and OAR 660-033-0130(4).

(8) The county governing body or its designate may not approve a land division or property line adjustment of a lot or parcel that separates a temporary hardship dwelling, relative farm help dwelling, home occupation or processing facility from the parcel on which the primary residential or other primary use exists.

(9) The county governing body or its designate may not approve a land division of a lot or parcel created before January 1, 1993, on which a nonfarm dwelling was approved pursuant to ORS 215.284(1).

(10) A division of a lawfully established unit of land may occur along an urban growth boundary where the parcel remaining outside the urban growth boundary is zoned for agricultural uses and is smaller than the minimum parcel size, provided that:

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

(b) If the parcel does not contain a dwelling, it:

(A) Is not eligible for siting a dwelling, except as may be authorized under ROS 195.120;

(B) May not be considered in approving or denying an application for any other dwelling; and

(C) May not be considered in approving a redesignation or rezoning of agricultural lands, except to allow a public park, open space or other natural resource use.

Stat. Auth.: ORS 197.040, 197.230 & 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

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 1994, f. & cert. ef. 1994; LCDC 5-1996, f. & cert. ef 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 6-2016, f. 3-22-16, cert. ef. 3-24-16

660-033-0120
Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the table shall have the following meanings:

(1) "A" Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130 and 660-033-0135. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.

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

(3) "*" — The use is not allowed.

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

[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

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 9-2011, f. & cert. ef. 11-23-11; LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14; LCDD 2-2014, f. & cert. ef. 10-14-14; LCDD 2-2015, f. & cert. ef. 4-9-15; LCDD 3-2016, f. & cert. ef. 2-10-16; LCDD 8-2016, f. & cert. ef. 8-26-16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Intact exterior walls and roof structure;

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

(iii) Interior wiring for interior lights; and

(iv) A heating system; and

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

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

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

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

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

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

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

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

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

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

(C) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For the purpose of subsection (a), "relative" means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse.

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

(e) For the purpose of subsection (d), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).

(10) 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 215.213(1)(q) or 215.283(1)(p). 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 468B.095, and with the requirements of 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 is allowed.

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

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

(14) Home occupations and the parking of vehicles may be authorized. 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 established under ORS 215.213(1)(c) or 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:

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

(i) Technical and engineering feasibility;

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

(iii) Lack of available urban and nonresource lands;

(iv) Availability of existing rights of way;

(v) Public health and safety; and

(vi) Other requirements of state and federal agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Technical and engineering feasibility;

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

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

(iv) Public health and safety; or

(v) Other requirements of state or federal agencies.

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

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

(17) Permanent features of a power generation facility shall not preclude more than 12 acres from use as a commercial agricul-

tural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval.

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

(b) 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, schools as formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, the effective date of 2009 Oregon 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 six-month period.

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

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

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

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

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

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

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

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

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

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

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

(22) Permanent features of a power generation facility shall not 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. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 660-033-0130(5) and shall have no effect on the original approval.

(23) A farm stand may be approved if:

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

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

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

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

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

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

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

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

(B) The accessory farm dwelling will be located:

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

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

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

(iv) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. "Farmworker housing" shall have the meaning set forth in 215.278 and not the meaning in 315.163; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) A farm on which a processing facility is located must provide at least one-quarter of the farm crops processed at the facility. A farm may also be used for an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use. A processing facility or establishment must comply with all applicable siting standards but the standards may not be applied in a manner that prohibits the siting of the processing facility or establishment. A county may not approve any division of a lot or parcel that separates a processing facility or establishment 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 accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

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

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under 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 3,000 or fewer 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 197.015(10) or subject to review under this division. Agri-tourism and other commercial events or activities may not be permitted as mass gatherings under 215.213(11) and 215.283(4).

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

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

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

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

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

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

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

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

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under paragraph (B);

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

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

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

(E) The criteria of subsection (b) are satisfied.

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

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

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

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

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

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

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

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

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

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

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

(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.

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

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

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

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

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately

qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;

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

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

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

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

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

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

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

(ii) When at least 48 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(g) For arable lands, a photovoltaic solar 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. The governing body or its designate must find that:

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

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

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

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

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

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

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

(ii) When at least 80 acres of photovoltaic solar power generation have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities, within the study area the local government or its designate must find that the photovoltaic solar energy generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar energy generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

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

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

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

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

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

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

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

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

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

(F) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be

carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) At least 1,000 acres;

(B) In eastern Oregon;

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

(D) Not within an irrigation district;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

which for purposes of this section shall be referred to as a restrictive covenant.

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

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

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

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

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

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

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

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

(e) In addition, the county may allow:

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

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

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

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

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

(C) Bathing and laundry facilities;

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

(E) Sleeping quarters, including cabins, tents or other structures, for youth camp participants only, consistent with subsection (c) of this section. Sleeping quarters intended as overnight accommodations for persons not participating in activities allowed under this section or as individual rentals are not allowed. Sleeping quarters may include restroom facilities and, except for the caretaker's dwelling, may provide only one shower for every five beds. Sleeping quarters may not include kitchen facilities.

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

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

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

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

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

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

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

(B) A youth camp shall adhere to standards for the protection of archaeological objects, archaeological sites, burials, funerary objects, human remains, objects of cultural patrimony and sacred objects, as provided in ORS 97.740 to 97.750 and 358.905 to 358.961, as follows:

(i) If a particular area of the lawfully established unit of land proposed for the youth camp is proposed to be excavated, and if that area contains or is reasonably believed to contain resources protected by ORS 97.740 to 97.750 and 358.905 to 358.961, the application shall include evidence that there has been coordination among the appropriate Native American Tribe, the State Historic Preservation Office (SHPO) and a qualified archaeologist, as described in 390.235(6)(b).

(ii) The applicant shall obtain a permit required by ORS 390.235 before any excavation of an identified archeological site begins.

(iii) The applicant shall monitor construction during the ground disturbance phase(s) of development if such monitoring is recommended by SHPO or the appropriate Native American Tribe.

(C) A fire safety protection plan shall be adopted for each youth camp that includes the following:

(i) Fire prevention measures;

(ii) On site pre-suppression and suppression measures; and

(iii) The establishment and maintenance of fire-safe area(s) in which camp participants can gather in the event of a fire.

(D) A youth camp's on-site fire suppression capability shall at least include:

(i) A 1000 gallon mobile water supply that can reasonably serve all areas of the camp;

(ii) A 60 gallon-per-minute water pump and an adequate amount of hose and nozzles;

(iii) A sufficient number of firefighting hand tools; and

(iv) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

(v) An equivalent level of fire suppression facilities may be determined by the governing body or its designate. The equivalent capability shall be based on the response time of the effective wildfire suppression agencies.

(E) The county shall require, as a condition of approval of a youth camp, that the land owner of the youth camp sign and record in the deed records for the county a document binding the land owner, the operator of the youth camp if different from the owner, and the land owner's or operator's successors in interest, prohibiting:

(i) a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937;

(ii) future land divisions resulting in a lawfully established unit of land containing the youth camp that is smaller in size than required by the county for the original youth camp approval; and

(iii) development on the lawfully established unit of land that is not related to the youth camp and would require a land use decision as defined at ORS 197.015(10) unless the county's original approval of the camp is rescinded and the youth camp development is either removed or can remain, consistent with a county land use decision that is part of such rescission.

(F) Nothing in this rule relieves a county from complying with other requirements contained in the comprehensive plan or implementing land use regulations, such as the requirements addressing other resource values (e.g. resources identified in compliance with statewide planning Goal 5) that exist on agricultural lands.

(i) If a youth camp is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between youth camp development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts consistent with OAR chapter 660, divisions 16 and 23. If there is no program to protect the listed Goal 5 resource(s) included in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures in compliance with OAR chapter 660, division 23; and

(ii) If a proposed youth camp is located on lands where, after site specific consultation with a district state biologist, the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive) or habitat, or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites, or pigeon springs), the applicant shall conduct a site-specific assessment of the land in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the youth camp facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the youth camp facility.

(iii) The commission shall consider the repeal of the provisions of subparagraph (ii) on or before January 1, 2022.

(i) Extension of Sewer to a Youth Camp. A Goal 11 exception to authorize the extension of a sewer system to serve a youth camp shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this section. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 11 shall not apply. Exceptions adopted pursuant to this section shall be deemed to fulfill the requirements for goal exceptions under ORS 197.732(1)(c) and Goal 2.

(A) A Goal 11 exception shall determine the general location for the proposed sewer extension and shall require that necessary infrastructure be no larger than necessary to accommodate the proposed youth camp.

(B) To address Goal 2, Part II(c)(1), the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Goal 2, Part II(c)(1) shall be found to be satisfied if the proposed sewer extension will serve a youth camp proposed for up to 600 youth camp participants.

(C) To address Goal 2, Part II(c)(2), the exception shall demonstrate that areas which do not require a new exception cannot reasonably accommodate the proposed sewer extension. Goal 2, Part II(c)(2) shall be found to be satisfied if the sewer system to be extended was in existence as of January 1, 1990 and is located outside of an urban growth boundary on lands for which an exception to Goal 3 has been taken.

(D) To address Goal 2, Part II(c)(3), the exception shall demonstrate that the long term environmental, economic, social, and energy consequences resulting from the proposed extension of sewer with measures to reduce the effect of adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the lawfully established unit of land proposed for the youth camp. Goal 2, Part II(c)(3) shall be found to be satisfied if the proposed sewer extension will serve a youth camp located on a tract of at least 1,000 acres.

(E) To address Goal 2, Part II(c)(4), the exception shall demonstrate that the proposed sewer extension is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. Goal 2, Part II(c)(4) shall be found to be satisfied if the proposed sewer extension for a youth camp is conditioned to comply with section (5) of this rule.

(F) An exception taken pursuant to this section does not authorize extension of sewer beyond what is justified in the exception.

(j) Applicability: The provisions of this section shall apply directly to any land use decision pursuant to ORS 197.646 and 215.427(3). A county may adopt provisions in its comprehensive plan or land use regulations that establish standards and criteria in addition to those set forth in this section, or that are necessary to ensure compliance with any standards or criteria in this section.

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040, 215.213, 215.275, 215.282, 215.283, 215.301, 215.448, 215.459 & 215.705

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994 , f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LDCD 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 7-2010(Temp), f. & cert. ef. 6-17-10 thru 11-30-10; LCDD 9-2010, f. & cert. ef. 9-24-10; LCDD 11-2010, f. & cert. ef. 11-23-10; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 9-2011, f. & cert. ef. 11-23-11; LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 2-2013, f. & cert. ef. 1-29-13; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14; LCDD 2-2014, f. & cert. ef. 10-14-14; LCDD 2-2015, f. & cert. ef. 4-9-15; LCDD 3-2016, f. & cert. ef. 2-10-16

660-033-0135
Dwellings in Conjunction with Farm Use

(1) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The parcel on which the dwelling will be located is at least:

(A) 160 acres and not designated rangeland; or

(B) 320 acres and designated rangeland; or

(C) As large as the minimum parcel size if located in a zoning district with an acknowledged minimum parcel size larger than indicated in paragraph (A) or (B) of this subsection.

(b) The subject tract is currently employed for farm use, as defined in ORS 215.203.

(c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.

(d) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract.

(2)(a) If a county prepares the potential gross sales figures pursuant to subsection (c) of this section, the county may determine that on land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(A) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least $10,000 in annual gross sales that are located within a study area that includes all tracts wholly or partially within one mile from the perimeter of the subject tract;

(B) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in paragraph (A) of this subsection;

(C) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in paragraph (B) of this subsection;

(D) The subject lot or parcel on which the dwelling is proposed is not less than 10 acres in western Oregon or 20 acres in eastern Oregon;

(E) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;

(F) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and

(G) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by paragraph (C) of this subsection.

(H) In determining the gross sales capability required by paragraph (C):

(i) The actual or potential cost of purchased livestock shall be deducted from the total gross sales attributed to the farm or ranch tract;

(ii) Only actual or potential gross sales from land owned, not leased or rented, shall be counted; and

(iii) Actual or potential gross farm sales earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(b) In order to identify the commercial farm or ranch tracts to be used in paragraph (2)(a)(A) of this rule, the gross sales capability of each tract in the study area, including the subject tract, must be determined, using the gross sales figures prepared by the county pursuant to subsection (2)(c) of this section as follows:

(A) Identify the study area. This includes all the land in the tracts wholly or partially within one mile of the perimeter of the subject tract;

(B) Determine for each tract in the study area the number of acres in every land classification from the county assessor's data;

(C) Determine the potential earning capability for each tract by multiplying the number of acres in each land class by the gross sales per acre for each land class provided by the commission pursuant to subsection (2)(c) of this section. Add these to obtain the potential earning capability for each tract;

(D) Identify those tracts capable of grossing at least $10,000 based on the data generated in paragraph (C) of this subsection; and

(E) Determine the median size and median gross sales capability for those tracts capable of generating at least $10,000 in annual gross sales to use in paragraphs (2)(a)(A) and (B) of this subsection.

(c) In order to review a farm dwelling pursuant to subsection (2)(a) of this section, a county may prepare, subject to review by the director of the Department of Land Conservation and Development, a table of the estimated potential gross sales per acre for each assessor land class (irrigated and nonirrigated) required in subsection (2)(b) of this section. The director shall provide assistance and guidance to a county in the preparation of this table. The table shall be prepared as follows:

(A) Determine up to three indicator crop types with the highest harvested acreage for irrigated and for nonirrigated lands in the county using the most recent OSU Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and State Agricultural Estimates," or other USDA/Extension Service documentation;

(B) Determine the combined weighted average of the gross sales per acre for the three indicator crop types for irrigated and for nonirrigated lands, as follows:

(i) Determine the gross sales per acre for each indicator crop type for the previous five years (i.e., divide each crop type's gross annual sales by the harvested acres for each crop type);

(ii) Determine the average gross sales per acre for each crop type for three years, discarding the highest and lowest sales per acre amounts during the five-year period;

(iii) Determine the percentage each indicator crop's harvested acreage is of the total combined harvested acres for the three indicator crop types for the five year period;

(iv) Multiply the combined sales per acre for each crop type identified under subparagraph (ii) of this paragraph by its percentage of harvested acres to determine a weighted sales per acre amount for each indicator crop; and

(v) Add the weighted sales per acre amounts for each indicator crop type identified in subparagraph (iv) of this paragraph. The result provides the combined weighted gross sales per acre.

(C) Determine the average land rent value for irrigated and nonirrigated land classes in the county's exclusive farm use zones according to the annual "income approach" report prepared by the county assessor pursuant to ORS 308A.092; and

(D) Determine the percentage of the average land rent value for each specific land rent for each land classification determined in paragraph (C) of this subsection. Adjust the combined weighted sales per acre amount identified in subparagraph (B)(v) of this subsection using the percentage of average land rent (i.e., multiply the weighted average determined in subparagraph (B)(v) of this subsection by the percent of average land rent value from paragraph (C) of this subsection). The result provides the estimated potential gross sales per acre for each assessor land class that will be provided to each county to be used as explained under paragraph (2)(b)(C) of this section.

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

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years, or in an average of three of the last five years, the farm operator earned the lower of the following:

(A) At least $40,000 in gross annual income from the sale of farm products; or

(B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon; and

(b) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands designated for exclusive farm use pursuant to ORS chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation;

(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and

(d) In determining the gross income required by subsection (a) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(B) Only gross income from land owned, not leased or rented, shall be counted; and

(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

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

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, on which the farm operator earned at least $80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years; and

(b) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands designated for exclusive farm use pursuant to ORS chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation; and

(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section;

(d) In determining the gross income required by subsection (a) of this section;

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(B) Only gross income from land owned, not leased or rented, shall be counted; and

(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(5)(a) For the purpose of sections (3) or (4) of this rule, noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross income requirements. Except for Hood River and Wasco counties and Jackson and Klamath counties, when a farm or ranch operation has lots or parcels in both "western" and "eastern" Oregon as defined by this division, lots or parcels in eastern or western Oregon may not be used to qualify a dwelling in the other part of the state.

(b) Prior to the final approval for a dwelling authorized by sections (3) and (4) of this rule that requires one or more contiguous or non contiguous lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:

(A) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS chapter 215; and

(B) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

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

(d) Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located;

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

(f) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(6) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, a dwelling may be considered customarily provided in conjunction with farm use if it is not on a lot or parcel identified as high-value farmland and it meets the standards and requirements of ORS 215.213(2)(a) or (b).

(7) A dwelling may be considered customarily provided in conjunction with a commercial dairy farm as defined by OAR 660-033-0135(8) if:

(a) The subject tract will be employed as a commercial dairy as defined by OAR 660-033-0135(8);

(b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy;

(c) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;

(d) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm;

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

(f) The Oregon Department of Agriculture has approved the following:

(A) A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

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

(8) As used in this division, the following definitions apply:

(a) "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(3)(a) or (4)(a), whichever is applicable, from the sale of fluid milk; and

(b) "Farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203.

(9) A dwelling may be considered customarily provided in conjunction with farm use if:

(a) Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable;

(b) The subject lot or parcel on which the dwelling will be located is:

(A) Currently employed for the farm use, as defined in ORS 215.203, that produced in each of the last two years or three of the last five years, or in an average of three of the last five years the gross farm income required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable; and

(B) At least the size of the applicable minimum lot size under OAR 215.780;

(c) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;

(d) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and

(e) In determining the gross income required by subsections (a) and (b)(A) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and

(B) Only gross income from land owned, not leased or rented, shall be counted.

(10) Farming of a marijuana crop, and the gross sales derived from selling a marijuana crop, may not be used to demonstrate compliance with the approval criteria for a primary farm dwelling.

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

Stat. Auth.: ORS 183, 197.040, 197.230 & 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

Hist.: LCDC 3-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 7-2012, f. & cert. ef. 2-14-12; LCDD 3-2016, f. & cert. ef. 2-10-16

660-033-0140
Permit Expiration Dates

(1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

(2) A county may grant one extension period of up to 12 months if:

(a) An applicant makes a written request for an extension of the development approval period;

(b) The request is submitted to the county prior to the expiration of the approval period;

(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(3) Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

(4) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

(5)(a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.

(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.

(6) For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).

Stat. Auth.: ORS 197.040 & 215
Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 4-2011, f. & cert. ef. 3-16-11; LCDD 6-2013, f. 12-20-13, cert. ef. 1-1-14

660-033-0145
Agriculture/Forest Zones

(1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-0050;

(2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055; and

(3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-0057.

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 197.213, 197.215, 197.230, 197.245, 197.283, 197.700, 197.705, 197.720, 197.740, 197.750 & 197.780
Hist.: LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0160
Effective Date

The provisions of this division shall become effective upon filing.

Stat. Auth.: 197.040, 197.230 & 197.245
Stats. Implemented: ORS 215
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 5-1996, 12-23-96

DIVISION 34

STATE AND LOCAL PARK PLANNING

660-034-0000
Purpose

(1) The purpose of this division is to establish policies and procedures for the planning and zoning of state and local parks in order to address the recreational needs of the citizens of the state. This division is intended to interpret and carry out requirements of Statewide Planning Goal 8 and ORS 195.120 to 195.125.

(2) In general, this division directs local government planning and zoning activities regarding state and local park master plans. OAR chapter 736, division 18, directs the Oregon Parks and Recreation Department (OPRD) with respect to state park master planning, and does not apply to local governments except where specified by this division.

Stat. Auth.: ORS 195.120 & 197.040
Stats. Implemented: ORS 195.120 - 195.125
Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2006, f. & cert. ef. 4-14-06

660-034-0010
Definitions

As used in this division, unless the context requires otherwise:

(1) "Administrative site" is property owned or managed by OPRD that is used solely for state park administration or maintenance facilities, or both, and which is not within or contiguous to a state park.

(2) "Agricultural land" shall have the same meaning as OAR 660-033-0020(1).

(3) "Camper cabin" is a camp structure with no permanent foundations or plumbing, located within a camping area and intended for occupancy by one to eight persons.

(4) "Camp store" is an enclosed building not exceeding 1500 square feet for the sale of sundries to registered campers in camping areas within the park.

(5) "Endowment property" is property owned by OPRD which has no known outstanding resources or recreational values that would support the state park system mission and role, and which is intended for sale, lease, trade or donation to a different entity or for management for a purpose which does not directly support the state park system mission and role.

(6) "Forest land" shall have the same meaning as provided in Goal 4.

(7) "Group shelter" is an open sided or enclosed permanent building that does not include bedrooms, but may include plumbing, fireplace, barbecue, and picnic tables, for use by registered campers in a group camping area.

(8) "Local park" is a public area intended for open space and outdoor recreation use that is owned and managed by a city, county, regional government, or park district and that is designated as a public park in the applicable comprehensive plan and zoning ordinance.

(9) "Open play field" is a large, grassy area with no structural improvements intended for outdoor games and activities by park visitors. The term does not include developed ball fields, golf courses or courts for racquet sports.

(10) "OPRD" means the Oregon Parks and Recreation Department.

(11) "PAPA" is a "post acknowledgment plan amendment" conducted according to the requirements of ORS 197.610 to 197.625. The term includes amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation.

(12) "Park retreat" is an area of a state park designated for organized gatherings. Facilities within a park retreat are for use only by registered retreat guests. A park retreat must include a meeting hall and designated parking, and may also include other park amenities and support facilities.

(13) "Park visitor" is any member of the public who enters a state or local park for the primary purpose of enjoying or learning about the natural, historic or prehistoric, or scenic resources associated with the park setting.

(14) "Preliminary draft master plan" is a proposal for a state park master plan which has been prepared for adoption as an administrative rule by OPRD under the provisions of OAR chapter 736, division 18, and which is provided to local governments and the public for review and comment.

(15) "Recreation shop" is an open or enclosed building not exceeding 500 square feet of floor area for the rental of horses or recreational equipment such as bicycles and boats and for the sale of incidental related items such as bait and fishing flies.

(16) "State park" is any property owned or managed by OPRD and that OPRD has determined possesses outstanding natural, cultural, scenic or recreational resource values that support the state park system mission and role. The following OPRD properties are not state parks for purposes of this division: endowment properties and administrative sites.

Stat. Auth.: ORS 195.120 & 197.040
Stats. Implemented: ORS 195.120 - 195.125
Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

660-034-0015
State Park Master Plans and Allowable Uses

(1) OPRD adopts state park master plans as administrative rules pursuant to OAR chapter 736, division 18 and ORS 390.180.

In order to facilitate the implementation of state park master plans through local government land use plans, this division provides procedures and criteria for park master planning and coordination.

(2) Each state park master plan shall describe, through maps and text as appropriate, the type, size and location of all land uses intended to occur in the park. Uses listed in ORS 195.120(3) and any other uses determined by OPRD may be authorized in a state park master plan provided all aspects of such uses comply with statewide planning goals, ORS 215.296, 390.180, and OAR 736-018-0020 on July 15, 1998, and all other applicable laws. State park master plans shall include findings of compliance with statewide planning goals and ORS 215.296.

(3) Except where the context specifies otherwise, the requirements in this division do not apply to state park master plans adopted as state rules prior to July 15, 1998. However, the requirements in this division do apply to amendments to such master plans when the amendments are adopted after July 15, 1998.

Stat. Auth.: ORS 195.120 & 197.040
Stats. Implemented: ORS 195.120 - 195.125
Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

660-034-0020
Coordination Procedures for Development of State Park Master Plans

(1) For each state park master plan developed after July 15, 1998, OPRD shall submit a preliminary draft master plan to DLCD and all local governments with land use authority over the subject state park property. This submittal shall occur prior to or simultaneously with OPRD's initiation of the administrative rule procedure for master plan adoption. At the time of the submittal, OPRD shall consult with local planning officials to determine whether the proposed uses in the park master plan are allowed by the acknowledged local comprehensive plan, as follows:

(a) If the local government determines that all of the proposed uses are allowed by the acknowledged local plan, OPRD may proceed with consideration and adoption of the master plan. In this case, the procedures in OAR 660-034-0020(2) to 660-034-0030(6) do not apply. However, if the proposed uses are allowable, but only by application of local conditional approval criteria that are not clear or objective, OPRD may seek to amend such criteria by proceeding as described in subsection (b) of this section. Upon request from OPRD, the local government shall provide written confirmation that the proposed master plan is compatible with the local plan.

(b) If the local government determines that any of the proposed uses described in the master plan are not allowed by the acknowledged local plan or implementing regulations, OPRD shall submit the preliminary master plan to the local government as an application for a post-acknowledgment plan amendment (PAPA).

(2) Upon receipt of a PAPA application from OPRD, a local government shall follow applicable PAPA procedures and requirements, except as described in subsections (a) through (c) of this section:

(a) The local government shall notify interested citizens and conduct at least one public hearing on the preliminary master plan within 90 days following submittal of a complete PAPA application. This may be conducted as a joint hearing of the local government and OPRD;

(b) Within 120 days following submittal of OPRD's complete application, the local government shall forward to OPRD any recommendations for changes to the master plan. The recommendations shall be in writing and shall include any suggested conditions or changes to the master plan;

(c) The local government shall not take final action on the PAPA application until OPRD has adopted the park master plan as an administrative rule and submitted it to the local government in accordance with OAR 660-034-0030.

(3) Within 60 days of receiving written recommendations from a local government pursuant to OAR 660-034-0020(2)(b), OPRD shall provide a written response to the local government addressing each recommendation. The response shall describe any changes to the draft park master plan that OPRD would propose in response to the local recommendations.

(4) OPRD's response shall also provide a second comment period not less than 30 days during which the local government may:

(a) Review any changes to the park master plan proposed by OPRD in response to the local government's previous recommendations; and

(b) Based on this review, either concur with or object to OPRD's pending adoption of the proposed master plan.

(5) If no objections are raised by the local government during the 30 day comment period, OPRD may proceed with consideration and adoption of the state park master plan. If OPRD receives a timely objection from the local government, and if the objection meets the requirements of OAR 660-034-0020(6), OPRD shall delay final consideration and adoption of the master plan in order to engage in formal or informal dispute resolution with the local government pursuant to OAR 660-034-0025. This delay of adoption shall continue for at least 60 days following the receipt of the objection, or until the issues in the objection are resolved and the objection is withdrawn, whichever occurs first. At the end of the 60 day delay period OPRD may proceed with consideration and adoption of the state park master plan.

(6) OPRD may choose to engage in dispute resolution for all issues raised by an objection. However, the mandatory 60 day delay specified in OAR 660-034-0020(5) shall only apply to an objection that meets the following requirements:

(a) The objection shall be described in a letter from the local governing body to the OPRD director received within the 30 day time period specified in OAR 660-034-0020(4); and

(b) The objection letter shall indicate the reasons why the local government believes the proposed master plan is inconsistent with the statewide planning goals, ORS 215.296, or OPRD's state park master planning criteria in OAR 736-018-0020.

Stat. Auth.: ORS 195.120 & 197.040
Stats. Implemented: ORS 195.120 - 195.125
Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

660-034-0025
Dispute Resolution

(1) If a local government objects to a proposed state park master plan, as described in OAR 660-034-0020(4) to 660-034-0020(6), OPRD shall attempt to resolve the objections during the 60 day delay period specified in OAR 660-034-0020(5), either through informal discussions with the local government or through formal mediation.

(2) OPRD or the local government may request mediation through the Oregon Consensus Program in order to resolve a disagreement about uses in a preliminary draft state park master plan. Such mediation shall be conducted according to the provisions of ORS 183.502.

(3) If OPRD and the local government engage in mediation pursuant to OAR 660-034-0025(2), and if this mediation does not result in timely resolution of the objection, either OPRD or the local government may request a nonbinding determination by the Land Conservation and Development Commission (LCDC). This determination shall be limited to issues involving the compliance of OPRD's proposed state park master plan with the statewide goals or related statutes or rules. Such a request shall be submitted by the end of the 60-day delay period specified in OAR 660-034-0020(5), or within 15 days following a withdrawal by either party from the mediation proceedings described under section (2) of this rule, whichever occurs last. LCDC may either agree or not agree to consider a request to issue a nonbinding determination regarding the dispute.

Stat. Auth.: ORS 195.120 & 197.040
Stats. Implemented: ORS 195.120 - 195.125
Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

660-034-0030
Local Government Implementation of State Park Master Plans

(1) Within 60 days following the effective date of the state park master plan administrative rule adopted by OPRD, unless an appeal of the rule is filed, OPRD shall submit the adopted master plan to all local governments with land use authority over the

subject state park. The submittal shall include a request that the local governments take final action on the PAPA application previously filed pursuant to OAR 660-034-0020(1)(b).

(2) Within 150 days after receipt of an adopted master plan from OPRD, the local governments shall take final action necessary to conclude the PAPA initiated under OAR 660-034-0020(1)(b). Final action shall include amendments to the plan, implementing ordinances, plan map and zoning map, as necessary, to:

(a) Indicate the existence of the state park and its boundaries on the appropriate maps;

(b) Apply appropriate plan and zone categories (a "park" zone or overlay zone is recommended); and

(c) Provide objective land use and siting review criteria in order to allow development of the uses indicated in the state park master plan.

(3) Amendments to the local plan intended to implement the state park master plan shall be consistent with all statewide planning goals. If the local action includes only such amendments as are necessary and sufficient to implement the park master plan, the local government may rely on goal findings that are included in the park master plan (see OAR 660-034-0015(2)) in order to comply with statewide planning goal requirements.

(4) The final local action shall include findings addressing ORS 215.296 for all uses and activities in or adjacent to an agricultural or forest zone. The local government may rely on the ORS 215.296 findings in the state park master plan (see OAR 660-034-0015(2)) in order to comply with this requirement. The analysis required under ORS 215.296 shall concern farm or forest practices occurring on lands surrounding the state park that are devoted to farm or forest use, and shall not concern farm or forest practices occurring on farm or forest land within the state park itself.

(5) The local government may decide to alter or disallow the state park master plan provided the local government determines that adoption of the state park master plan would not comply with a statewide planning goal or ORS 215.296, or both. The local government shall alter or disallow uses described in the park plan only to the extent necessary to comply with statewide goals or ORS 215.296, or both. If the local government alters or disallows the state park master plan, OPRD may pursue any of the following options:

(a) Take no action;

(b) Modify the state park master plan to be compatible with the final PAPA action taken by the local government;

(c) Appeal the local decision.

(6) If the local government takes no final action on the PAPA within 150 days from receipt of the adopted state parks master plan from OPRD, the master plan, rather than the local plan:

(a) Shall be deemed the controlling land use regulation for the subject state park with respect to uses described in the state parks master plan;

(b) Shall supersede local zoning ordinances with respect to review and approval of uses described in the state parks master plan; and

(c) The provisions of this section shall remain in effect until the local government takes final action on the PAPA application.

(7) OPRD may submit a state park master plan that OPRD adopted prior to July 15, 1998 to a local government as a PAPA. Upon receipt of such a previously adopted state park master plan, the local government shall consider conforming amendments to local planning and zoning measures, and may adopt such amendments provided the proposed uses in the park master plan comply with statewide planning goals and ORS 215.296.

(8) The OPRD director may continue any use or facility that existed in a state park on July 25, 1997. Furthermore, the following uses and activities shall be approved by local government subject only to clear and objective siting criteria that shall not, either individually or cumulatively, prohibit the use or activity

(a) The repair and renovation of facilities in existence on July 25, 1997;

(b) The replacement of facilities and services in existence on July 25, 1997, including minor location changes; and

(c) The minor expansion of uses and facilities in existence on July 25, 1997.

Stat. Auth.: ORS 195.120 & 197.040
Stats. Implemented: ORS 195.120 - 195.125
Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

660-034-0035
Park Uses On Agricultural and Forest Land

(1) All uses allowed under Statewide Planning Goal 3 are allowed on agricultural land within a state park, and all uses allowed under Statewide Planning Goal 4 are allowed on forest land within a state park, provided such uses are also allowed under OAR chapter 736, division 18 and all other applicable laws, goals, and rules. Local governments may allow state parks and park uses as provided in OAR chapter 660, division 33, and ORS 215.213 or 215.283 on agricultural lands, or as provided in OAR 660-006-0025(4) on forest lands, regardless of whether such uses are provided for in a state park master plan.

(2) The park uses listed in subsection (a) through (i) of this section are allowed in a state park subject to the requirements of this division, OAR chapter 736, division 18, and other applicable laws. Although some of the uses listed in these subsections are generally not allowed on agricultural lands or forest lands without exceptions to Statewide Planning Goals 3 or 4, a local government is not required to adopt such exceptions in order to allow these uses on agricultural or forest land within a state park provided the uses, alone or in combination, meet all other applicable requirements of statewide goals and are authorized in a state park master plan adopted by OPRD, including a state park master plan adopted by OPRD prior to July 15, 1998:

(a) Campground areas: recreational vehicle sites; tent sites; camper cabins; yurts; teepees; covered wagons; group shelters; campfire program areas; camp stores;

(b) Day use areas: picnic shelters, barbecue areas, swimming areas (not swimming pools), open play fields, play structures;

(c) Recreational trails: walking, hiking, biking, horse, or motorized off-road vehicle trails; trail staging areas;

(d) Boating and fishing facilities: launch ramps and landings, docks, moorage facilities, small boat storage, boating fuel stations, fish cleaning stations, boat sewage pumpout stations;

(e) Amenities related to park use intended only for park visitors and employees: laundry facilities; recreation shops; snack shops not exceeding 1500 square feet of floor area;

(f) Support facilities serving only the park lands wherein the facility is located: water supply facilities, sewage collection and treatment facilities, storm water management facilities, electrical and communication facilities, restrooms and showers, recycling and trash collection facilities, registration buildings, roads and bridges, parking areas and walkways;

(g) Park Maintenance and Management Facilities located within a park: maintenance shops and yards, fuel stations for park vehicles, storage for park equipment and supplies, administrative offices, staff lodging;

(h) Natural and cultural resource interpretative, educational and informational facilities in state parks: interpretative centers, information/orientation centers, self-supporting interpretative and informational kiosks, natural history or cultural resource museums, natural history or cultural educational facilities, reconstructed historic structures for cultural resource interpretation, retail stores not exceeding 1500 square feet for sale of books and other materials that support park resource interpretation and education;

(i) Visitor lodging and retreat facilities in state parks: historic lodges, houses or inns and the following associated uses in a state park retreat area only:

(A) Meeting halls not exceeding 2000 square feet of floor area;

(B) Dining halls (not restaurants).

Stat. Auth.: ORS 195.120 & 197.040
Stats. Implemented: ORS 195.120 - 195.125
Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2006, f. & cert. ef. 4-14-06

660-034-0040
Planning for Local Parks

(1) Local park providers may prepare local park master plans, and local governments may amend acknowledged comprehensive plans and zoning ordinances pursuant to the requirements and procedures of ORS 197.610 to 197.625 in order to implement such local park plans. Local governments are not required to adopt a local park master plan in order to approve a land use decision allowing parks or park uses on agricultural lands under provisions of ORS 215.213 or 215.283 or on forestlands under provisions of OAR 660-006-0025(4), as further addressed in sections (3) and (4) of this rule. If a local government decides to adopt a local park plan as part of the local comprehensive plan, the adoption shall include:

(a) A plan map designation, as necessary, to indicate the location and boundaries of the local park; and

(b) Appropriate zoning categories and map designations (a "local park" zone or overlay zone is recommended), including objective land use and siting review criteria, in order to authorize the existing and planned park uses described in local park master plan.

(2) Unless the context requires otherwise, this rule does not require changes to:

(a) Local park plans that were adopted as part of an acknowledged local land use plan prior to July 15, 1998; or

(b) Lawful uses in existence within local parks on July 15, 1998.

(3) All uses allowed under Statewide Planning Goal 3 are allowed on agricultural land within a local park and all uses allowed under Statewide Planning Goal 4 are allowed on forest land within a local park, in accordance with applicable laws, statewide goals, and rules.

(4) Although some of the uses listed in OAR 660-034-0035(2)(a) to (g) are not allowed on agricultural or forest land without an exception to Goal 3 or Goal 4, a local government is not required to take an exception to Goals 3 or 4 to allow such uses on land within a local park provided such uses, alone or in combination, meet all other statewide goals and are described and authorized in a local park master plan that:

(a) Is adopted as part of the local comprehensive plan in conformance with Section (1) of this rule and consistent with all statewide goals;

(b) Is prepared and adopted applying criteria comparable to those required for uses in state parks under OAR chapter 736, division 18; and

(c) Includes findings demonstrating compliance with ORS 215.296 for all uses and activities proposed on or adjacent to land zoned for farm or forest use.

Stat. Auth.: ORS 195.120 & 197.040
Stats. Implemented: ORS 195.120 - 195.125
Hist.: LCDD 3-1998, f. & cert. ef. 7-15-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 3-2006, f. & cert. ef. 4-14-06

DIVISION 35

FEDERAL CONSISTENCY

660-035-0000
Purpose

This division establishes state procedures for implementing the federal consistency requirements of the federal Coastal Zone Management Act of 1972 (CZMA), as amended, section 307(c).

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.435
Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88; LCDD 8-2012, f. & cert. ef. 6-15-12

660-035-0005
Conformance with Federal Consistency Review Rules

The CZMA provides a federal consistency requirement that allows states with an approved coastal management program to review federal actions affecting coastal uses or resources. Pursuant to ORS 196.435, the Department of Land Conservation and Development is Oregon's designated coastal zone management agency and administers federal consistency reviews. In administering federal consistency reviews, the department will follow the federal requirements and procedures provided in 15 CFR Part 930. All references to 15 CFR Part 930 in this division are to the version that existed on May 11, 2012.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.435
Hist.: LCDD 8-2012, f. & cert. ef. 6-15-12

660-035-0010
Definitions

As used in this division, the definitions at CZMA section 304, 15 CFR Part 930, ORS 196.405, and 197.015 apply, unless the context requires otherwise. Additionally, the following definitions apply:

(1) "Coastal Zone," as defined in CZMA §304(1) and 15 CFR §930.11(e), specifically means the area lying between the State of Oregon border with the State of Washington on the north, to the State of Oregon border with the State of California on the south, seaward to the extent of the state's jurisdiction as recognized by federal law, and inland to the crest of the Coast Range Mountains, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness;

(c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island; and

(d) Land the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers, or agents, which federal law excludes from the coastal zone.

NOTE: A map depicting the boundaries of Oregon's coastal zone, but not depicting the excluded federal lands, is available from the department and on the coastal program website.

(2) "OCMP" means the Oregon Coastal Management Program described in ORS 196.425(1), which the federal Office of Ocean and Coastal Resource Management approved in 1977 and all federally approved amendments thereto.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.435
Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88; LCDD 8-2012, f. & cert. ef. 6-15-12

660-035-0015
Activities Subject to Review

The following types of federal actions are subject to federal consistency review:

(1) Proposed federal agency activities, including proposed federal development projects, which affect any coastal use or resource, pursuant to 15 CFR Part 930, Subpart C;

(2) Activities that affect any coastal use or resource and that require one or more federal licenses or permits identified on the federally-approved OCMP license and permit list developed pursuant to 15 CFR §930.53, or unlisted licenses or permits the department identifies through the process set forth in 15 CFR §930.54, pursuant to 15 CFR Part 930, Subpart D;

(3) Federal license or permit activities described in detail in outer continental shelf plans that affect any coastal use or resource, pursuant to 15 CFR Part 930, Subpart E; and

(4) Federal assistance to state and local governments, including special purpose districts and related public entities, for activities that affect any coastal use or resource, pursuant to 15 CFR Part 930, Subpart F.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.435
Hist.: LCDD 8-2012, f. & cert. ef. 6-15-12

660-035-0020
Federal Consistency in the OCMP

(1) To initiate consistency review, the responsible party identified in 15 CFR Part 930 shall submit all required consistency determinations, consistency certifications, or applications for federal financial assistance to the department along with supporting

information or necessary data and information required by 15 CFR Part 930 and, for 15 CFR Part 930, Subparts D, E and F, as augmented by OAR 660-035-0030 through 660-035-0070.

(2) The department will review activities for consistency with the federally-approved enforceable policies of the OCMP. The enforceable policies can be found generally within:

(a) The statewide planning goals;

(b) The applicable acknowledged city or county comprehensive plan and implementing land use regulations; and

(c) Selected state agency statutory and regulatory authorities governing any coastal use or resource.

(3) A person may contact the department for a list of federally-approved enforceable policies.

Stat. Auth.:ORS 197.040
Stats. Implemented: ORS 196.435
Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88; LCDD 8-2012, f. & cert. ef. 6-15-12

660-035-0030
Consistency for Federal Agency Activities

(1) When reviewing a federal agency activity or development project for consistency to the maximum extent practicable with the enforceable policies of the OCMP, the department shall conform to the requirements and procedures provided in 15 CFR Part 930, Subpart C.

(2) For review of a consistency determination submitted by a federal agency for a federal agency activity or federal development project, the federal agency must submit to the department the information described in 15 CFR §930.39(a).

(a) Although 15 CFR §930.37 limits state authority to require National Environmental Policy Act (NEPA) documents for federal consistency review purposes, a federal agency may mutually agree with the department to rely on information contained in NEPA documents or other project documents to provide some of the comprehensive data and information sufficient to support the federal agency's consistency statement under 15 CFR §930.39(a).

(b) A federal agency may elect to rely on information contained in NEPA documents or other project documents to demonstrate consistency to the maximum extent practicable with the enforceable policies of the OCMP. If relying on NEPA documents or other project documentation, the federal agency must clearly demonstrate how the materials support a finding of consistency with OCMP enforceable policies.

(3) The department shall provide for public participation consistent with the provisions of 15 CFR §930.42. The department will:

(a) Maintain a mailing list of interested parties;

(b) Notify interested parties when the department is reviewing federal agency activities or development projects for consistency with the OCMP; and

(c) Solicit comments that address the consistency of the proposed federal activity or development project with applicable elements of the OCMP.

(4) Evidence supporting consistency for a federal agency activity or development project: Federal agencies are not required to file applications for state and local permits and other authorizations unless required to do so by provisions of federal law other than the CZMA. However, federal agencies are required to demonstrate that the proposed activity is consistent to the maximum extent practicable with the applicable state and local enforceable policies underlying the permits. While federal agencies are not required to apply for state and local permits and other authorizations otherwise required by enforceable policies, where federal law authorizes a federal agency to do so the department will consider such applications when determining whether the federal activity or development project is consistent with the enforceable policies underlying the permit or authorization.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.435
Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88; LCDD 8-2012, f. & cert. ef. 6-15-12

660-035-0050
Consistency for Activities Requiring a Federal License or Permit

(1) When reviewing any consistency certification submitted by an applicant for a federal license or permit activity affecting any coastal use or resource for consistency with the enforceable policies of the OCMP, the department shall conform to the requirements and procedures provided in 15 CFR Part 930, Subpart D.

(2) For review of a federal license or permit application, an applicant must submit to the department a consistency certification and the necessary data and information described in 15 CFR §930.58(a).

(a) Copies of complete applications for permits that state and local governments require for the proposed activity are required as necessary data and information to begin the CZMA six-month review period. The department does not require issued state or local permits as necessary data or information to begin the six-month review. If at the end of the six-month review period the applicant has not obtained all required state and local permits:

(A) The department may object to the consistency certification as provided in 15 CFR §930.63, or

(B) The department and the applicant may enter into a written agreement to stay the CZMA review period to permit resolution of the remaining issues as provided in 15 CFR §930.60(b).

(b) To expedite the federal consistency review process, the department encourages applicants to obtain state and local permits and other authorizations required by enforceable policies before beginning the federal consistency review process.

(c) Draft NEPA documents are necessary data and information to begin the CZMA six-month review period except when a federal statute requires a federal agency to initiate CZMA consistency review prior to its completion of NEPA compliance.

(d) In cases where an applicant relies on draft NEPA documents to satisfy some of the necessary data and information requirements for federal consistency review under subsection (c), the department will not begin the federal consistency review period until the applicant submits the draft NEPA documents, together with all other required necessary data and information, to the department.

(e) An applicant must clearly demonstrate how draft NEPA or other project documentation materials support a finding of consistency with OCMP enforceable policies.

(3) The department shall provide for public participation consistent with the provisions of 15 CFR §930.61. The department will:

(a) Maintain a mailing list of interested parties;

(b) Notify interested parties when the department is reviewing a federally licensed or permitted activity for consistency with the OCMP. The department may issue joint public notices with the federal permitting or licensing agency; and

(c) Solicit comments that address the consistency of the proposed activity with applicable elements of the OCMP.

(4) Evidence supporting consistency for federal license or permit activities: For activities located within the state's jurisdiction that require state or local permits or authorizations, the issued permit or authorization is the only acceptable evidence demonstrating consistency with the enforceable policies that the permit or authorization covers.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 196.435 & 197.040
Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88; LCDD 8-2012, f. & cert. ef. 6-15-12

660-035-0060
Consistency for Outer Continental Shelf (OCS) Activities

(1) When reviewing an outer continental shelf activity that requires an authorization from the U.S. Department of the Interior pursuant to the Outer Continental Shelf Lands Act (43 USC § 1331–1356(a) for consistency with the enforceable policies of the OCMP, the department shall conform to the requirements and procedures provided in 15 CFR Part 930, Subpart E.

(2) For review of an outer continental shelf activity, an applicant must submit to the Secretary of the Interior or designee a consistency certification and materials described in 15 CFR

§930.76. The Secretary of the Interior or designee will furnish the department with a copy of the information.

(3) The department shall provide for public participation consistent with the provisions of 15 CFR §930.77. To do so, the department will follow the procedure set forth in OAR 660-035-0050(3)(a)–(c).

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.435
Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88; LCDD 8-2012, f. & cert. ef. 6-15-12

660-035-0070
Consistency for Federal Assistance to State and Local Governments

(1) When reviewing applications for federal assistance to state and local governments for consistency with the enforceable policies of the OCMP, the department shall conform to the requirements and procedures provided in 15 CFR Part 930, Subpart F.

(2) For review of federal assistance to state and local governments, the applicant agency must submit to the department the materials described in 15 CFR §930.94.

(3) The department's review period for consistency certifications for federal assistance to state and local governments shall be 60 days.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.435
Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88; LCDD 8-2012, f. & cert. ef. 6-15-12

DIVISION 36

OCEAN PLANNING

660-036-0000
Territorial Sea Plan

The Land Conservation and Development Commission adopts and herein incorporates by reference the **Territorial Sea Plan** approved by the Ocean Policy Advisory Council on August 12, 1994, as part of the Oregon Coastal Management Program.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.310 - 183.550, 196.465, 196.471 & 197.040
Stats. Implemented: ORS 196.465, 196.471 & 197.040
Hist.: LCDC 5-1995, f. & cert. ef. 5-24-95

660-036-0001
Telecommunication Cables, Pipelines, and Other Utilities

(1) Oregon's coast is a prime landing zone for fiber-optic telecommunication cables that cross the ocean floor from sites around the Pacific Rim. Other utilities, such as natural gas pipelines, may eventually be routed across Oregon's Territorial Sea bed. Proper placement of utility easements and installation of fixtures is required to avoid damage to or conflict with other ocean uses, such as commercial fishing, and to reduce or avoid adverse effects on marine habitats. State agencies, such as the Division of State Lands, the Department of Fish and Wildlife, the Oregon Parks and Recreation Department, and the Department of Land Conservation and Development, need clear policies and standards for reviewing and approving the routing and installation of utilities on the seafloor of Oregon and adjacent federal waters.

(2) **Policies**. When making decisions to approve routing, placement, or operation of a seafloor utility or fixture, state and federal agencies shall:

(a) Protect ocean fisheries and other ocean uses from any adverse effects that may be caused by installation or operation of cables, pipelines, or other fixtures by requiring that such routing, placement, or operation:

(A) Avoid conflicts between commercial or recreational fishing or other ocean-use activities and utilities, as a first priority;

(B) Reduce any adverse effects when conflicts cannot be avoided; and

(C) Mitigate for adverse effects after first reducing them to the minimum practicable.

(b) Protect marine habitat, fishery areas, and other marine resources as required by Statewide Planning Goal 19, Ocean Resources, and the Oregon Territorial Sea Plan; and

(c) Promote direct communication between affected ocean users to resolve or avoid conflicts and require written agreements among the parties when necessary to ensure communication and memorialize agreements.

(3) **Implementation Requirements**. When approving the routing, placement, or operation of seafloor utility, state and federal agencies shall avoid or reduce conflicts or adverse effects on other ocean users through the use of one or more of the following:

(a) **Burial**:

(A) In state waters: All telecommunication cables, pipelines, and other fixtures, crossing or affixed to state lands of the territorial sea lying seaward of Extreme Low Water (which is the seaward boundary of the Ocean Shore Recreation Area), shall be buried so as to ensure continuous burial unless the approving state agencies make findings that burial cannot be practically achieved and all affected parties agree that adverse effects of not burying the cable, pipeline, or fixture have been reduced, avoided, or mitigated to the extent practicable.

(B) In federal waters: Decisions to permit burial of cables, pipelines, or other fixtures crossing or affixed to the seabed of the outer continental shelf (beneath federal waters) to a depth of 2,000 meters off Oregon, will be deemed consistent with this state policy. When a federal agency does not require burial in waters to this depth, the state may concur that the decision is consistent with state policy only if the federal agency makes findings that burial cannot be practically achieved and all affected parties agree that adverse effects of not burying the cable, pipeline, or fixture, have been reduced, avoided, or mitigated to the extent practicable.

(C) Burial shall be certified by the contractor to the easement-granting agency.

(D) The easement-granting agency shall require that cables, pipelines, or other utility fixtures shall be inspected periodically and after any major geologic event, such as subduction-zone earthquake to ensure continued burial.

(b) **Communication and coordination**. Written agreements between the applicant and fishers or other users shall be required by the easement-granting agency as evidence of communication and coordination. Such agreements may coordinate work, determine routing, identify routes, respond to emergencies, provide for mitigation of adverse effects, or specify procedures for on-going communication. Written agreements shall specify how fishers or other users and the applicant will resolve disputes over lost fishing gear, damage to seafloor utilities, or liability for such actions.

(c) **Controlling the location of utilities**. Locations for new cables, pipelines, or other utilities shall conserve areas available to ocean fisheries, prevent or avoid conflicts with other uses, protect marine habitats, and minimize adverse effects on other public resources of the seafloor or ocean shore. New rights of way may be required to be located as close to existing rights of way as possible or with sufficient capacity to enable future expansion within the approved right of way.

(d) **Single point-of-contact**. The Division of State Lands shall coordinate approvals of easements and permits in consultation with the Parks and Recreation Department, the Department of Fish and Wildlife, the Department of Land Conservation and Development, the Department of Geology and Mineral Industries, and coastal local governments, as appropriate. The Department of Land Conservation and Development will use its authority under the federal Coastal Zone Management Act to review federal permits to ensure that they are consistent with state requirements.

Stat. Auth.: ORS 183.310 - 550, 196.465, 196.471 & 197
Stats. Implemented: ORS 196.465, 196.471 & 197.040
Hist.: LCDD 1-2001, f. 1-25-01, cert. ef. 1-26-01

660-036-0003
Territorial Sea Plan: Ocean Policies

The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan entitled Ocean Management Goals and Policies that was approved by the Ocean Policy Advisory Council on June 4, 1999.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197
Stats. Implemented: ORS 196.471
Hist. LCDD 5-2001, f. & cert. ef. 10-16-01

660-036-0004
Territorial Sea Plan: Rocky Shores Management at Cape Arago

The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan approved by the Ocean Policy Advisory Council on June 4, 1999, replacing rocky shore management prescriptions and management area designations on pages 139 through 146 pertaining to the rocky shores of the Cape Arago headland.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197
Stats. Implemented: ORS 196.471
Hist. LCDD 5-2001, f. & cert. ef. 10-16-01

660-036-0005
Territorial Sea Plan: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities

The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, that the Commission approved as modified on January 24, 2013.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.471
Hist.: LCDD 4-2009, f. & cert. ef. 11-25-09; LCDD 3-2013, f. & cert. ef. 10-7-13

660-036-0010
Ocean Resources Management Plan

The Land Conservation and Development Commission adopts and herein incorporates by reference the **Ocean Resources Management Plan** adopted by Commission Order #90-OCEAN-699, December 12, 1990, and amendments to the **Ocean Resources Management Plan** as approved by the Ocean Policy Advisory Council on March 11, 1994 and June 10, 1994.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.310 - 183.550, 196.465, 196.471 & 197.040
Stats. Implemented: ORS 196.405 - 196.515 & 197.040
Hist.: LCDC 5-1995, f. & cert. ef. 5-24-95

DIVISION 37

GOAL 17 WATER-DEPENDENT SHORELANDS

660-037-0010
Purpose Statement

The purpose of this division is to implement Coastal Shoreland Uses Requirement 2 of Goal 17 Coastal Shorelands (OAR 660-015-0010(2)) regarding water-dependent shorelands in estuaries. This division explains how to calculate the minimum amount of shorelands to be protected for water-dependent uses. This division also identifies the qualifications of shorelands suitable for water-dependent uses as well as suggested land use regulations for implementation.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010 - 197.830
Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99

660-037-0020
Policy

(1) The Land Conservation and Development Commission (LCDC) recognizes that since the early 1980s, when comprehensive estuary management plans were acknowledged by LCDC, significant economic changes experienced in coastal communities have affected the demands for shorelands. During this period, most of the shorelands designated for water-dependent development in local estuary plans have remained vacant. As a result of these economic changes, there have been increased pressures to develop the vacant or underdeveloped water-dependent lands for nonwater-dependent uses.

(2) The reasons to protect certain shorelands for water-dependent uses are both economic and environmental. Economically, shoreland sites for water-dependent development are a finite economic resource that usually need protection from prevailing real estate market forces. By its very nature, water-dependent development can occur only in shoreland areas and only in certain shorelands with suitable characteristics relating to water access, land transportation and infrastructure, and surrounding land use compatibility. Once these suitable sites are lost to nonwater-dependent uses, they are very difficult and expensive to recover, if at all. Environmentally, providing "suitable" areas for water-dependent development means less economic and political pressure to accommodate future development in environmentally sensitive areas such as wetlands, marshes, and biologically productive shallow subtidal areas.

(3) As a matter of state policy, it is not desirable to allow these scarce and non-renewable resources of the marine economy to be irretrievably committed to, or otherwise significantly impaired by, nonindustrial or nonwater-dependent types of development which enjoy a far greater range of locational options.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010 - 197.830
Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99

660-037-0030
Statement of Applicability

(1) This division applies to any post-acknowledgment plan amendment or periodic review work task that:

(a) Would directly affect a designated water-dependent shoreland site; and

(b) Is initiated on or after the effective date of this division.

(2) For purposes of this division, a designated water-dependent shoreland site is directly affected when any post-acknowledgment plan amendment or periodic review work task would:

(a) Change the size or shape of the site;

(b) Allow or authorize a nonwater-dependent use or activity at a site, unless the use or activity is a "permissible nonwater-dependent use" as allowed by Goal 17 Coastal Shoreland Uses Requirement 2 (OAR 660-015-0010(2)); or

(c) Prohibit all water-dependent uses and activities at the site.

(3) For purposes of this division, a post-acknowledgment plan amendment is "initiated" when a local government files a proposed amendment to or adoption of a comprehensive plan or land use regulation with the director in accordance with OAR 660-018-0020.

(4) For purposes of this division, a periodic review work task is "initiated" when a local government's periodic review work program is approved in accordance with OAR 660-025-0100 or modified in accordance with OAR 660-025-0100.

(5) This division does not mandate any changes to existing local comprehensive plans or land use regulations for water-dependent shorelands. Local cities and counties may retain their existing comprehensive plan designations and land use regulation designations for water-dependent shorelands.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010 - 197.830
Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99; LCDD 3-2004, f. & cert. ef. 5-7-04

660-037-0040
Definitions

For purposes of division 037, the definitions contained in ORS 197.015 and the Statewide Planning Goals (OAR chapter 660, division 015) apply. In addition, the following definitions apply:

(1) "Designated water-dependent shoreland site" means an estuarine shoreland area designated in a comprehensive plan and land use regulation to comply with Coastal Shoreland Uses Requirement 2 of Goal 17, Coastal Shorelands (OAR 660-015-0010(2)).

(2) "Goal 2 Exception" means the land use planning requirements waiver process provided in Goal 2, Land Use Planning, Part II (OAR 660-015-0000(2)) and OAR chapter 660, division 004, Interpretation of Goal 2 Exception Process.

(3) "Periodic review" means the land use planning process described in ORS 197.628 through 197.646.

(4) "Post-acknowledgment plan amendment" means an action taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions.

(5) "Structure or facility that provides water-dependent access" means anything constructed or installed, regardless of its present condition, functionality or serviceability, that provides or provided water-dependent uses with physical access to the adjacent coastal water body. Examples include wharves, piers, docks, mooring piling, boat ramps, water intake or discharge structures, or navigational aids.

(6) "Water-Dependent Use."

(a) The definition of "water-dependent" contained in the Statewide Planning Goals (OAR chapter 660, division 015) applies. In addition, the following definitions apply:

(A) "Access" means physical contact with or use of the water.

(B) "Requires" means the use either by its intrinsic nature (e.g., fishing, navigation, boat moorage) or at the current level of technology cannot exist without water access.

(C) "Water-borne transportation" means uses of water access:

(i) Which are themselves transportation (e.g. navigation);

(ii) Which require the receipt of shipment of goods by water; or

(iii) Which are necessary to support water-borne transportation (e.g. moorage fueling, servicing of watercraft, ships, boats, etc. terminal and transfer facilities).

(D) "Recreation" means water access for fishing, swimming, boating, etc. Recreational uses are water dependent only if use of the water is an integral part of the activity.

(E) "Energy production" means uses which need quantities of water to produce energy directly (e.g. hydroelectric facilities, ocean thermal energy conversion).

(F) "Source of water" means facilities for the appropriation of quantities of water for cooling processing or other integral functions.

(b) Typical examples of water dependent uses include the following:

(A) Industrial — e.g., manufacturing to include boat building and repair; water-borne transportation, terminals, and support; energy production which needs quantities of water to produce energy directly; water intake structures for facilities needing quantities of water for cooling, processing, or other integral functions.

(B) Commercial — e.g., commercial fishing marinas and support; fish processing and sales; boat sales, rentals, and supplies.

(C) Recreational — e.g., recreational marinas, boat ramps, and support.

(D) Aquaculture.

(E) Certain scientific and educational activities which, by their nature, require access to coastal waters — estuarine research activities and equipment mooring and support.

(c) For purposes of this division, examples of uses that are not "water dependent uses" include restaurants, hotels, motels, bed and breakfasts, residences, parking lots not associated with water-dependent uses, and boardwalks.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010 - 197.830
Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99

660-037-0050
Minimum Water-Dependent Shoreland Protection Acreage

(1) Estuarine cities and counties shall protect for water-dependent industrial, commercial, and recreational uses a minimum amount of shorelands suitable for water-dependent uses.

(2) Estuarine cities and counties shall calculate the minimum amount of shorelands to be protected within their respective political boundaries based on the following combination of factors as they may exist:

(a) Current Water-Dependent Use — Acreage of estuarine shorelands that are currently being used for water-dependent uses; and

(b) Former Water-Dependent Use — Acreage of estuarine shorelands that at any time were used for water-dependent uses and still possess a structure or facility that provides water-dependent access.

(c) For purposes of this rule, the calculation of the minimum amount of shorelands to be protected shall include storage and other backup land that is, or in the case of former water-dependent uses was, in direct support of the water-dependent use at the site.

(3) The minimum amount of shorelands to be protected in each estuary as a whole shall be equivalent to the sum of the minimum acreage calculations for each city and the county in the estuary.

(4) To calculate the minimum water-dependent shoreland protection acreage required by this rule, local governments may:

(a) Rely on data from local assessor maps or from plat maps that were officially adopted as part of a locally approved development plan;

(b) Generate original acreage data from orthorectified aerial photography;

(c) For shoreland parcels with a mixture of water-dependent and nonwater-dependent uses, visually approximate the acreage after examining assessor maps or plat maps, or after making a physical reconnaissance of the mixed-use shoreland sites; or

(d) Any other valid source as appropriate.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010 - 197.830
Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99

660-037-0060
Designate Water-Dependent Shorelands

(1) Estuarine city and county comprehensive plans shall designate as water-dependent shorelands a sufficient total acreage that is equal to or greater than the minimum water-dependent shorelands acreage calculated by OAR 660-037-0050 above. In addition, all shorelands designated in accordance with this rule shall satisfy the water-dependent access locational criteria of OAR 660-037-0070 below.

(2) Designation Options. Either Option A or Option B:

(a) Option A: An individual estuarine city or county may designate as water-dependent shorelands any shorelands within its planning jurisdiction the total acreage of which is equal to or greater than the minimum acreage of water-dependent shorelands calculated for protection in OAR 660-037-0050 above.

(b) Option B: An individual estuarine city or county may designate as water-dependent shorelands any shorelands within its planning jurisdiction the total acreage of which is less than the minimum acreage of water-dependent shorelands calculated for protection in OAR 660-037-0050 above. An estuarine city or county choosing to exercise this option must do so in coordination with one or more of the other city and county governments in the estuary. This means that the local governments participating in Option B must do the following:

(A) Revise their comprehensive plans and land use regulations in compliance with this division; and

(B) Designate as water-dependent shorelands any shorelands within the estuary whose total acreage is equal to or greater than the minimum acreage of water-dependent shorelands calculated for the estuary as a whole in OAR 660-037-0050 above. In effect, this means that the other cities and the county in the estuary will provide the water-dependent shoreland acreage not provided by the jurisdiction or jurisdictions exercising Option B.

(3) Local governments are encouraged to designate and protect as water-dependent shorelands an amount that is greater than the minimum required to be protected by this division. This "excess capacity" may be beneficial to achieving local economic objectives over the long term.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.010 - 197.830

Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99

660-037-0070
Water-Dependent Shoreland Locational and Suitability Criteria

(1) A proposal to designate lands as water-dependent shorelands in accordance with OAR 660-037-0060 above shall meet all of the following minimum locational and suitability criteria:

(a) The proposed shoreland site is within an urban or urbanizable area, or if in a rural area it is built upon or irrevocably committed to non-resource use or is designated in accordance with OAR chapter 660, division 022 Unincorporated Communities.

(b) The designated water-dependent uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse effects.

(c) The proposed shoreland site and its designated uses and activities comply with all applicable Statewide Planning Goals, in particular with Goal 16 Estuarine Resources, and with the Goal 2 Exceptions process if applicable.

(A) Any water-dependent shoreland site acknowledged to comply with the Statewide Planning Goals without needing a Goal 2 Exception prior to the effective date of this division and that is selected to provide a jurisdiction's minimum shorelands acreage for water-dependent protection is deemed to comply with this rule provided there are no changes to the following:

(i) The size or shape of the site; or

(ii) The uses or activities allowed or authorized at the site, unless the use or activity is a "permissible nonwater-dependent use" as allowed by Goal 17 Coastal Shoreland Uses Requirement 2 (OAR 660-015-0010(2)).

(B) Any water-dependent shoreland site acknowledged to comply with the Statewide Planning Goals with a Goal 2 Exception prior to the effective date of this division and that is selected to provide a jurisdiction's minimum shorelands acreage for water-dependent protection is deemed to comply with this rule provided all of the following criteria are met:

(i) There are no changes to the size or shape of the site.

(ii) There are no changes to the uses or activities allowed or authorized at the site, unless the use or activity is a "permissible nonwater-dependent use" as allowed by Goal 17 Coastal Shoreland Uses Requirement 2 (OAR 660-015-0010(2)).

(iii) The local government provides in writing its reasons for retaining the shoreland site in a water-dependent designation. As part of this explanation, the local government may consider factors such as the site's location and parcel size. The explanation shall include a description of the proposed or potential alterations to the natural resources that were the object of the Goal 2 Exception, as well as any practicable methods for avoiding or offsetting potential adverse effects to those resources. The commission encourages developers of these sites to take all practicable steps to avoid or offset potential adverse effects to significant natural resources at these sites. The protection of these natural resources will be a particular focus of the department's review of any subsequent state or federal regulatory permits.

(d) The proposed shoreland site possesses or is planned for land-based transportation and public utility services appropriate for the designated uses. Considerations should include the following: availability of public sewers, public water lines, and adequate power supply; and access to the area for truck and rail, if heavy industry is to be accommodated.

(e) The proposed shoreland site possesses or is planned for storage, parking, or other backup land that is adequate for the designated uses.

(f) The proposed shoreland site is capable, with or without the use of structures or facilities that provide water-dependent access, of providing the designated water-dependent uses with access to the adjacent coastal water body.

(g) If transportation, commercial fishing, or recreational boating uses are designated, the adjacent coastal waters provide or are planned for adequately sized navigational channels.

(2) Appropriate additional locational criteria may be considered by the local government in the analysis of a site's suitability for water-dependent development. These include the following:

(a) The site is capable of providing large quantities of water for uses needing water for processing and cooling purposes (e.g., hydroelectric power plants, fish processing plants, pumped storage power plants).

(b) The site is in close proximity to shipping facilities for uses that rely heavily on the waterborne transportation of raw materials or products that are difficult to transport on land (e.g., coal export facilities; cement plants; quarries).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010 - 197.830
Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99

660-037-0080
Methods of Protection

(1) Local governments shall adopt appropriate land use regulations that protect for water-dependent recreational, commercial, and industrial uses the shorelands designated in OAR 660-037-0060 above.

(2) A designated water-dependent shoreland is protected for water-dependent uses when:

(a) the operation of a water-dependent use is not threatened by nonwater-dependent uses; and

(b) the siting of future water-dependent uses will not be preempted by the presence of nonwater-dependent uses.

(3) To protect a designated water-dependent shoreland site, local land use regulations may do any of the following:

(a) Allow only water-dependent uses.

(b) Allow nonwater-dependent uses that are in conjunction with and incidental and subordinate to water-dependent uses on the site.

(A) Such nonwater-dependent uses shall be constructed at the same time as or after the water-dependent use of the site is established, and must be carried out together with the water-dependent use.

(B) The ratio of the square footage of ground-level indoor floor space plus outdoor acreage distributed between the nonwater-dependent uses and the water-dependent uses at the site shall not exceed one to three (nonwater-dependent to water-dependent).

(C) Such nonwater-dependent uses shall not interfere with the conduct of the water-dependent use.

(c) Allow temporary nonwater-dependent uses that involve minimal capital investment and no permanent structures. The intent of allowing such uses is to avoid posing a significant economic obstacle to attracting water-dependent uses. Tools for implementing this approach include "vacate" clauses in leases on public lands, as well as requiring "vacate" clauses for land use approvals involving leasing of private lands.

(4) Local governments may use any combination of the following techniques for their land use regulations for protecting designated water-dependent shorelands:

(a) Traditional water-dependent zoning district. Traditional zoning districts typically list uses and activities that will be allowed either with or without a discretionary "conditional use" review.

(b) "Floating" water-dependency performance standard. The water-dependent protection standard would "float" within a designated geographic area rather than being applied to specific parcels within the area. Such a "performance zone" would typically be applied to urban waterfronts with existing or planned mixed water-dependent and nonwater-dependent uses, or to large undeveloped shoreland sites to configure planned development away from environmentally sensitive natural resources at the site.

(A) The "floating" water-dependency performance standard must establish quantitative performance measures for retaining water-dependency. The performance measures shall be expressed as overall acreage, floor space square footage, waterfront lineal footage, or other suitable quantitative measure of water-dependent use.

(B) Nonwater-dependent development proposals within the "floating" water-dependency performance zone would be measured against maintaining the overall water-dependency standard.

(C) Additional development controls including compatibility with existing water dependent uses, reserving waterfront access, and limiting development to certain specified types or categories of water-dependent uses may also be established.

Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010 - 197.830
Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99

660-037-0090
Rezoning of Qualifying Shorelands to Nonwater-Dependent Uses

(1) Any amendment to an acknowledged comprehensive plan or land use regulation under this rule must comply with all applicable Statewide Planning Goals. For purposes of this division, such applicable Goals include but are not limited to the following: Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces (OAR 660-015-0000(5)); Goal 7, Natural Hazards (660-015-0000(7)); Goal 16, Estuarine Resources (660-015-0010(1)); and Goal 17, Coastal Shorelands (660-015-0010(2)). In Goal 16, the designation of estuarine management units is based in part on the uses of the adjacent shorelands. Consequently, any change to shoreland designations and allowed uses being proposed under this division must include consideration of affected estuarine management unit designations and allowed uses. This is particularly important in situations where the level of development designated in the adjacent estuarine management unit was acknowledged through a Goal 2 Exception; retaining that level of estuarine development would no longer be justified without taking a new Goal 2 Exception.

(2) Local governments that choose to rezone shoreland sites to nonwater-dependent uses as allowed under this division are encouraged to provide for water-related and water-oriented uses at such sites as much as possible.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 197
Stats. Implemented: ORS 197.010 - 197.830
Hist.: LCDD 7-1999, f. & cert. ef. 8-20-99

DIVISION 38

SIMPLIFIED URBAN GROWTH BOUNDARY METHOD

660-038-0000
Purpose

(1) The purpose of this division is to implement ORS 197A.300 to 197A.325 by providing simplified methods to evaluate and amend an urban growth boundary (UGB) for a city outside Metro.

(Note: ORS 197A.320 regarding the establishment of study areas and the priority of lands for UGB amendment applies both to the "simplified" UGB methods under this division and to the "traditional" UGB method described in OAR chapter 660, division 24. Rules in this division at OAR 660-038-0160 and 660-038-0170 interpret that statute with respect to the simplified methods. Rules at OAR 660-024-0065 and 660-024-0067 interpret ORS 197A.320 for purposes of the traditional UGB method).

(2) The method for UGB evaluation and amendment described in OAR chapter 660, division 24 (the traditional UGB method) is not modified by this division. Cities may choose to apply the methods described in this division instead of division 24 in order to evaluate or amend a UGB, as described in OAR 660-038-0020.

(3) The methods described in this division are intended to achieve the following objectives provided in ORS 197A.302:

(a) Become, as a result of reduced costs, complexity and time, the methods that are used by most cities with growing populations to manage their urban growth boundaries;

(b) Encourage, to the extent practicable given market conditions, the development of urban areas in which individuals desire to live and work and that are increasingly efficient in terms of land uses and in terms of public facilities and services;

(c) Encourage the conservation of important farm and forest lands, particularly lands that are needed to sustain agricultural and forest products industries;

(d) Encourage cities to increase the development capacity within their urban growth boundaries;

(e) Encourage the provision of an adequate supply of serviceable land that is planned for needed urban residential and industrial development; and

(f) Assist residents in understanding the major local government decisions that are likely to determine the form of a city's growth.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0010
Definitions

The definitions in ORS 197.015, the statewide planning goals, and the following definitions apply to this division:

(1) "Buildable lands" means land in urban or urbanizable areas that are suitable for urban uses, as provided in ORS 197A.300(1). Note: This definition applies to this division only; a different definition of "buildable lands" is provided in laws and rules concerning needed housing (ORS 197.295; OAR 660-007-0005 and 660-008-0005 and OAR 660-024-0010).

(2) "Commercial" and "commercial use" mean office, retail, institutional and public employment land uses described by the North American Industry Classification System (NAICS) Categories 44, 45, 51, 52, 53, 54, 55, 56, 61, 62, 71, 72, 81, 92, and 99. These are land uses that generally do not require significant space for indoor or outdoor production or logistics.

(3) "Industrial" and "industrial use" mean employment activities including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment, and research and development, that generate income from the production, handling or distribution of goods or services, including goods or services in the traded sector, as defined in ORS 285A.010. "Industrial use" means NAICS Categories 11, 21, 22, 23, 31, 32, 33, 42, 48, and 49. These are land uses that generally require significant space for indoor or outdoor production or logistics.

(4) "Initiate" means that the local government issues a public notice specified in OAR 660-018-0020, including a notice to the Department of Land Conservation and Development, for a proposed plan amendment that concerns evaluating or amending a UGB.

(5) "Nonresource land" has the meaning specified in OAR 660-004-0005(3).

(6) "Range" means a range of numbers specified in rules in this division (see ORS 197A.325(2)(a)). A city may choose to use the number at either end of a stated range or any number between. Ranges allow a city to make choices regarding its future growth.

(7) "Serviceable" means, with respect to land supply in a UGB, and as described in OAR 660-038-0200, that:

(a) Adequate sewer, water and transportation capacity for planned urban development is available or can be either provided or made subject to committed financing; or

(b) Committed financing can be in place to provide adequate sewer, water and transportation capacity for planned urban development.

(8) "UGB" means "urban growth boundary."

(9) "Urbanizable land" means land inside a UGB that, due to the present unavailability of urban facilities and services, or for other reasons, either retains the zone designations assigned prior to inclusion in the UGB or is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0020
Applicability

(1) This division takes effect January 1, 2016. Rules in this division provide optional simplified methods for a city outside Metro to evaluate or amend its UGB. These methods are available to cities in addition to and not in lieu of the methods provided in OAR chapter 660, division 24. If a city uses this division to evaluate or amend a UGB, the requirements of division 24 do not apply to the UGB evaluation or amendment.

(2) A city that evaluates or amends its UGB using this division must demonstrate that:

(a) It has sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, within its UGB to meet the growth in population and employment that is forecast to occur over a 14-year period,

(b) It based its determination of the amount of buildable lands needed for housing, employment and other urban uses on the population and employment growth forecast to occur over a 14-year period, consistent with rules in this division, and

(c) Lands included within the UGB include sufficient serviceable land for at least a seven-year period and can all be serviceable over a 14-year period as provided in OAR 660-038-0200.

(3) A city using this division is not required to adopt findings to support the use of a number or a number within a range that is expressed by a rule in this division.

(4) A city that uses this division to add land to the UGB may not use a method in this division again to add land to the UGB until:

(a) The population of the city has grown by at least 50 percent of the amount of growth forecast to occur in conjunction with the previous use of the method by the city; or

(b) At least one-half of the lands identified as buildable lands for employment needs or for residential needs during the previous use of the method by the city have been developed.

(5) A city that adopts a UGB amendment using this division must evaluate whether the city needs to include additional land for residential or employment uses within the UGB before the population of the city has grown by 100 percent of the population growth forecast to occur in conjunction with the city's previous use of this division.

(6) A city that adopts a UGB amendment using this division may subsequently add land to the UGB using division 24 instead of the method described in this division. However, a city's determination of land need resulting from the previous use of this method shall not be considered by itself sufficient to support a housing or employment need determination under OAR chapter 660, division 24.

(7) A city may not use this division in order to evaluate or amend a UGB for purposes of OAR 660-024-0045 concerning Regional Large Lot Industrial Land.

(8) A city that elects to use this division shall notify the Department of Land Conservation and Development in the manner required by ORS 197.610, 197.615 and OAR chapter 660, division 18, regarding a proposed change to an acknowledged comprehensive plan or a land use regulation. The city may revoke its election under this section at any time until the city makes a final decision to amend the UGB.

(9) A city that initiated an amendment of its UGB under OAR chapter 660, division 24, but has not submitted that amendment to the Department of Land Conservation and Development, may withdraw the proposed amendment and use a method described in this division by filing notice of the election with the Department of Land Conservation and Development in the manner required by ORS 197.610, 197.615, and OAR chapter 660, division 18 for notice of a post-acknowledgment plan amendment.

(10) Notwithstanding ORS 197.626, when a city evaluates or amends the UGB pursuant to this division, the Land Use Board of Appeals rather than the commission has jurisdiction for review of the final decision of the city.

(11) A city that amends a UGB under this division is not required to also satisfy the requirements of ORS 197.296 applicable to a UGB amendment for cities subject to that statute.

(12) A city that amends a UGB under this division is not required to also satisfy the requirements of Goals 9 and 10 with

respect to the determinations of land need and land supply, the housing needs projection requirements of OAR chapter 660, division 8, or the economic opportunities analysis requirements of OAR chapter 660, division 9.

(13) All statewide planning goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:

(a) The exceptions process in Goal 2 and OAR chapter 660, division 4, is not applicable to a UGB amendment unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1), provided however that a local government may not take an exception to the UGB requirements of Goal 14;

(b) Goals 3 and 4 are not applicable;

(c) Goal 5 and related rules under OAR chapter 660, division 23, apply only to lands added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;

(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied at the time of a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the UGB or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the UGB;

(e) Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;

(f) Goals 16 through 18 are not applicable to land added to the UGB unless the land is subject to acknowledged comprehensive plan or land use regulations that implement these goals;

(g) Goal 19 is not applicable to a UGB amendment.

(14) A city considering a UGB evaluation or amendment must apply its acknowledged citizen involvement program to ensure adequate notice and participation opportunities for the public and must assist the public in understanding the major local government decisions that are likely to determine the form of the city's growth.

(15) A city that is scheduled to commence periodic review as required by OAR 660-025-0030 is not required to commence periodic review if the city has amended its UGB pursuant to this division, or if the city has evaluated its UGB need and land supply using this division and determined that the UGB contains sufficient buildable land for a 14-year period, including a supply that is serviceable for a seven-year period and a supply that can be serviceable for a 14-year period as provided in OAR 660-038-0200.

(16) When a city is required to undertake an analysis or make a determination concerning lots or parcels under the rules in the division, the city may conduct such analyses using tax lot data shown on the most recent tax assessment rolls in the county in which the land is located.

(17) Beginning on or before January 1, 2023, the commission shall:

(a) Evaluate, every five years, the impact of this division on the population per square mile, livability in the area, the provision and cost of urban facilities and services, the rate of conversion of agriculture and forest lands and other considerations;

(b) Consider changes to the statewide land use planning goals or rules to address adverse outcomes; and

(c) Make recommendations to the Legislative Assembly, as necessary, for statutory changes.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0030
Residential Land Need

OAR 660-038-0030 through 660-038-0080 provides steps that a city must take to determine residential land need over the 14-year planning period.

(1) A city that applies the UGB method in this division:

(a) Must forecast the amount of buildable lands that it will need for housing based on the population forecast for the 14-year period commencing on the date it initiates and consistent with OAR 660-038-0040 through OAR 660-038-0090, and

(b) Must provide within its UGB sufficient buildable lands and other development capacity, for needed housing to accommodate the growth in population forecast to occur over a 14-year period.

(2) The city must use the most recent final forecast issued by the Portland State University Population Research Center under ORS 195.033 in effect at the time the city initiates a UGB review to forecast the UGB population growth for a 14-year period.

(3) The city must subtract from the forecast population growth the number of persons projected to live in group quarters in the UGB during the planning period. The city shall determine this number by calculating the percentage of the city's population living in group quarters at the last decennial United States Census and subtracting the same percentage from projected population growth. For the purpose of this rule, "group quarters," as defined by the United States Census, are places where people live or stay, in a group living arrangement, which is owned or managed by an entity or organization providing housing or services for the residents.

(4) To determine the gross number of dwelling units needed for the 14-year period, the city must divide the projected growth reduced as determined in section (3) by the persons per household within the city determined at the most recent decennial United States Census.

(5) The city must adjust the gross number of needed dwelling units to account for the vacancy rate projected to occur during the planning period, as follows: Multiply the result calculated in section (4) by the vacancy rate and add the resulting product to the gross number of dwelling units needed. The vacancy rate used shall be five percent plus the portion of the vacancy rate that is comprised of seasonal, recreational, or occasional vacancies within the city, determined at the last decennial United States Census. However, the total vacancy rate used may not exceed 15 percent.

(6) The city must account for projected redevelopment expected to occur in residentially zoned areas, and for mixed use residential development expected to occur in commercially zoned areas, as follows: multiply the result calculated in section (5) by the applicable percentage in subsections (a) through (c) of this section.

(a) For cities with a current UGB population less than 10,000, the percentage shall be within a range from one percent to 10 percent of the result calculated in section (5).

(b) For cities with a current UGB population equal to or greater than 10,000 and less than 25,000, the percentage shall be within a range from five percent to 15 percent of the result calculated in section (5).

(c) For cities with a current UGB population equal to or greater than 25,000, the percentage shall be within a range from five percent to 25 percent of the result calculated in section (5).

(7) The city must account for accessory dwelling units expected to occur during the planning period by multiplying the result calculated in section (5) by the applicable percentage in subsection (a) or (b) of this section:

(a) For cities with UGB population less than 10,000, the percentage shall be within a range from zero percent to two percent of the result calculated in section (5).

(b) For cities with UGB population equal to or greater than 10,000, the percentage shall be within a range from one percent to three percent of the result calculated in section (5).

(8) The city must subtract the numbers determined in sections (6) and (7) from the result calculated in section (5). The resulting number is the identified need for new dwelling units for 14 years.

(9) The city shall accommodate the dwelling unit need identified in section (8):

(a) On vacant and partially vacant residentially zoned lands within the UGB, and

(b) If the amount of land described in subsection (a) is insufficient to accommodate all of the identified need, the remaining need must be accommodated on lands to be added to the UGB for residential development consistent with OAR 660-038-0180.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235

Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0040
Determine the Mix of Dwelling Units Needed

(1) A city must determine the current mix of housing types within the city based on the percentages of low density, medium density, and high density residential dwellings using:

(a) For cities with UGB population less than 2,500, the percentages determined in the most recent five-year American Community Survey conducted by the United States Census;

(b) For cities with UGB population greater than or equal to 2,500, using either the percentages determined in:

(A) The most recent American Community Survey conducted by the United States Census, or

(B) An average of the two most recent American Community Surveys conducted by the United States Census.

(2) For the purposes of this rule and for OAR 660-038-0050:

(a) For cities with a UGB population less than 2,500, single-family detached dwellings shall be considered low density residential, and all other dwellings shall be considered medium density residential.

(b) For cities with a UGB population greater than or equal to 2,500, single-family detached dwellings shall be considered low density residential; single-family attached dwellings, mobile homes, and multiplexes with two to four units shall be considered medium density residential; and multi-family dwellings with five or more units shall be considered high density residential.

(3) A city must project the mix of housing types needed for new development over the 14-year period using the ranges of numbers in Table 1. The percentage of low density residential development is calculated by subtracting the percentage of medium density and high density residential development selected by the city from the table.

(4) To determine the number of low density, medium density and high density dwelling units needed over the 14-year period, the city must multiply the percentages of needed housing for different housing categories determined in section (3) by the total housing need determined in OAR 660-038-0030.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0050
Determine Amount of Land Needed for Each Housing Type

A city must:

(1) Determine the land needed for each category of residential development over the 14-year period by dividing the number of needed units determined in OAR 660-038-0040 by the projected number of net dwelling units per acre using the ranges in Table 2.

(2) Calculate the overall net density (total dwelling units divided by total land need) for all residential land need in terms of dwellings units per acre and compare the result with the current density of the developed lands shown in the buildable lands inventory within the city's UGB completed under OAR 660-038-0060(5).

(3) If necessary, adjust the density assumptions used in the residential land need analysis so that the overall net density for all residential land need is at least equal to the density determined in section (2).

(4) Add an amount equal to 25 percent of the total residential land needed to account for public land need for infrastructure and facilities such as schools and parks and to account for private institutional land need.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0060
Buildable Lands Inventory (BLI) for Residential Land within the UGB

A city must determine the supply and development capacity of lands within its UGB by conducting a buildable lands inventory (BLI) as provided in this rule.

(1) For purposes of the BLI, the city shall classify the existing residential comprehensive plan and zoning designations within its UGB based on allowed density. The classification shall be based on either:

(a) The allowed density and housing types on the comprehensive plan map; or

(b) If the comprehensive plan map does not differentiate residential districts by density or type of housing, the applicable city or county zoning map, as follows:

(A) For cities with a UGB population less than 2,500, districts shall be classified as follows:

(i) Districts with a maximum density less than or equal to eight dwelling units per acre: low density residential. A city may classify a district as low density residential despite a maximum density of greater than eight dwelling units per acre if the majority of existing residences within the district are single-family detached and if the city has a medium density residential district as determined by subparagraph (ii);

(ii) Districts with a maximum density greater than eight dwelling units per acre: medium density residential.

(B) For cities with UGB populations greater than or equal to 2,500, districts shall be classified as follows:

(i) Districts with a maximum density less than or equal to eight dwelling units per acre: low density residential. A city may classify a district as low density residential despite a maximum density of greater than eight dwelling units per acre if the majority of existing residences within the district are single-family detached and the city has a medium density residential district as determined by subparagraph (ii);

(ii) Districts with a maximum density greater than eight dwelling units per acre and less than or equal to 16 dwelling units per acre: medium density residential, unless the district has been classified as low density residential pursuant to subparagraph (i). A city may classify a district as medium density residential despite a maximum density of greater than 16 dwelling units per acre if the majority of development within the district is developed at densities of between eight and 16 dwelling units per net acre and the city has a high density residential district as determined by subparagraph (iii);

(iii) Districts with a maximum density greater than 16 dwelling units per acre: high density residential, unless the district has been classified as medium density residential pursuant to subparagraph (ii);

(iv) A city may not classify as low density a district that allows higher residential densities than a district the city has classified as medium density. A city may not classify as medium density a district that allows higher residential densities than a district the city has classified as high density.

(2) The city must identify all vacant lots and parcels with a residential comprehensive plan designation. A city shall assume that a lot or parcel is vacant if it is at least 3,000 square feet with a real market improvement value of less than $10,000.

(3) The city must identify all partially vacant lots and parcels with a residential comprehensive plan designation, as follows:

(a) For lots and parcels at least one-half acre in size that contain a single-family residence, the city must subtract one-quarter acre for the residence, and count the remainder of the lot or parcel as vacant land, and

(b) For lots and parcels at least one-half acre in size that contain more than one single-family residence, multiple-family residences, non-residential uses, or ancillary uses such as parking areas and recreational facilities, the city must identify vacant areas using an orthophoto or other map of comparable geometric accuracy. For the purposes of this identification, all publicly owned park land shall be considered developed. If the vacant area is at

least one-quarter acre, the city shall consider that portion of the lot or parcel to be vacant land.

(4) The city must determine the amount and mapped location of low density, medium density, and high density vacant and partially vacant land in residential plan or zone districts within the city's UGB.

(5) The city must, within the city limits,

(a) Identify all lots and parcels within a residential district that are developed;

(b) Identify all portions of partially vacant lots and parcels within a residential district that are developed with residential uses;

(c) Calculate the total area of land identified in (a) and (b);

(d) Calculate the total number of existing dwelling units located on the land identified in (a) and (b); and

(e) Calculate the net density of residential development on the land identified in (a) and (b).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0070
Adjust Residential Lands Inventory to Account for Constrained Lands

A city must adjust the inventory of residential lands prepared under OAR 660-038-0060 to account for constrained lands using this rule.

(1) The city must identify the following physical constraints on land inventoried as vacant or partially vacant under OAR 660-038-0060:

(a) Floodways and water bodies. For the purpose of this subsection, "water bodies" includes;

(A) Rivers; and

(B) Lakes, ponds, sloughs, and coastal waters at least one-half acre in size.

(b) Other lands within the Special Flood Hazard Area as identified on the applicable Flood Insurance Rate Map;

(c) Lands within the tsunami inundation zone established pursuant to ORS 455.446;

(d) Contiguous lands of at least one acre with slopes greater than 25 percent. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum 10-foot contour intervals;

(e) Lands subject to development restrictions as a result of acknowledged comprehensive plan or land use regulations to implement Statewide Planning Goals 5, 6, or 7, and

(f) Lands subject to development prohibitions, natural resource protections, or both in acknowledged comprehensive plan or land use regulations to implement Statewide Planning Goals 15, 16, 17, or 18.

(2) For lands identified in section (1), the city may reduce the estimated residential development capacity by the following factors in terms of acreage:

(a) For lands within floodways and water bodies: a 100 percent reduction.

(b) For other lands within Special Flood Hazard Area as identified on the applicable Flood Insurance Rate Map: a 100 percent reduction.

(c) For lands within the tsunami inundation zone: no reduction unless the acknowledged comprehensive plan or land use regulations applicable to such areas prohibits or reduces residential development, in which case the reduction shall be based upon the maximum density allowed by the acknowledged comprehensive plan or land use regulation.

(d) For lands with slopes that are greater than 25 percent: a 100 percent reduction. However, if the lot or parcel includes land with slopes less than 25 percent, the reduction applies only to the land with slopes greater than 25 percent. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

(e) For lands subject to development restrictions in an acknowledged comprehensive plan or land use regulations developed pursuant to Statewide Planning Goals 5, 6, or 7: a reduction to the maximum level of development authorized by the acknowledged comprehensive plan or land use regulations.

(f) For lands subject to development prohibitions, natural resource protections, or both, in an acknowledged comprehensive plan or land use regulations that implements Statewide Planning Goals 15, 16, 17 or 18: a reduction to the maximum level of development authorized by the acknowledged comprehensive plan or land use regulations.

(3) The residential BLI amount for each type of needed housing for a city is the amount of buildable land for that needed housing type determined in OAR 660-038-0060 reduced by the constraints as determined in this rule.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0080
Compare Residential Land Need to Land Supply

(1) To determine whether to expand the UGB, a city must compare the amount of land needed for each category of residential development, as determined in OAR 660-038-0050, with the amount of buildable land available for each category of residential development, as determined in OAR 660-038-0070(3).

(2) If the amount of buildable residential land is greater than the amount of land needed for all categories of residential development, then no UGB expansion for residential land need is allowed.

(3) If the amount of buildable residential land is less than the amount of land needed for residential development, the city must expand the UGB to provide the amount of land needed, provided that if the amount of buildable residential land is less than the amount of land needed for one category of residential development, but is greater than the amount of land needed for another category, then the city must determine whether the residential land need can be reasonably accommodated by redesignating surplus land in the other residential category, except as provided in section (5) of this rule.

(4) A city must also determine whether surplus employment land as determined in OAR 660-038-0150, or publicly-owned land not designated for employment or residential use that has been declared surplus by the public entity, can reasonably accommodate all or part of a residential land deficit except as provided in OAR 660-038-0150(4).

(5) A city:

(a) Is not required to consider whether a high or medium density land surplus can reasonably accommodate a low density land deficit;

(b) May not redesignate surplus high or medium density land that is located within 500 feet of an arterial roadway or its functional equivalent identified in the city's acknowledged Transportation System Plan.

(6) If a city determines that the UGB must be expanded to meet residential land needs, the city must apply:

(a) OAR 660-038-0160 and 660-038-0170 to evaluate which lands to include in the UGB in order to meet the need deficit, and

(b) OAR 660-038-0190 to plan and zone lands that are added and, if necessary, to adjust planning and zoning of residential lands currently in the UGB.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0090
Employment Land Need

OAR 660-038-0090 to 660-038-0150 provides steps that a city must follow to determine employment land need over the 14-year planning period.

(1) A city that applies the UGB method in this division:

(a) Must forecast the amount of buildable lands that will be needed for projected employment in the UGB over a 14-year period using rules in OAR 660-038-0100 through 660-038-0150, and

(b) Must provide within its UGB sufficient buildable lands and other development capacity to accommodate the growth in employment that is forecast to occur over a 14-year period and plan those lands as required by OAR 660-038-0180.

(2) The city must forecast employment growth within the UGB for a 14-year period from the year in which the UGB analysis was initiated. As provided in ORS 197A.310(4) and 197A.312(4), the city may forecast employment growth based on either:

(a) The population growth forecast for the city's UGB in the most recent final forecast issued by the Portland State University Population Research Center under ORS 195.033 applying the requirements of OAR 660-038-0100, or

(b) The most recent long term employment growth forecast issued by the Oregon Employment Department (OED) for the applicable region, applying the requirements of OAR 660 038 0110.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0100
Forecast Employment Growth Based on Population Growth

To forecast 14-year employment growth based on the PSU long term forecast of population growth, a city must:

(1) Determine the forecast population of the city's UGB for the 14-year period from the year in which the UGB analysis was initiated based on the most recent forecast issued by the Portland State University Population Research Center.

(2) Determine the current population of the UGB using the most recent population estimate issued by the Portland State University Population Research Center.

(3) Determine the rate of population growth for the city over the 14-year period based on sections (1) and (2).

(4) Using Table 3, determine the current number of "commercial" and "industrial" jobs in the UGB, based on the definitions in OAR 660-038-0010.

(5) To forecast the number of new commercial and new industrial jobs anticipated to occur in the UGB for the 14-year planning period, the city must:

(a) Multiply the number of commercial jobs currently in the UGB determined in section (4) by the rate of population growth rate determined in section (3), and

(b) Multiply the number of industrial jobs currently in the UGB determined in section (4) by the rate of population growth determined in section (3).

(6) To account for jobs that are likely to occur on land that is zoned for uses other than commercial or industrial (and which therefore will not require buildable "employment land"), the city must reduce the forecast of new jobs determined in section (5) by 20 percent.

(7) The result is the number of new commercial and industrial jobs forecast for the 14-year planning period to be accommodated on employment lands in the UGB. The city must use this result or the result in OAR 660-038-0110 as a basis for determining land needs under OAR 660-038-0140.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0110
Forecast Employment Growth Based on Oregon Employment Department Forecast

As an alternative to the method provided in OAR 660-038-0100, to forecast 14-year employment growth based on the most recent long-term job forecast issued by the Oregon Employment Department (OED), a city must:

(1) Determine the number of "commercial" and "industrial" jobs currently in the UGB as provided in Table 3.

(2) Using Table 4, determine the long-term growth rates forecast by OED for commercial jobs and for industrial jobs in the OED region that includes the city. For purposes of this rule, "OED region" means Workforce Innovation and Opportunity Act (WIOA) Areas for which OED forecasts long-term job growth.

(3) To forecast the number of new commercial and new industrial jobs anticipated to occur in the UGB for the 14-year planning period, the city must:

(a) Multiply the number of commercial jobs currently in the UGB determined in section (1) by the forecast rate of growth determined in section (2), and

(b) Multiply the number of industrial jobs currently in the UGB determined in section (1) by the forecast rate of growth determined in section (2).

(4) To account for jobs that are likely to occur on land that is zoned for uses other than commercial or industrial (and which therefore will not require buildable "employment land"), the city must reduce the forecast of new commercial and industrial jobs determined in subsections (3)(a) and (3)(b) by 20 percent.

(5) The result is the number of new commercial and industrial jobs forecast for the 14-year planning period to be accommodated on employment lands in the UGB. The city must use this result or the result in OAR 660-038-0100 as a basis for determining employment land needs under OAR 660-038-0140.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0120
Inventory of Buildable Employment Land within the UGB

A city must determine the supply and development capacity of employment lands within its UGB at the time of initiation by conducting a buildable lands inventory (BLI) for employment land as provided in this rule and OAR 660-038-00130.

(1) For purposes of the employment BLI, the city shall classify the existing employment zoning districts and plan map districts within its UGB as either "commercial" or "industrial" based on the applicable definitions in OAR 660-038-0010. Districts that allow both commercial and industrial uses as per the definition must be classified as one or the other, based on the intent of the plan and with consideration of whether the predominant NAICS categories allowed by the district are characteristic of a commercial or industrial use.

(2) The city must identify all lots and parcels in the UGB with either a commercial or industrial designation on the comprehensive plan map or zoning district, determine which lots or parcels are vacant, partially vacant, or developed and calculate the total area of such land, as follows:

(a) A city may assume that a lot or parcel is vacant if the real market improvement value is less than $5,000 or if the real market improvement value is less than or equal to 5 percent of the real market land value.

(b) A city may assume that a lot or parcel is partially vacant if either:

(A) The real market improvement value of the lot or parcel is greater than five percent and less than 40 percent of the real market land value, in which case, the city must assume that 50 percent of the lot or parcel is developed and 50 percent is vacant, or

(B) Based on an orthomap, the lot or parcel is greater than one acre in size and at least one-half acre is not improved.

(c) A city may assume that a lot or parcel is developed if the real market improvement value is greater than or equal to 40 percent of the real market land value.

(3) The city must use the results of section (2) to determine the current density of employment land within the UGB under OAR 660-038-0140(4) and (5).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0130
Adjust Employment Buildable Land Inventory to Account for Constrained Lands

A city must adjust the employment buildable lands inventory determined under OAR 660-038-0120 to account for constrained lands using this rule.

(1) The city must identify the following physical constraints on employment land inventoried under OAR 660-038-0120:

(a) Floodways and water bodies. For the purpose of this subsection, "water bodies" includes:

(A) Rivers; and

(B) Lakes, ponds, sloughs, and coastal waters at least one-half acre in size;

(b) Other lands within the Special Flood Hazard Area as identified on the applicable Flood Insurance Rate Map;

(c) Lands within the tsunami inundation zone established pursuant to ORS 455.446;

(d) Contiguous lands planned and zoned for commercial use of at least one acre with slopes that are greater than 25 percent. For purposes of this rule, slope shall be measured as the increase in elevation divided by the horizontal distance at maximum 10-foot contour intervals;

(e) Contiguous lands planned and zoned for industrial use of at least one acre with slopes that are greater than 10 percent. For purposes of this rule, slope shall be measured as the increase in elevation divided by the horizontal distance at maximum 10-foot contour intervals;

(f) Lands subject to development restrictions as a result of acknowledged comprehensive plan or land use regulations to implement Statewide Planning Goals 5, 6, or 7, and

(f) Lands subject to development prohibitions, natural resource protections, or both, in an acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goals 15, 16, 17, or 18.

(2) For lands identified in section (1), the city may reduce the estimated development capacity by the following factors in terms of acreage:

(a) For lands within floodways and water bodies: a 100 percent reduction.

(b) For other lands within the Special Flood Hazard Area (SFHA) as identified on the applicable Flood Insurance Rate Map (FIRM), either (at the city's option):

(A) A 50 percent reduction, or

(B) A reduction to the levels required by the acknowledged comprehensive plan or land use regulations.

(c) For lands within the tsunami inundation zone: no reduction unless the acknowledged comprehensive plan or land use regulations applicable to such areas prohibits or reduces allowed development, in which case the reduction shall be based upon the maximum density allowed by the acknowledged comprehensive plan or land use regulations.

(d) For lands designated for commercial use, contiguous lands of at least one acre with slope greater than 25 percent: a 100 percent reduction, provided that if such land includes slopes less than 25 percent, the reduction applies only to those areas with slopes greater than 25 percent. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

(e) For lands designated for industrial use, contiguous lands of at least one acre with slope greater than 10 percent: a 100 percent reduction, provided that a lot or parcel with slopes greater than 10 percent that has at least five contiguous acres with slopes less than 10 percent, this authorized reduction does not apply to those areas.

(f) For lands subject to restrictions in density or location of development in an acknowledged comprehensive plan or land use regulations developed pursuant to Statewide Planning Goals 5, 6, or 7: a reduction to the maximum level of development authorized by the acknowledged comprehensive plan or land use regulations.

(g) For lands subject to development prohibitions, natural resource protections, or both, in an acknowledged comprehensive plan or land use regulations that implements Statewide Planning Goals 15, 16, 17, or 18: a reduction to the maximum level of development authorized by the acknowledged comprehensive plan or land use regulations.

(3) The amount of buildable land in the UGB designated for commercial and industrial uses is that amount determined in OAR 660-038-0120 reduced by the constraints determined under section (2) of this rule.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0140
Translate Job Forecast to Employment Land Need

(1) Determine the current density (jobs per acre) of developed commercial land, as follows:

(a) Based on the determination from OAR 660-038-0120, for all lots and parcels zoned for commercial uses, identify the area (acreage) of "developed" lots and parcels, and the developed portion (acreage) of "partially vacant" lots and parcels. The sum of these equals the total area of "developed commercial land" for purposes of this rule.

(b) Determine current number of commercial jobs in the UGB from Table 3.

(c) Subtract 20 percent from (b) to account for current commercial jobs that occur on land not zoned commercial or industrial.

(d) Divide the number of jobs determined in subsection (c) by the amount of developed commercial land determined in subsection (a). The result is the current density of commercial uses (jobs per acre) on commercial land in the UGB.

(2) Determine the current density (jobs per acre) for developed industrial land in the UGB, as follows:

(a) Based on the determination in OAR 660-038-0120, for all lots and parcels zoned for industrial uses, identify the area (acreage) of "developed" lots and parcels, and the developed portion (acreage) of "partially vacant" lots and parcels. The sum of these equals the total area of "developed industrial land" for purposes of this rule.

(b) Determine current number of industrial jobs in the UGB from Table 3.

(c) Subtract 20 percent from the determination in subsection (b) to account for current industrial jobs that occur on land not zoned commercial or industrial.

(d) Divide the number of jobs determined in subsection (c) by the amount of developed industrial land determined in subsection (a). The result is the current density of industrial uses (jobs per acre) on industrial land in the UGB.

(3) To account for redevelopment and the anticipated long term increase in efficiency of employment land, the city must:

(a) Multiply the result of section (1) for commercial uses, and section (2) for industrial uses, by the applicable factors in paragraphs (A) or (B) of this subsection:

(A) For cities with a UGB population less than 10,000, the factor shall be a range from one to three percent for commercial, and one-half of a percent for industrial.

(B) For cities with a UGB population equal to or greater than 10,000 the factor shall be a range of three to five percent for commercial and one percent for industrial.

(b) Add the result from subsection (a) to the result in section (1) for commercial uses, and to the result in section (2) for industrial uses. This is the anticipated density of commercial and industrial land (jobs per acre) in the UGB.

(4) Divide the number of commercial and industrial jobs forecast in OAR 660-038-0100 and 660-038-0110 by the applicable results in section (3) to determine the net new land need for commercial and industrial uses over the planning period.

(5) The city must increase the results of section (4) by 15 percent to convert net land need to gross land need in consideration of land need for streets, roads and other public facilities due to employment land growth over the planning period.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325

Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0150
Determine if UGB Expansion is Necessary to Accommodate Employment Needs

(1) To determine whether to expand the UGB, a city using the method in this division must compare the amount of land needed for new commercial and industrial development determined under OAR 660-038-0140 with the amount of vacant or partially vacant buildable employment land designated for commercial and industrial development as determined in the employment BLI as per OAR 660-038-0130.

(2) If the amount of buildable commercial land in the UGB is greater than the amount of land needed for new commercial development, and the amount of buildable industrial land is greater than the amount of land needed for new industrial development, then no UGB expansion for employment land need is allowed.

(3) If the amount of buildable employment land in the UGB is less than the amount of land needed for either commercial or industrial development, then the UGB may be expanded to provide the amount of land needed, provided that:

(a) If the amount of buildable industrial land is less than the amount of land needed for industrial development, but is greater than the amount of land needed for commercial development, then the city must determine whether the industrial land need can be reasonably accommodated by redesignating the surplus of buildable commercial land within the UGB, except as provided in section (4) of this rule.

(b) If the amount of buildable commercial land is less than the amount of land needed for commercial development, but is greater than the amount of land needed for new industrial development, then the city must determine if the commercial land need can be reasonably accommodated by redesignating the surplus of industrial land within the UGB, except as provided in section (4) of this rule.

(c) A city must also determine whether surplus residential land as determined in OAR 660-038-0080, or publicly-owned land not designated for employment or residential use that has been declared surplus by the public entity, can reasonably accommodate all or part of an employment land deficit, except as provided in OAR 660-038-0080(5).

(4) The following existing commercial or industrial lands may not be re-designated for another use under this division, including in response to section (3):

(a) Land within industrial sanctuaries identified on the acknowledged comprehensive plan, including lands added to UGB as Regional Large Lot Industrial Land under to OAR 660-024-0045.

(b) Land owned by a port district or other public entity for the purpose of economic development.

(c) Land within:

(A) An urban renewal district;

(B) An enterprise zone, rural enterprise zone, or urban enterprise zone, as defined in ORS 285C.050; or

(C) A strategic investment zone, as defined in ORS 285C.623.

(d) Sites served by state or regional infrastructure investments, such as the Strategic Reserve Fund (ORS chapter 285B), Connect Oregon, Immediate Opportunity Fund, or grant or loan programs administered by the Infrastructure Finance Authority.

(e) Sites that include working port access or Class A rail access (e.g., access to existing sidings or loops).

(f) Sites that have been certified as a shovel ready site by the Oregon Business Development Department (OBDD), or has received designation as a Regionally Significant Industrial Area by the Economic Recovery Review Council.

(g) Land that was previously designated as industrial under rules under this division and may not be redesignated as provided in OAR 660-038-0180(6).

(h) Land that is designated for a particular land need under OAR 660-024-0065(10).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325

Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0160
Establishment of Study Area to Evaluate Land for Inclusion in the UGB

Cities shall comply with this rule and OAR 660-038-0170 when determining which lands to include within the UGB in response to a deficit of land to meet long-term needs determined under OAR 660-038-0080, 660-038-0150, or both.

(1) The city shall determine which land to add to the UGB by evaluating alternative locations within a "study area" established pursuant to this rule. To establish the study area, the city must first identify a "preliminary study area" which shall not include land within a different UGB or the corporate limits of a city within a different UGB. The preliminary study area shall include:

(a) All lands in the city's acknowledged urban reserve, if any;

(b) All lands that are within the following distance from the acknowledged UGB, except as provided in subsection (d):

(A) For cities with a UGB population less than 10,000: one-half mile;

(B) For cities with a UGB population equal to or greater than 10,000: one mile;

(c) All exception areas contiguous to an exception area that includes land within the distance specified in subsection (b) and that are within the following distance from the acknowledged UGB:

(A) For cities with a UGB population less than 10,000: one mile;

(B) For cities with a UGB population equal to or greater than 10,000: one and one-half miles;

(d) At the discretion of the city, the preliminary study area may include land that is beyond the distance specified in subsections (b) and (c).

(2) The city may exclude land from the preliminary study area if it determines that any of the conditions in this section apply to the land:

(a) Based on the standards in section (5) of this rule, it is impracticable to provide necessary public facilities or services to the land;

(b) The land is subject to significant development hazards, due to a risk of:

(A) Landslides: The land consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer. If the owner of a lot or parcel provides the city with a site-specific analysis by a certified engineering geologist demonstrating that development of the property would not be subject to significant landslide risk, the city may not exclude the lot or parcel under this paragraph;

(B) Flooding, including inundation during storm surges: the land is within the Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate Map (FIRM);

(C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS 455.446.

(c) The land consists of a significant scenic, natural, cultural or recreational resource described in this subsection:

(A) Land that is designated in an acknowledged comprehensive plan prior to initiation of the UGB amendment, or that is mapped on a published state or federal inventory at a scale sufficient to determine its location for purposes of this rule, as:

(i) Critical or essential habitat for a species listed by a state or federal agency as threatened or endangered;

(ii) Core habitat for Greater Sage Grouse; or

(iii) Migration corridors or big game winter range, except where located on lands designated as urban reserves or exception areas;

(B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related Adjacent Lands described by ORS

390.805, as mapped by the applicable state or federal agency responsible for that scenic program;

(C) Designated Natural Areas on the Oregon State Register of Natural Heritage Resources;

(D) Wellhead protection areas described under OAR 660-023-0140 and delineated on a local comprehensive plan;

(E) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or Conservation management unit designated in an acknowledged comprehensive plan;

(F) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

(G) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 18, Implementation Requirement 2.

(d) The land is owned by the federal government and managed primarily for rural uses.

(3) After excluding land from the preliminary study area under section (2), the city must adjust the study area, if necessary, so that it includes an amount of land that is at least twice the amount of land needed to satisfy the combined need deficiency determined under OAR 660-038-0080 and 660-038-0150. Such adjustment shall be made by expanding the applicable distance specified under section (1) and applying section (2) to the expanded area.

(4) For purposes of evaluating the priority of land under OAR 660-038-0170, the "study area" shall consist of all land that remains in the preliminary study area described in section (1) of this rule after adjustments to the area based on sections (2) and (3).

(5) For purposes of subsection (2)(a), the city may consider it impracticable to provide necessary public facilities or services to the following lands:

(a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of 25 percent or greater; provided that contiguous areas 20 acres or more that are less than 25 percent slope may not be excluded under this subsection. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

(b) Lands requiring the construction of a new freeway interchange, overpass, underpass, or similar improvement to accommodate planned urban development providing such improvement is not currently identified in the Statewide Transportation Improvement Program (STIP) for construction within the planning period;

(c) Land that is isolated from existing service networks by physical, topographic, or other impediments to service provision such that it is impracticable to provide necessary facilities or services to the land within the planning period. The city's determination shall be based on an evaluation of:

(A) The likely amount of development that could occur on the land within the planning period;

(B) The likely cost of facilities and services; and,

(C) Any substantial evidence collected by or presented to the city regarding how similarly situated land in the region has, or has not, developed over time.

(d) As used in this section, "impediments to service provision" may include but are not limited to:

(A) Major rivers or other water bodies that would require new bridge crossings to serve planned urban development;

(B) Topographic features such as canyons or ridges with slopes exceeding 40 percent and vertical relief of greater than 80 feet;

(C) Freeways, rail lines, or other restricted access corridors that would require new grade separated crossings to serve planned urban development;

(D) Significant scenic, natural, cultural or recreational resources on an acknowledged plan inventory and subject protection measures under the plan or implementing regulations, or on a published state or federal inventory, that would prohibit or substantially impede the placement or construction of necessary public facilities and services.

(6) Land may not be excluded from the preliminary study area based on a finding of impracticability that is primarily a result of existing development patterns. However, a city may forecast development capacity for such land as provided in OAR 660-038-0170(1)(d).

(7) A city that has a population of 10,000 or more that evaluates or amends its UGB using a method described in this division, must notify districts and counties that have territory within the study area in the manner required by ORS 197A.315 and meet other applicable requirements in that statute.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0170
Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities

(1) A city considering a UGB amendment must decide which land to add to the UGB by evaluating all land in the study area determined under OAR 660-038-0160, as follows:

(a) Beginning with the highest priority category of land described in section (2), the city must apply section (5) to determine which land in that priority category is suitable to satisfy the need deficiency determined under OAR 660-038-0080 and 660-038-0150 and select for inclusion in the UGB as much of the land as necessary to satisfy the need.

(b) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, the city must apply section (5) to determine which land in the next priority is suitable and select for inclusion in the UGB as much of the suitable land in that priority as necessary to satisfy the need. The city must proceed in this manner until all the land need is satisfied.

(c) If the amount of suitable land in a particular priority category in section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by applying the criteria in section (7) of this rule.

(d) In evaluating the sufficiency of land to satisfy a need under this section, the city may consider factors that reduce the capacity of the land to meet the need, including factors identified in sections (5) and (6) of this rule.

(e) Land that is determined to not be suitable under section (5) of this rule to satisfy the need deficiency determined under OAR 660-038-0080 or 660-038-0150 is not required to be selected for inclusion in the UGB unless its inclusion is necessary to serve other higher priority lands.

(2) Priority of Land for inclusion in a UGB:

(a) First priority is urban reserve, exception land, and nonresource land. Lands in the study area that meet the description in paragraphs (A) through (C) of this subsection are of equal (first) priority:

(A) Land designated as an urban reserve under OAR chapter 660, division 21, in an acknowledged comprehensive plan;

(B) Land that is subject to an acknowledged exception under ORS 197.732; and

(C) Land that is nonresource land.

(b) Second priority is marginal land: land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

(c) Third priority is forest or farm land that is not predominantly high-value farmland: land within the study area that is designated for forest or agriculture uses in the acknowledged comprehensive plan that is not predominantly high-value farmland, as defined in ORS 195.300, or that does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS). In selecting as much of the suitable land as necessary to satisfy the need, the city must use the agricultural land capability classification system or the cubic foot site class system, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic foot site class lands first.

(d) Fourth priority is farmland that is predominantly high-value farmland: land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high-value farmland as defined in ORS 195.300. A city may not select land that is predominantly made up of prime or unique farm soils, as defined by the USDA NRCS, unless there is an insufficient amount of other land to satisfy its land need. In selecting as much of the suitable land as necessary to satisfy the need, the city must use the agricultural land capability classification system to select lower capability lands first.

(3) Notwithstanding subsections (2)(c) or (d) of this rule, land that would otherwise be excluded from a UGB may be included if:

(a) The land contains a small amount of third or fourth priority land that is not important to the commercial agricultural enterprise in the area and the land must be included in the UGB to connect a nearby and significantly larger area of land of higher priority for inclusion within the UGB; or

(b) The land contains a small amount of third or fourth priority land that is not predominantly high-value farmland or predominantly made up of prime or unique farm soils and the land is completely surrounded by land of higher priority for inclusion into the UGB.

(4) For purposes of categorizing and evaluating land pursuant to subsections (2)(c) and (d) and section (3) of this rule:

(a) Areas of land not larger than 100 acres may be grouped together and studied as a single unit of land;

(b) Areas of land larger than 100 acres that are similarly situated and have similar soils may be grouped together provided soils of lower agricultural or forest capability may not be grouped with soils of higher capability in a manner inconsistent with the intent of section (2) of this rule, which requires that higher capability resource lands shall be the last priority for inclusion in a UGB;

(c) When determining whether the land is predominantly high-value farmland, or predominantly prime or unique, "predominantly" means more than 50 percent.

(5) With respect to section (1), a city must assume that vacant or partially vacant land in a particular priority category is "suitable" to satisfy a need deficiency identified in OAR 660-038-0080 or 660-038-0150, whichever is applicable, unless it demonstrates that the land cannot satisfy the need based on one or more of the conditions described in subsections (a) through (f) of this section:

(a) Existing parcelization, lot sizes or development patterns of rural residential land make that land unsuitable for an identified employment need, as follows:

(A) Parcelization: the land consists primarily of parcels 2-acres or less in size, or

(B) Existing development patterns: the land cannot be reasonably redeveloped or infilled within the planning period due to the location of existing structures and infrastructure.

(b) The land would qualify for exclusion from the preliminary study area under the factors in OAR 660-038-0160(2) but the city declined to exclude it pending more detailed analysis.

(c) The land is, or will be upon inclusion in the UGB, subject to natural resources protection under Statewide Planning Goals 5 such that that no development capacity should be forecast on that land to meet the land need deficiency.

(d) With respect to needed industrial uses only, the land is over 10 percent slope, as measured in the manner described in OAR 660-038-0160(5); is an existing lot or parcel that is smaller than 5 acres in size; or both.

(e) The land is subject to a conservation easement described in ORS 271.715 that prohibits urban development.

(f) The land is committed to a use described in this subsection and the use is unlikely to be discontinued during the planning period:

(A) Public park, church, school, or cemetery, or

(B) Land within the boundary of an airport designated for airport uses, but not including land designated or zoned for residential, commercial or industrial uses in an acknowledged comprehensive plan or land use regulations.

(6) For vacant or partially vacant lands added to the UGB to provide for residential uses:

(a) Existing lots or parcels one acre or less may be assumed to have a development capacity of one dwelling unit per lot or parcel. Existing lots or parcels greater than one acre but less than two acres shall be assumed to have an aggregate development capacity of two dwelling units per acre.

(b) In any subsequent review of a UGB pursuant to this division, the city may use a development assumption for land described in subsection (a) of this section for a period of up to 14 years from the date the lands were added to the UGB.

(7) Pursuant to subsection (1)(c), if the amount of suitable land in a particular priority category under section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by first applying the boundary location factors of Goal 14 and then applying applicable criteria in the comprehensive plan and land use regulations acknowledged prior to initiation of the UGB evaluation or amendment. The city may not apply local comprehensive plan criteria that contradict the requirements of the boundary location factors of Goal 14. The boundary location factors are not independent criteria; when the factors are applied to compare alternative boundary locations and to determine the UGB location the city must demonstrate that it considered and balanced all the factors. The criteria in this section may not be used to select lands designated for agriculture or forest use that have higher land capability or cubic foot site class, as applicable, ahead of lands that have lower capability or cubic foot site class.

(8) The city must apply the boundary location factors in coordination with service providers and state agencies, including the Oregon Department of Transportation (ODOT) with respect to Factor 2 regarding impacts on the state transportation system, and the Oregon Department of Fish and Wildlife (ODFW) and the Department of State Lands (DSL) with respect to Factor 3 regarding environmental consequences. "Coordination" includes timely notice to agencies and service providers and consideration of any recommended evaluation methodologies.

(9) In applying Goal 14 Boundary Location Factor 2, to evaluate alternative locations under section (7), the city must compare relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. For purposes of this section, the term "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities. The evaluation and comparison under Boundary Location Factor 2 must consider:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

(10) The adopted findings for UGB amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0180
Planning Requirements for Land added to a UGB

(1) A city must plan and zone lands included within the UGB:

(a) For categories of land uses in amounts that are roughly proportional to the land need determined for each category of use; and

(b) For an intensity of use that is generally consistent with the estimates that were used to determine the amount of land needed.

(2) All land added to a UGB under this division must be planned and zoned such that the lands will not significantly affect a state highway, a state highway interchange, or a freight route designated in the Oregon Highway Plan, based on the requirements of OAR 660-012-0060(1) and on written concurrence provided by the Oregon Department of Transportation. However, a city may add land that does not meet this requirement provided the land is planned and zoned either:

(a) For industrial uses only, or

(b) Compact urban development consisting of a mixed-use, pedestrian friendly center or neighborhood as described in OAR 660-012-0060(8).

(3) For lands added to the UGB to provide for residential uses, the city must also satisfy applicable requirements of OAR 660-038-0190.

(4) If factual information is submitted demonstrating that a Goal 5 resource site, or the impact areas of such a site, is included in the area proposed to be added to the UGB, the city shall apply the applicable requirements of OAR chapter 660, division 23, concurrent with adoption of a UGB amendment. For purposes of this section, "impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource, as described in OAR 660-023-0040(3).

(5) Concurrently with adoption of a UGB amendment pursuant to this division, a city must assign appropriate urban plan designations to land added to the UGB consistent with the need determination. The city must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development.

(6) When lands added to the UGB pursuant to rules in this division are planned and zoned for industrial or residential uses, the lands must remain planned and zoned for the use for 20 years beyond the date of adoption of the UGB amendment by the city.

(7) The UGB and amendments to the UGB must be shown on the applicable city and county plan and zone maps at a scale sufficient to determine which particular lots and parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location.

(8) Amendment of a UGB shall be a cooperative process among cities and counties. A UGB and amendments to the UGB shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located. Cities and counties shall follow the requirements of OAR 660-018-0021 regarding coordinated notice of a UGB amendment.

(9) "Roughly proportional" means, with respect to planning of land added to a UGB in response to a need determination, the amount of land provided for a particular category of need is within five percent of the amount needed or within 10 acres, whichever is less.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0190
Additional Planning for Residential Lands Added to the UGB

Cities that use the method in this division to provide land for needed housing must plan for residential lands added to the UGB as provided in this rule, in addition to the requirements in OAR 660-038-0180.

(1) The comprehensive plan and implementing zoning shall allow the housing types and densities determined to be needed in OAR 660-038-0040 and 660-038-0050 under clear and objective standards and shall meet other applicable needed housing requirements specified in ORS 197.307 and OAR chapter 660, division 8.

(2) The city and appropriate counties must assign appropriate urban plan designations to the added residential land consistent with the need determination, and either:

(a) Apply appropriate zoning to the added land consistent with the plan designation, or

(b) Adopt measures to maintain the land as urbanizable land until the land is rezoned for the planned urban uses by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. Measures for rezoning urbanizable land for needed housing shall be clear and objective and consistent with other requirements of ORS 197.307.

(3) Cities with UGB population of 10,000 or greater must either:

(a) Consider the housing measures listed in the Table 5 and adopt at least one high impact measure or three low impact measures, or

(b) Satisfy the alternate performance standard in section (4).

(4) A city has satisfied the alternate performance standard section (3)(b) if the city:

(a) Has a development code that contains the provisions specified in items 1 through 5 and 29 through 31 of Table 5; and

(b) Demonstrates with substantial evidence in the record that, during the preceding planning period or preceding seven years, whichever is less, development in the city equaled or exceeded the maximum percentage set forth in the ranges for redevelopment in residentially zoned and developed areas and mixed use residential development in commercially zoned areas in OAR 660-038-0030(6)(a) through (c).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0200
Serviceability

(1) Pursuant to ORS 197A.310(3) or 197A.312(3), a city that amends its UGB using this division shall demonstrate that lands included within the UGB:

(a) Provide sufficient serviceable land for at least a seven-year period, and

(b) Can all be serviceable over a 14-year period.

(2) For purposes of subsection (1)(a) of this rule, a city shall demonstrate adequate sewer, water and transportation capacity to serve at least seven years of planned urban development based on system capacity and system improvements that are identified and described in an acknowledged public facilities plan, an acknowledged Transportation System Plan, a capital improvement plan, or the findings adopted by a city in support of a decision to amend its UGB. This shall consist of sewer, water and transportation capacity that is available or can be provided based on subsection (a) or (b) of this section, or both:

(a) Capacity is available: existing sewer, water and transportation system capacity sufficient to serve some or all of the anticipated seven-year demand is available. To demonstrate available sewer and water capacity, a city may rely upon the system capacity documentation contained in the acknowledged Public Facilities Plan adopted pursuant to OAR chapter 660, division 11, and documentation from city or other service provider records of current system condition and demand. To demonstrate available transportation system capacity, a city may rely upon the system capacity documentation contained in an acknowledged Transportation System Plan (TSP) adopted pursuant to OAR chapter 660, division 12;

(b) Capacity can be provided within seven years: sewer, water and transportation system capacity sufficient to serve the anticipated seven-year demand can be provided by identified system improvements that:

(A) Are fully funded and scheduled for construction within a seven-year period;

(B) Can be made subject to committed financing, which means a city or other service provider has one or more dedicated

funding mechanisms in place that will generate sufficient revenue to fund the construction of such improvements within a seven-year period; or

(C) Can have committed financing in place, which means a city or other service provider does not have dedicated funding mechanisms in place but has identified funding sources and methods that will be implemented by the city or other service provider, and that will generate sufficient revenues to fund the construction of such improvements within a seven-year period.

(3) For purposes of subsection (1)(b) of this rule, to demonstrate that adequate sewer, water and transportation capacity can be in place for that portion of the 14-year period for which capacity has not been demonstrated in accordance with section (2) of this rule, a city shall:

(a) Identify the type and amount of the needed capacity;

(b) Identify the system improvements required to provide the needed capacity; and,

(c) Identify the funding method(s) that is or can be in place to provide committed financing in an amount sufficient to provide the needed capacity within the 14-year period. This identification shall include:

(A) The type of proposed funding method(s);

(B) The statutory or other legal authority for establishing the proposed funding method(s);

(C) The timing of the establishment of the proposed funding method(s); and,

(D) The projected revenues to be generated by the proposed funding method(s).

(4) For purposes of this rule, "sewer, water and transportation capacity for planned urban development" includes:

(a) Sewer capacity, which consists of wastewater treatment facility capacity and collection system capacity, including interceptors, lift or pump stations, force mains, and main sewer lines;

(b) Water capacity, including:

(A) Available water rights;

(B) Water treatment capacity;

(C) Water storage capacity, including system reserves needed for fire suppression; and,

(D) Distribution system capacity, including pumping facilities, primary and secondary feeders, and distributor mains; and

(c) Transportation capacity, including:

(A) Networks of pedestrian, bicycle, transit, and street facilities; and

(B) Performance of the planned transportation system measured against adopted transportation performance standards set forth in the applicable acknowledged TSP.

(5) For purposes of this rule, "committed financing" means financing methods for which a city or other service provider has identified and documented the following: the authority to establish and implement the method, the amount of funding to be generated, the purpose to which the funding will be dedicated, and the repayment method and schedule for any bonded or credit indebtedness is identified and documented. Committed financing includes, but is not limited to, funding that is:

(a) Included in the adopted budget of the service provider;

(b) Designated for projects included in the Statewide Transportation Improvement Program;

(c) Provided by the Department of Interior through the Bureau of Indian Affairs Tribal Transportation Plan (TTP) program pursuant to 25 CFR Part 170;

(d) Provided through a development agreement entered into pursuant to ORS 94.504 to 94.528;

(e) Provided by system development charges established pursuant to ORS 223.997 to 223.314 or by other authorized development fees, conditions of approval or exactions;

(f) Provided by utility fees;

(g) Provided through Local Improvement District or Reimbursement District assessments; or

(h) Provided by revenue bonds, financing agreements, voter approved general obligation bonds or other authorized debt instruments.

(6) For lands that are added to a UGB pursuant to a method described in this this division but not made "serviceable" within 20 years after the date of their inclusion:

(a) The lands must be removed from within the UGB the next time the city evaluates the UGB; or

(b) If there have been significant increases in the cost of making the lands serviceable, the planned development capacity of the lands must be reduced by an amount based on such costs the next time the city evaluates the need for land in the UGB.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

DIVISION 40

CERTIFICATION OR COPYING PUBLIC RECORDS

660-040-0005
Public Records

Pursuant to ORS 192.430 and 192.440, the Department:

(1) May charge the following fees for certification or copying of any public records in the Department's custody and not otherwise exempt from disclosure:

(a) For each certification containing five pages or less — $5;

(b) For each page of a certified document in excess of five pages — $0.25/pg;

(c) For each page of an uncertified copy — $0.25/pg.

(2) In addition to the charges prescribed in section (1) of this rule, an amount, as determined reasonable by the Director, to reimburse the Department for the actual cost of making the records available.

(3) Shall make all public records of the Department, not otherwise exempt from disclosure by law, available for inspection and copying during regular business hours of the Department.

(4) May condition the time and manner of inspection or copying as necessary under the circumstances to protect the records and to prevent interference with the regular discharge of the duties of the Commission, Department and its employes.

(5) Shall post within public view the fee schedule for certification or copying of public records.

Stat. Auth.: ORS 183, 192 & 197
Stats. Implemented: ORS 192.430 & 192.440
Hist.: LCD 12-1981, f. & ef. 12-15-81

DIVISION 41

MEASURE 49 — EXISTING CLAIM RULES (MEASURE 37 CLAIMS, INCLUDING SUPPLEMENTAL REVIEW UNDER BALLOT MEASURE 49)

660-041-0000
Purpose and Applicability

(1) The purpose of OAR 660-041-0000 to 660-041-0150 is to implement Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49), Chapter 855, Oregon Laws 2009 (2009 House Bill 3225), and Chapter 8, Oregon Laws 2010 (2010 Senate Bill 1049), by establishing procedures for Supplemental Review of Measure 37 Claims. These rules also contain requirements for notice of applications and decisions regarding Measure 37 Permits, and clarify when a DLCD Measure 37 Waiver was required in addition to a waiver from a city or county. Finally, these rules also explain the effect of Measure 49 on DLCD Measure 37 Waivers.

(2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCD Measure 37 Waivers that are subject to OAR 660-041-0020 to 660-041-0160, as well as to the Supplemental Review of Measure 37 Claims under OAR 660-041-0080 to 660-041-0160.

(3) OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006 and before December 6, 2007, and that are based on one or more DLCD Regulations and that are not described in section 3 of Chapter 855, Oregon Laws 2009.

(4) OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007.

(5) OAR 660-041-0040 to 660-041-0070 apply to all DLCD Measure 37 Waivers.

(6) OAR 660-041-0080 to 660-041-0160 apply to the Supplemental Review of a Claim by DLCD.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 3-2009(Temp), f. & cert. ef. 8-18-09 thru 2-14-10; LCDD 2-2010, f. & cert. ef. 2-9-10; LCDD 4-2010(Temp), f. & cert. ef. 5-7-10 thru 10-1-10; LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0010
Definitions

The following definitions apply to OAR 660-041-0000 to 660-041-0160:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claim" means a written demand for compensation under ORS 197.352 (2005) that was filed before December 6, 2007.

(3) "Claimant" means a person who submitted a Claim.

(4) "DAS" means the Department of Administrative Services.

(5) "DLCD" means the Department of Land Conservation and Development.

(6) "DLCD Measure 37 Waiver" means a decision by LCDC or DLCD that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more DLCD Regulations to allow a Claimant to use the Measure 37 Claim Property for a use that was permitted when the Claimant acquired the Measure 37 Claim Property.

(7) "DLCD Regulation" means a Land Use Regulation that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.

(8) "Elected" means signed and filed the form provided by DLCD.

(9) "Land Use Application" means an application for a "land use decision," a "limited land use decision," or an "expedited land division," as those terms are defined by ORS 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under 215.402 to 215.437.

(10) "Land Use Regulation" has the meaning provided by ORS 197.352(11) (2005).

(11) "LCDC" means the Land Conservation and Development Commission.

(12) "Measure 37 Claim Property" means the private real property described in a Measure 37 Claim.

(13) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to authorize the development, division or other use of Measure 37 Claim Property pursuant to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land use decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A Measure 37 Permit also includes a final decision by a city, a county, or by Metro that a person has a vested right to complete or continue a use based on a Measure 37 Waiver.

(14) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more Land Use Regulations to allow a Claimant to use the Measure 37 Claim Property for a use that was permitted when the Claimant acquired the Measure 37 Claim Property.

(15) "Measure 49" means Chapter 424, Oregon Laws 2007 as amended by Chapter 855, Oregon Laws 2009, and Chapter 8, Oregon Laws 2010.

(16) "Measure 49 Authorization" means a final order and authorization issued by the department under Measure 49 that authorizes a claimant to seek local approval of one or more home sites; or, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010, of a dwelling and, when applicable, a lot or parcel for that dwelling.

(17) "Supplemental Information" means information needed by DLCD, to proceed with the Supplemental Review of a Claim.

(18) "Supplemental Review" means review by DLCD of a Claim under either section 6 or section 7 of Measure 49 and when applicable, Chapter 855, Oregon Laws 2009 or Chapter 8, Oregon Laws 2010.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 1-2009, f. & cert. ef. 4-2-09; LCDD 3-2009(Temp), f. & cert. ef. 8-18-09 thru 2-14-10; Administrative correction 3-22-10; LCDD 4-2010(Temp), f. & cert. ef. 5-7-10 thru 10-1-10; LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0020
Contents of a Measure 37 Claim Based on a DLCD Regulation

(1) Unless otherwise described in section 3 of Chapter 855, Oregon Laws 2009, when a Claim was received by DAS after December 4, 2006 and was based on one or more Existing DLCD Regulations, then the Claim must:

(a) Demonstrate that a city, county, Metro, or an Agency applied one or more Existing DLCD Regulations, or applied one or more city, county or Metro land use regulations that implement Existing DLCD Regulations, as approval criteria to an application submitted by the Claimant; and

(b) Include one of the following:

(A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that included the Measure 37 Claim Property and that requested authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCD Regulations or city, county or Metro Land Use Regulations that implement Existing DLCD Regulations were approval criteria for the decision; or

(B) A copy of the final written action by an Agency on a complete application to the Agency, in which the Agency determined that one or more Existing DLCD Regulations were approval criteria for the application.

(2) Unless otherwise described in section 3 of Chapter 855, Oregon Laws 2009, when a Claim was based on one or more New DLCD Regulations, then the Claim must:

(a) Have been received by DAS within two years of:

(A) The effective date of the New DLCD Regulation; or

(B) Within two years of the date the Claimant submitted a Land Use Application in which the Land Use Regulations were approval criteria, whichever was later; and

(b) If the Claim was submitted more than two years after the effective date of the New DLCD Regulation, the Claim must include a copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Measure 37 Claim Property and that requested authorization for the specific use that the Claim was based on, in which the city, county, or Metro determined that the New DLCD Regulation or city or county or Metro Land Use Regulation that implemented the New DLCD Regulation were approval criteria for the decision.

(3) Unless otherwise described in section 3 of Chapter 855, Oregon Laws 2009, when a Claim was based on both Existing and New DLCD Regulations, the requirements of section (1) of this rule must be met with respect to the Existing DLCD Regulation, and the requirements of section (2) of this rule must be met with respect to the New DLCD Regulation.

(4) A DLDC Regulation was applied as an approval criterion for purposes of this rule and ORS 197.352(5) (2005) when a city, county or Metro made a final written decision on a Land Use Application, or when an Agency took final written action on an application to that Agency, and that final written decision or final written action denied the application or conditioned the approval of the application on the basis (in whole or in part) of the DLCD Regulation.

(5) This rule applies only to Claims that were received by DAS after December 4, 2006, and that were based on one or more DLCD Regulations, and that are not described in section 3 of Chapter 855, Oregon Laws 2009.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 3-2009(Temp), f. & cert. ef. 8-18-09 thru 2-14-10; LCDD 2-2010, f. & cert. ef. 2-9-10

660-041-0030
Notice of Applications and Decisions

(1) Except for a building permit that is not a "land use decision" under ORS 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all applications for a Measure 37 Permit, and all final written decisions on a Measure 37 Permit, filed with or made by the city, county or Metro after February 20, 2007.

(2) Notice of an application for a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office at least ten (10) calendar days before any deadline for comment on the application for a Measure 37 Permit. If there is no opportunity for comment, then the notice must be sent ten (10) days before the decision becomes final. The notice must include:

(a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;

(b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;

(c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);

(d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject Land Use Application; and,

(e) The name of the present owner of the Measure 37 Claim Property.

(3) Notice of a final decision on a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office within ten (10) calendar days of the date of the final written decision. The notice must include a copy of the final written decision.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 to 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0040
When a DLCD Measure 37 Waiver Was Required

Before a Claimant could lawfully use Measure 37 Claim Property for a use under a Measure 37 Waiver, the Claimant must have obtained a DLCD Measure 37 Waiver for that use of the Measure 37 Claim Property in all cases where that use was restricted by a DLCD Regulation or by a city, county or Metro Land Use Regulation that implements a DLCD Regulation. These cases include, but are not limited to, all cases where the use is a use of land, and the Measure 37 Claim Property includes:

(1) Land zoned for farm use under Goal 3;

(2) Land zoned for forest use under Goal 4; or

(3) Land outside of an acknowledged urban growth boundary where the Claimant's desired use of the Measure 37 Claim Property was an urban use under Goal 14, or that use included the establishment or extension of a sewer or water system restricted under Goal 11.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0060
Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers

Any authorization for a Claimant to use Measure 37 Claim Property without application of a DLCD Regulation provided by a DLCD Measure 37 Waiver expired on December 6, 2007, as did the effect of any order of DLCD denying a Claim. A Claimant may continue an existing use of Measure 37 Claim Property that was authorized under ORS 197.352 (2005). A Claimant may complete a use of Measure 37 Claim Property that was begun prior to December 6, 2007, only if the Claimant had a common law vested right to complete and continue that use on December 6, 2007, and the use complies with the terms of any applicable DLCD Measure 37 Waiver.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0070
State Agency and Special District Land Use Coordination and DLCD Measure 37 Waivers

After December 5, 2007, when a state agency or a special district is required to take an action in a manner that complies with the Statewide Planning Goals and that is compatible with comprehensive plans and land use regulations under ORS 197.180 (for a state agency), or under ORS 195.020 (for a special district), the state agency or special district must not take that action if it involves a use of Measure 37 Claim Property based on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land Use Regulation based on a DLCD Measure 37 Waiver has expired, and a DLCD Measure 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or 195.020. This rule does not apply to a use that was lawfully established or vested based on a DLCD Measure 37 Waiver on December 6, 2007.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0080
Supplemental Information for Supplemental Review of Measure 37 Claims under Measure 49 and Fees under Chapter 855, Oregon Laws 2009 and Chapter 8, Oregon Laws 2010

(1) If the record for the Claim does not include the information needed for DLCD to proceed with the Supplemental Review of the Claim, DLCD will request Supplemental Information from a Claimant or the Claimant's authorized agent.

(2) If the Claim is described in sections 2 through 5a or Section 13 of Chapter 855, Oregon Laws 2009 a Claimant or Claimant's authorized agent must submit a $175 fee to DLCD. DLCD will request the fee from a Claimant or the Claimant's authorized agent.

(3) If the Claim is described in section 5 or 6 of Chapter 8, Oregon Laws 2010, a Claimant or Claimant's authorized agent must submit a $2,500 fee to DLCD. If the Claim is divided into more than one claim under OAR 660-041-0150, an additional $2,500 fee is due for each resultant claim. If the Claim is combined with one or more other Claims, only one $2,500 fee is due for the resultant claim.

(4) Supplemental Information, and a $175 fee for a Claim described in sections 2 through 5a or section 13 of Chapter 855, Oregon Laws 2009, and a $2,500 fee for a Claim described in section 5 or 6 of Chapter 8, Oregon Laws 2010 must be filed with DLCD within fifty-six (56) days of the date the request is sent, and must be filed in the manner described in OAR 660-041-0100.

(5) For good cause shown, DLCD may extend the period for filing Supplemental Information or a $175 fee beyond fifty-six (56) days. DLCD will not extend the period for filing a $2,500 fee or Supplemental Information for a Claim described in section 5 or 6 of Chapter 8, Oregon Laws 2010.

(6) If DLCD fails to issue a final order on a Claim described in sections 2 through 5a, or Section 13 of Chapter 855, Oregon Laws 2009 by December 31, 2010, DLCD shall refund any $175 fee submitted for that Claim.

(7) If DLCD fails to issue a final order on a Claim described in section 5 or 6 of Chapter 8, Oregon Laws 2010 by June 30, 2011, DLCD shall refund any $2,500 fee submitted for that Claim.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 3-2009(Temp), f. & cert. ef. 8-18-09 thru 2-14-10; LCDD 2-2010, f. & cert. ef. 2-9-10; LCDD 4-2010(Temp), f. & cert. ef. 5-7-10 thru 10-1-10; LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0090
Procedures for Supplemental Review of Measure 37 Claims under Measure 49

(1) If a Claimant files an Election seeking relief under section 6 or section 7 of Measure 49 and, when applicable, Chapter 855, Oregon Laws 2009 and Chapter 8, Oregon Laws 2010, DLCD will review the Claim, as supplemented by the Election and the Supplemental Information, and prepare a Preliminary Evaluation of the relief that the Claimant may be entitled to. The Preliminary Evaluation will be based on and include an initial preliminary assessment of the number of lots, parcels and dwellings, if any, the Claimant lawfully was permitted to establish on the date the Claimant acquired the Measure 37 Claim Property.

(2) Prior to the issuance of the Preliminary Evaluation, DLCD will mail written notice of the Supplemental Review and a copy of any materials submitted by the Claimant to the county with land use jurisdiction over the Measure 37 Claim Property, and will provide that county an opportunity to submit written comment on the Supplemental Review. DLCD will consider all comments from the county in its preparation of the Preliminary Evaluation.

(3) DLCD will mail Notice of the Preliminary Evaluation to the Claimant, the Claimant's authorized agent, the county with land use jurisdiction over the Measure 37 Claim Property, and to any person who is an owner of record of real property located either within 250 feet of the Measure 37 Claim Property, if the Measure 37 Claim Property is not within a farm or forest zone, or within 750 feet of the Measure 37 Claim Property if it is located in a farm or forest zone, and to any neighborhood or community organization(s) whose boundaries include any portion of the Measure 37 Claim Property or that has made a written request for a copy of the Preliminary Evaluation.

(4) Any person may submit written comments, evidence or information in response to the Preliminary Evaluation as provided in OAR 660-041-0100 within twenty-eight (28) days of the date the Preliminary Evaluation is mailed under section (3) of this rule.

(5) DLCD will mail copies of any comments, evidence and information concerning the Preliminary Evaluation that are timely received under section (4) of this rule to the Claimant and the Claimant's authorized agent.

(6) The Claimant and the Claimant's authorized agent may file written comments, evidence or information in response to any materials filed by a third party or county. To be considered by DLCD, the response must filed as provided in OAR 660-041-0100 within twenty-one (21) days after the date DLCD mailed the comments, evidence and information to the Claimant and the Claimant's authorized agent as provided under section (5) of this rule.

(7) Based on the record, DLCD will prepare a Final Decision on the Claim, which either will deny the authorization of home sites or a dwelling; or will approve a the specific number of home sites under section 6 or section 7 of Measure 49 or a dwelling, and lot or parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010. If approved, the Final Decision will authorize the county with land use jurisdiction over the Measure 37 Claim Property to approve a permit to allow the number of home sites approved or the approved dwelling, and unless the property includes a vacant lot or parcel, a lot or parcel for the dwelling, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010.

(8) Following issuance of the Final Decision, the owner of the Measure 37 Claim Property may file an application with the county with land use jurisdiction over the Measure 37 Claim Property for a permit to establish home sites authorized or to establish an authorized dwelling, and unless the property includes a vacant lot or parcel, a lot or parcel for the dwelling, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010.

(9) For good cause shown, DLCD may extend any time period under this rule.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 4-2010(Temp), f. & cert. ef. 5-7-10 thru 10-1-10; LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0100
Submissions to DLCD Regarding Supplemental Review of a Measure 37 Claim under Measure 49

(1) A Claimant may file the form electing how the Claimant wishes to proceed under sections 5 to 11 of Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) only after receiving the notice and form from DLCD.

(2) All information filed with DLCD regarding the Supplemental Review of a Claim must be filed at:

Supplemental Measure 49 Claim Review
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

(3) Submissions regarding a Supplemental Review shall not be submitted by facsimile or electronically.

(4) The date information is filed is the date the information is received by DLCD, or the date it is mailed, provided it is mailed by registered or certified mail and the person filing the information has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424

Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0110
Determining What Was Lawfully Permitted on the Claimant's Acquisition Date

(1) A Claimant lawfully was permitted to establish one or more lots, parcels or dwellings on the Claimant's acquisition date if DLCD determines that the characteristics of the Measure 37 Claim Property as it existed on that date, including the size, soil quality and location of the Measure 37 Claim Property, would have allowed the Claimant to satisfy the standards and criteria for approval of the lot, parcel or dwelling in effect on that date.

(2) Based on the Claimant's acquisition date, as determined under ORS 195.328, DLCD will apply the following standards and criteria to determine the number of lots, parcels or dwellings that were lawfully permitted; or, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010, to determine whether, in addition to the existing lots, parcels and dwellings contained within the Measure 37 Claim Property, a Claimant was lawfully permitted to establish one dwelling and, unless the property includes a vacant lot or parcel, a lot or parcel for the dwelling:

(a) If the Claimant's acquisition date is prior to January 25, 1975, DLCD will apply the applicable local land use regulations and comprehensive plan provisions, if any, along with any directly-applicable state statutes;

(b) If the Claimant's acquisition date is on or after January 25, 1975 but before the date the county with land use jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan and land use regulations acknowledged by LCDC for compliance with the Statewide Planning Goals, DLCD will apply the standards set forth in section 2 of Chapter 8, Oregon Laws 2010.

(c) If the Claimant's acquisition date is on or after the date the county with land use jurisdiction over the Measure 37 Claim Property had its applicable comprehensive plan and local land use regulations acknowledged by LCDC for compliance with the Statewide Planning Goals, DLCD will apply the applicable local land use regulations and comprehensive plan provisions along with any directly-applicable state statutes, Statewide Planning Goals, LCDC rules, or the standard set forth in section 4 of Chapter 8, Oregon Laws 2010.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 1-2009, f. & cert. ef. 4-2-09; LCDD 4-2010(Temp), f. & cert. ef. 5-7-10 thru 10-1-10; LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0120
Evaluation of Measure 37 Contiguous Property in Supplemental Review

(1) For purposes of the Supplemental Review of a Claim, ownership of contiguous property will be determined and evaluated as of the date the Claimant Elected relief under section 6 or section 7 of Measure 49.

(2) Except for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010, in determining the relief to which a Claimant is entitled under section 6 or section 7 of Measure 49, the number of home site approvals a Claimant is entitled to will be reduced by the number of existing lots, parcels and dwellings contained within the entire property, which includes both the Measure 37 Claim Property and any contiguous property in the same ownership.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08; LCDD 4-2010(Temp), f. & cert. ef. 5-7-10 thru 10-1-10; LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0130
High-Value Farmland and High-Value Forestland

(1) Measure 37 Claim Property is high-value farmland as described in ORS 195.300(10) if:

(a) The Measure 37 Claim Property meets the criteria in ORS 195.300(10)(a) or (b), or both ORS 195.300(10)(a) and (b);

(b) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(c);

(c) The Measure 37 Claim Property is greater than five acres in size and all of the Measure 37 Claim Property is planted in wine grapes, as provided by ORS 195.300(10)(d); or

(d) All of the Measure 37 Claim Property meets the criteria in ORS 195.300(10)(e) or (f), or both ORS 195.300(10)(e) and (f).

(2) Measure 37 Claim Property is high-value forestland if it meets the criteria in ORS 195.300(11).

(3) To determine the cubic foot potential of Measure 37 Claim Property and whether it is high-value forestland as described in ORS 195.300(11), DLCD will use soil survey information from the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), unless other information or data are made a part of the record for the Supplemental Review, in which case DLCD will consider such information or data along with any pertinent NRCS information.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0140
Groundwater Restricted Areas

Measure 37 Claim Property is in a Ground Water Restricted Area if the Measure 37 Claim Property is located entirely within the boundaries of a Ground Water Limited Area or Critical Ground Water Area, or both.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0150
Combining and Dividing Claims

To evaluate the relief, if any, to which each Claimant is entitled under section 6 or section 7 of Measure 49, DLCD will divide a single Claim into two or more claims if the Measure 37 Claim Property contains multiple lots or parcels that are not in the same ownership. In addition, DLCD will combine multiple Claims into one claim if the Measure 37 Claim Property contains multiple contiguous lots or parcels that are in the same ownership.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0160
Appraisals Under Section 7 of Measure 49

(1) A Claimant seeking relief under section 7 of Measure 49 must provide an appraisal for the Measure 37 Claim Property showing the fair market value one year before the enactment of the Land Use Regulation(s) that are the basis for the Claim, and the fair market value one year after the enactment of the Land Use Regulation(s).

(2) The appraisal provided under this rule must also show the present fair market value of each lot, parcel or dwelling that the Claimant is seeking under section 7(2) of Measure 49. The appraisal must comply with all provisions of section 7(7) of Measure 49.

(3) For the Claimant to obtain relief under section 7, the appraisal must show that the enactment of one or more Land Use Regulations that are the basis of the Claim, other than land use regulations described in ORS 197.352(3) (2005), caused a reduction in the fair market value of the Measure 37 Claim Property that is equal to or greater than the fair market value of the home site approvals that may be established on the property under section 7(2) of Measure 49. The reduction in fair market value of the Measure 37 Claim Property must be measured as set forth in section 7(6) of Measure 49.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0170
Notice of County Applications and Decisions Under Measure 49

(1) The county with land use jurisdiction over property for which a Measure 49 Authorization has been issued must provide written notice to DLCD of any land use application that seeks approval of one or more home sites or of a dwelling, and lot or parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010 under the Measure 49 Authorization,; and of all final written decisions on home site approvals or on a dwelling, and lot or parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010 that are based on a Measure 49 Authorization.

(2) Notice of an land use application for home site approval(s) or for a dwelling, and lot or parcel when applicable, for Claims described in section 5 or 6 of Chapter 8, Oregon Laws 2010 under a Measure 49 Authorization, required under section (1) of this rule, must be mailed to DLCD's Salem office at least ten (10) calendar days before any deadline for comment on the application. If there is no opportunity for comment, then the notice must be sent ten (10) days before the decision becomes final. The notice must include:

(a) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;

(b) The claim number of the Measure 49 Authorization issued by the State of Oregon; and

(c) The name of the present owner of the Measure 49 Claim Property.

Stat. Auth.: ORS 197.040 & 197.065
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 1-2009, f. & cert. ef. 4-2-09; LCDD 4-2010(Temp), f. & cert. ef. 5-7-10 thru 10-1-10; LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0180
County Implementation of Measure 49 Authorizations

(1) The county with land use jurisdiction over the Measure 37 Claim Property must approve an application for a county permit submitted as provided in OAR 660-041-0090(8), based on current local standards, if the county finds that:

(a) the approval of the proposed lots, parcels or dwellings is not prohibited by one or more current local siting or development standard(s) that the county finds are reasonably necessary in order to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law; and

(b) the owner has not received county permits for more than a total of 20 home site approvals statewide pursuant to Measure 49 Authorizations.

(2) If the Measure 37 Claim Property is zoned for farm, forest or mixed farm and forest use, the county must also determine and find:

(a) if the property is located on high-value farm or forest land, or on land within a ground water restricted area, as defined in these rules, each new lot or parcel does not exceed two acres; or

(b) if the property is not located on high-value farm or forest land, and is not on land within a groundwater restricted area, as defined in these rules, each new lot or parcel does not exceed five acres; and

(c) all new lots or parcels are located on the property in a manner that maximizes suitability of the remnant lot or parcel for farm or forest use.

(3) If the owner has received Measure 49 Authorizations for more than one Measure 37 Claim Property, and proposes to cluster some or all of the authorized lots, parcels or dwellings on one of the Measure 37 Claim Properties by transferring the right to develop one or more authorized home sites from one or more other Measure 37 Claim Properties the county must determine:

(a) if all affected properties are farm, forest, or mixed farm and forest zoned, the property on which the lots, parcels or dwellings are proposed to be clustered is less suitable than the other property or properties for farm or forest use;

(b) if one or more of the affected properties is zoned for rural residential use, the clustered lots, parcels or dwellings are located on a property zoned for rural residential use;

(c) that no home site approvals are transferred from a Measure 37 Claim Property that contains multiple dwellings on a single lot or parcel;

(d) that the number of lots, parcels or dwellings that may be established on the Measure 37 Claim property to which additional home site approvals are transferred is reduced by the number of existing lots, parcels and dwellings on that Measure 37 Claim Property and on contiguous property in the same ownership in accordance with Section 6(2) of Measure 49; and

(e) that following completion of the development based on the Measure 49 Authorizations, the net number of lots or parcels developed with dwellings on all the affected Measure 37 Claim Properties and contiguous properties in the same ownership will not exceed the number of home site approvals authorized for all affected properties.

(4) Prior to the final approval of clustered lots or parcels as provided in OAR 660-041-0180(3), the owner shall provide evidence that a Declaration of Use Restriction has been recorded with the county clerk of every county where a Measure 37 Claim Property from which home site approvals have been transferred is located.

(a) As depicted in Examples A and B, the Declaration of Use Restriction shall:

(A) identify the Measure 37 Claim Property on which the lots, parcels or dwellings are approved to be clustered;

(B) identify all the Measure 37 Claim Properties from which home site approvals are transferred; preclude on each Measure 37 Claim Property from which one or more home site approvals are transferred all future rights to establish new lots, parcels or dwellings other than any lot, parcel or dwelling established pursuant to a home site approval the owner did not transfer from the property; and

(C) state that the Declaration of Use Restrictions is irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the affected property is located, which verifies that no lot, parcel or dwelling has been established pursuant to any home site approval that was approved for transfer and the approval of the transfer and clustering has been revoked or expired.

(b) The county planning director or assignee shall maintain a copy of the Declaration of Use Restrictions and a map or other record depicting the Measure 37 Claim Property subject to the Declaration of Use Restrictions, filed in the county deed records. The map or other record required by this subsection shall be available to the public in the county planning office.

Example A- Full Transfer
Declaration of Property Use Restriction

The undersigned _____ (Declarant) is the owner of the Measure 37 claim property described in Exhibits A (Final Order and Authorization in claim Exxxxxx) and B (Final Order and Authorization in claim Exxxxxx); and

The Declarant obtained authorizations under Measure 49, which authorized [X] lots or parcels developed with dwellings on the claim property described in Exhibit A, and [Y] lots or parcels developed with dwellings on the claim property described in Exhibit B; and

The Declarant proposes to cluster on the property described in Exhibit A, all of the [X+Y] lots or parcels developed with dwellings described in Exhibits A and B, in accordance with ORS 195.305 Section 11(4).

Because the lots or parcels developed with dwellings described in Exhibit B have been transferred to the property described in Exhibit A, recording this document establishes a restriction on the property described in Exhibit B prohibiting the establishment of any additional lots, parcels or dwellings on that property.

This restriction cannot be removed unless a statement of release is signed by an authorized representative of the county or counties where the property described in Exhibit A is located, which verifies that lots, parcels or dwellings authorized to be clustered have not been established and the approval of the clustering has been revoked or expired; or until a change in zoning or other land use regulations renders the restrictions imposed by current zoning moot; the legislature provides by statute that

this restriction can be removed; or the authorizations granted through Exxxxxx and Exxxxxx are otherwise determined to be no longer applicable.

Dated this ___ day of _____, ____.

[signature and notary]

Example B – Partial Transfer
Declaration of Property Use Restriction

The undersigned _____ (Declarant) is the owner of the Measure 37 claim property described in Exhibits A (Final Order and Authorization in claim Exxxxxx) and B (Final Order and Authorization in claim Exxxxxx); and

The Declarant obtained authorizations under Measure 49, which authorized [X] lots or parcels developed with dwellings on the claim property described in Exhibit A, and [Y] lots or parcels developed with dwellings on the claim property described in Exhibit B; and

The Declarant proposes to cluster on the property described in Exhibit A, [X + M] of the [X+Y] lots or parcels developed with dwellings described in Exhibits A and B, in accordance with ORS 195.305 Section 11(4).

Because [M] of the [Y] lots or parcels developed with dwellings described in Exhibit B have been transferred to the property described in Exhibit A, [Y-M] lots or parcels developed with dwellings are authorized on the property described in Exhibit B. Recording this document, therefore, establishes a restriction on the property described in Exhibit B prohibiting the establishment of any lots, parcels or dwellings that would result in more than [Y-M] lots or parcels developed with dwellings on that property.

This restriction cannot be removed unless a statement of release is signed by an authorized representative of the county or counties where the property described in Exhibit A is located, which verifies that lots, parcels or dwellings authorized to be clustered have not been established and the approval of the clustering has been revoked or expired; or until a change in zoning or other land use regulations renders the restrictions imposed by current zoning moot; the legislature provides by statute that this restriction can be removed; or the authorizations granted through Exxxxxx and Exxxxxx are otherwise determined to be no longer applicable.

Dated this ___ day of _____, ____.

[signature and notary]

New Claim Rules
(Ballot Measure 49)

Stat. Auth.: ORS 197.040 & 2010 OL Ch. 8
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353. 2007 OL Ch. 855 & 2010 OL Ch. 8
Hist.: LCDD 8-2010, f. & cert. ef. 8-9-10

660-041-0500
Purpose and Applicability

The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement ORS 195.300 to 195.336 (2007 Oregon Ballot Measure 49) in terms of the requirements and procedures for filing and reviewing Measure 49 Claims. These rules apply to Measure 49 Claims filed with the State of Oregon.

Stat. Auth.: ORS 195.300 - 195.336, 197.040 & 197.065
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0510
Definitions

The following definitions apply to OAR 660-041-0500 to 660-041-0530:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claimant" means an Owner who filed a Measure 49 Claim.

(3) "DLCD" means the Department of Land Conservation and Development.

(4) "DLCD Regulation" has the meaning provided by ORS 195.300(14)(a)–(b) and 195.300(14)(g).

(5) "Farming Practice" has the meaning provided by ORS 195.300(5).

(6) "File" or "Filed" has the meaning provided by ORS 195.300(7). The date a document is Filed is the date that it is received by the Public Entity.

(7) "Forest Practice" has the meaning provided by ORS 195.300(8).

(8) "Land Use Regulation" has the meaning provided by ORS 195.300(14). A "New Land Use Regulation" means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency on or after January 1, 2007.

(9) "Lot" means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(10) "Measure 49 Claim" means:

(a) A claim Filed with the State of Oregon under ORS 195.300 to 195.336 after December 5, 2007; and

(b) A claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed between June 29, 2007 and December 5, 2007 if no corresponding claim was filed for the Property with the city or county with land use jurisdiction over the Property prior to June 29, 2007.

(11) "Owner" has the meaning provided by ORS 195.300(16).

(12) "Parcel" means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(13) "Property" has the meaning provided by ORS 195.300(17).

(14) "Regulating Entity" means an Agency that has enacted, or has authority to remove, modify or not apply, the Land Use Regulation(s) identified in the Measure 49 Claim.

Stat. Auth.: ORS 197.040, 197.065 & 2007 OL Ch. 424
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065, 197.353 & 2007 OL Ch. 424
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0520
Procedures for Measure 49 Claims

(1) A Measure 49 Claim must be Filed by the Owner of the Property or an authorized agent of the Owner. A Measure 49 Claim must be Filed on a claim form available from DLCD at the address provided in this rule, or from DLCD's website, and must contain all information required by the form. Claims may not be submitted by facsimile or electronically.

(2) A Measure 49 Claim must be Filed with DLCD at:
Measure 49 Claims
635 Capitol St. NE, Suite 150
Salem 97301-2540

(3) If the Measure 37 Claim was Filed after June 28, 2007, but before December 6, 2007, and if no corresponding claim was filed for the Property with the city or county with land use jurisdiction over the Property prior to June 29, 2007, the Measure 37 Claim is deemed Filed on December 6, 2007 for purposes of ORS 195.312.

(4) DLCD's form for a Measure 49 Claim will require at least the following information:

(a) The name and mailing address of each Claimant and each Owner of the Property.

(b) Evidence establishing that each Claimant is an Owner of the Property.

(c) The consent to the Measure 49 Claim by each Owner of the Property if there are Owners of the Property other than the Claimant, which consent must be notarized.

(d) A description of the Claimant's specific desired use of the Property, which use must be a residential use or a Farming Practice or a Forest Practice. The description must be sufficiently specific to establish that each Land Use Regulation listed under paragraph (g) of this rule applies to and restricts the Claimant's desired use.

(e) The location of the Property by reference to:

(A) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;

(B) The street address of each Lot or Parcel that makes up the Property, if a street address has been assigned;

(C) The county the Property is located in; and

(D) If the Property is located within a city, the name of that city.

(f) Evidence of each Claimant's Acquisition Date, as provided in ORS 195.328;

(g) A listing of each specific New Land Use Regulation that is alleged to restrict the Claimant's desired use of the Property, and for each New Land Use Regulation listed, a description of how that regulation restricts the Claimant's desired use of the property;

(h) An appraisal of the reduction in the fair market value of the Property caused by the enactment of each listed New Land Use Regulation as provided in ORS 195.310.

(5) DLCD will review a Measure 49 Claim to determine whether it complies with the requirements of ORS 195.310 to 195.312. If the Measure 49 Claim is incomplete, within sixty (60) days of receiving the Claim, DLCD will notify the person who filed the Claim of the information that is missing. The notification will be in writing. A Measure 49 Claim is complete when DLCD receives:

(a) The missing information;

(b) Part of the missing information and written notice from the Claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the Claimant that none of the missing information will be provided.

(6) If a Claimant submits a request in writing for additional time to provide missing information, DLCD may for good cause shown agree to provide such additional time, which agreement must be in writing. An agreement to allow additional time has the effect of abating the time requirements under ORS 195.312 and 195.314, until the date specified in the agreement.

(7) If DLCD does not notify the Claimant within sixty (60) days after a Measure 49 Claim is Filed that information is missing from the Claim, the Claim is deemed complete when Filed.

(8) If the Claimant does not respond in writing to the written notification from DLCD under section (5) of this rule within sixty (60) days of the date the written notification was sent, the Claim is deemed withdrawn.

(9) DLCD will provide notice of a Measure 49 Claim as provided by ORS 195.314. The notice will describe the Measure 49 Claim and specify a deadline by which written evidence and arguments must be Filed. The Claimant may respond to the written evidence and argument by Filing a written response within fifteen (15) days of the date specified as the deadline for the initial evidence and argument.

(10) DLCD will mail a copy of its final determination to the Claimant and to any person who timely filed written evidence or arguments.

Stat. Auth.: ORS 195.300 - 195.336, 197.040 & 197.065
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

660-041-0530
Coordinating with Other Regulating Entities

(1) If the Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation that was enacted by an Agency other than DLCD, or the New Land Use Regulation is a state statute that is administered by an Agency other than DLCD, DLCD will forward the Claim to that Agency.

(2) When a Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation for which there is no Regulating Entity, DLCD will forward the Claim to the Department of Administrative Services.

(3) When a Regulating Entity other than DLCD is wholly responsible for a Measure 49 Claim, that Regulating Entity will process the Claim using the procedures set forth in OAR 660-041-0520 unless that Regulating Entity has adopted its own procedures for review.

(4) When a Regulating Entity other than DLCD is partially responsible for a Measure 49 Claim, DLCD will coordinate the review of the Claim under the procedures set forth in OAR 660-041-0520. However, the other Regulating Entity will decide whether the Claimant is entitled to relief with respect to the New Land Use Regulations that it enacted or that it administers as provided in ORS 195.300 to 195.336 and if so what form of relief to grant under ORS 195.310(5) with respect to those regulations.

(5) DLCD will issue the final order itself or jointly with one or more other Regulating Entities.

Stat. Auth.: ORS 195.300 - 195.336, 197.040 & 197.065
Stats. Implemented: ORS 195.300 - 195.336, 197.015, 197.040, 197.065 & 197.353
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08; LCDD 4-2008, f. & cert. ef. 5-23-08

DIVISION 43

AREAS OF CRITICAL STATE CONCERN

660-043-0100
Metolius Area of Critical State Concern

(1) The Legal Effect of the Management Plan. This section of the Metolius Area of Critical State Concern contains the operative provisions of the designation. The earlier sections are intended only as background for the land use management plan. The provisions of the management plan will become effective upon filing of this rule with the Secretary of State. No further action by the commission or by Jefferson of Deschutes County is required for the plan to take effect. Specifically, neither county is required to amend its comprehensive plan or land use regulations as a result of this management plan. Instead, the counties will apply the provisions of this management plan directly to any land use decision that the plan applies to (as specified in more detail below). The Management Plan provisions in this section apply in addition to and (in some cases) instead of other state and local land use statutes, goal, rules, plans and regulations governing land uses within the Area of Critical State Concern. If any statute, goal, rule, plan or regulation conflicts with a provision of this Management Plan, the plan will control upon the effective date of legislation approving the plan. All other programs and regulations of state agencies, Jefferson County and Deschutes County are not affected by this Management Plan. The Management Plan may be amended by the commission, as provided and subject to the limitations contained in subsection 4 of this section.

(2) The Boundary of the Area of Critical Concern. The Area of Critical State Concern consists of two areas: The Metolius basin itself, except for the Three Rivers unincorporated community and lands to the east of Three Rivers (defined by surface hydrology as mapped by the Oregon Water Resources Department, and as shown in Exhibit A) (Area 1); and an area along the edge of the basin located to include lands where groundwater use is likely to adversely effect surface water flows in the Metolius basin, or where large-scale development would adversely affect important deer or elk winter range (as shown in Exhibit A) (Area 2). The eastern boundary of Area 1 was adjusted by the commission to remove the Three Rivers unincorporated community from the boundary, along with lands to the east of Three Rivers. The boundary otherwise encompasses the surface drainage of the Metolius River, including Fly Creek. The boundary of Area 2 was developed based on two criteria: the area where groundwater withdrawals are likely to substantially affect surface flows in the Metolius River (by more than 30 percent); and the area identified as especially sensitive big game habitat by ODFW or identified as important winter or transitional deer or elk range by the U.S. Forest Service. The boundary of Area 2 was adjusted to follow section lines to assist in the administration of the Management Plan.

(3) Management Plan Objectives. The Management Plan for the Metolius Basin Area of Critical State Concern ("the Management Plan") is intended to achieve three important objectives. These objectives will guide the commission and Jefferson and Deschutes Counties in the implementation of the Management Plan.

(a) Protect the Basin. The Management Plan is designed to protect the Metolius Basin (Area 1) and Area 2 from large-scale development that would be inconsistent with the outstanding and unique environmental, cultural and scenic values and resources described in Section V of the Management Plan. This is accomplished by prohibiting large-scale development in the basin itself, and by substantially limiting such development in Area 2. The location and development limits with Area 2 have been planned carefully, based on the likely hydrological impacts of development and the location of important wildlife resources. Within Area 2 the

amount, location and type of development are limited to: assure no negative impact to the Metolius River, its springs or its tributaries; assure no negative impact to fish resources in the ACSC; and assure no negative impact to wildlife resources in the ACSC. The limitations do not affect small-scale development allowed under existing zoning, or existing land uses including the development of platted lots in Camp Sherman or the Three Rivers unincorporated communities.

(b) Give Jefferson County a Clear Path to Allow Small-Scale Recreation Oriented Development Consistent with the Carrying Capacity of the Area. The Management Plan also recognizes the economic development objectives of Jefferson County by authorizing small-scale recreation-oriented development within a small portion of the two areas mapped by the county for destination resort development. In addition, the Management Plan allows Jefferson County to remap without regard to the 30-month waiting period that would normally apply under ORS 197.455.

(c) Provide a Fair Result for the Property Owners. The Management Plan provides fairness for the property owners that would be directly affected by the proposed management plan by giving them an entitlement that they do not currently have in exchange for the prohibition on large scale resort or other large-scale development. The level of entitlement for the Metolian property set to offset the costs that have been incurred in preparing detailed development plans for the property. The entitlements for the Ponderosa property reflect the development allowed under existing zoning. The Management Plan does not eliminate statutory claims for compensation the owners may (or may not) have under Measure 49.

(4) Management Plan General Standards and Procedures. The following standards limit the authority of the commission to amend the Management Plan, by prohibiting certain changes to the plan without legislative approval, and by setting general standards for other changes.

(a) Changes Prohibited Without Legislative Approval. The following types of changes in the designation and Management Plan are prohibited without legislative approval:

(A) Any change to the boundary of the ACSC, including its two Areas, of more than 50 acres;

(B) Any change to the prohibition of a destination resort, as defined by Statewide Planning Goal 8 or ORS 197.435 et. seq.; or

(C) Any change that would authorize an exception to a Statewide Planning Goal in order to allow the development of more than 100 residential units.

(b) Other Changes. Other changes to the boundary of the ACSC or Management Plan by the commission are allowed without legislative approval, subject to the following standards: Any new development allowed by the change will not result in:

(A) Negative impact to the Metolius River, its springs or its tributaries;

(B) Negative impact on fish resources in the area of critical state concern; or

(C) Negative impact on the wildlife resources in the area of critical state concern.

(c) Procedure for Amendments. If the commission proposes to amend, add to or remove the boundary of Area 1 or Area 2, or to amend any provision of the Management Plan in a manner that is subject to paragraph (a) of this subsection, the amendment will not take effect until the effective date of legislation approving the amendment. If the commission proposes to amend, add to or remove the boundary of Area 1 or Area 2, or to amend any provision of the Management Plan in a manner that is not subject to paragraph (a) of this section, it shall do so by following the applicable rulemaking procedures specified in ORS 183.325 et. seq. The commission shall hold at least one hearing in Jefferson County on any proposed change to the boundary of the ACSC or any proposed change to the Management Plan.

(d) In addition, the commission shall give notice of proposed amendments to the management plan to the governing bodies of Jefferson County and the Confederated Tribes of the Warm Springs Indian Reservation. If either governing body files a written objection to the proposed amendment within 45 days of the notice, the commission may adopt the proposed amendment only if the commission finds by clear and convincing evidence that the proposed amendment meets the applicable requirements of 2009 Or Laws, chapter 712.

(e) Implementation of the Management Plan. Notwithstanding other statutory requirements, neither Deschutes County nor Jefferson County is required to amend their comprehensive plan or land use regulations as a result of the designation or the Management Plan. Instead, the two counties will apply the designation and Management Plan directly to any application for a permit or land use decision within the ACSC, to the extent that this section of the Management Plan specifies that the Management Plan applies to the proposed use. The Management Plan will apply in the same manner as provided by ORS 197.646(4). If the county receives a land use application that is subject to the Management Plan, it must provide written notice to the department 15 days prior to the deadline for comments or testimony on the application. Any development or use of land not specifically regulated by this Management Plan is subject to the otherwise applicable provisions of state and local laws, goals, rules, plans and regulations.

(5) Management Plan Supplemental Land Use Regulations, Area 1: Metolius Basin. Area 1 is the area shown as Area 1 on Exhibit A.

(a) Prohibited Uses and Activities (Jefferson and Deschutes Counties). In addition to the existing provisions of state statutes, statewide land use planning goals and rules, and the acknowledged Jefferson County and Deschutes County Comprehensive Plans and land use regulations, the following uses and activities are prohibited on all lands in Area 1:

(A) Any new destination resort, as defined by Statewide Planning Goal 8 (Recreation) or ORS 197.435 to 197.467;

(B) Any new golf course;

(C)Any new residential development exceeding 10 dwelling units on a tract, regardless of whether an exception is taken (except as provided in subparagraph (b)(D), below);

(D) Any new commercial or industrial development that would have an average annual consumptive use of water of more than 5 acre-feet, and small-scale, low impact uses allowed under OAR 660-022-0030; and

(E) Any new uses of a tract of land that would have an average annual consumptive use of water in excess of 5 acre-feet, except as provided in subparagraph (b)(D), below.

(b) Special Land Use Provisions (Jefferson County). The following uses and development in the portion of Area 1 in Jefferson County are not subject to paragraph (a), above:

(A) All uses allowed by the current provisions of the Jefferson County comprehensive plan and land use regulations concerning the Blue Lake, Camp Sherman Vacation Resort, Camp Sherman Rural Service Center, Camp Sherman Rural Residential (3 acre and 5 acre) areas.

(B) Farm uses and forest uses allowed under Statewide Planning Goal 3 or Goal 4, including conditional uses of farm and forest land allowed by Goals 3 and 4 or their implementing rules (so long as any conditional use does not have an average annual consumptive use of water in excess of 5 acre-feet).

(C) Non-farm uses allowed under Statewide Planning Goal 3 and its implementing rules (so long as any non-farm use does not have an average annual consumptive use of water in excess of five acre-feet).

(D) A small-scale recreation-oriented development within the area mapped as eligible for destination resort development by Jefferson County in Township 13 South, Range 8 East, section 13. The development authorized by this section consists of:

(i) Up to twenty-five residential units and up to ten additional overnight accommodations in a lodge format, or including cabins on the lodge footprint, and accessory uses and activities including a small accessory restaurant and recreation-oriented amenities;

(ii) All units must be sited within a single clustered node of development, not to exceed 25 acres in size (access roads to the node and fire buffer areas are not included in the 25 acre limitation). The units must be sited, clustered and designed to min-

imize conflicts with wildlife in consultation with the Oregon Department of Fish and Wildlife, the U.S. Forest Service and the Confederated Tribes of the Warm Springs.

(iii) Fire siting standards must meet or exceed the standards in Jefferson County zoning code section 426;

(iv) The average annual consumptive water use for this development may not exceed 12.5 acre-feet; however, this limitation does not include water for fire-fighting needs on or off-site;

(v) Individual residential lots may not exceed one acre in size, with a maximum disturbance area of 35 percent;

(vi) Front and rear yard minimum setbacks are 10 feet; minimum side yard setbacks are 5 feet;

(vii) Roads to serve the residential lots may be private;

(viii) Jefferson County's review of development carried out under this section shall demonstrate compliance with the applicable provisions of this Management Plan, together with applicable county site plan and land division requirements, as set forth in Jefferson County's land use regulations;

(ix) This use is allowed not withstanding any state statute in ORS chapters 197 or 215 to the contrary, and notwithstanding any Statewide Planning Goal or implementing rule to the contrary, and notwithstanding any land use regulation or comprehensive plan provision of Jefferson County to the contrary;

(x) If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential use or overnight accommodations (including any common facilities) must be dedicated as open space. In addition, if the owner elects to carry out this use, all other property owned by the owner, or any affiliate of the owner, within Area 1 or Area 2 may not be developed with farm, non-farm or forest dwellings that would otherwise be allowed under applicable state and local land use regulations;

(xi) If the 2009 Legislative Assembly enacts a bill that provides for an owner, or affiliate of an owner, of the property described in this section to carry out a pilot project to develop a sustainable eco-community outside of Area 1 and Area 2, then the development authorized by this section is limited to two forest dwellings.

(c) Special Land Use Provisions (Deschutes County). The following uses and development in the portion of Area 1 in Deschutes County are not subject to paragraph (a), above:

(A) All uses allowed by the applicable provisions of Deschutes County's current acknowledged comprehensive plan and land use regulations (so long as any new use does not have an average annual consumptive use of water in excess of 5 acre-feet);

(B) Farm uses and forest uses allowed under Statewide Planning Goal 3 or Goal 4, including conditional uses of farm and forest land allowed by Goal 4 or their implementing rules (so long as any conditional use does not have an average annual consumptive use of water in excess of 5 acre-feet);

(C) Non-farm and non-forest uses allowed under Statewide Planning Goals 3 and 4 and their implementing rules (so long as any non-farm or non-forest use does not have an average annual consumptive use of water in excess of five acre-feet).

(6) Management Plan Supplemental Land Use Regulations, Area 2: Metolius Water/Wildlife Buffer Area. Area 2 is that area shown as Area 2 on Exhibit A.

(a) Prohibited Uses and Activities (Jefferson and Deschutes Counties). In addition to the existing provisions of state statutes, Statewide Planning Goals and their implementing rules, and the acknowledged Jefferson County and Deschutes County Comprehensive Plans and land use regulations, the following uses and activities are prohibited on all lands in Area 2:

(A) Any new destination resort as defined by Statewide Planning Goal 8 (Recreation) or ORS 197.435 to 197.467;

(B) Any new golf course;

(C) Any new residential development exceeding 20 dwelling units on a tract, regardless of whether an exception is taken;

(D) Any new commercial or industrial development, other than those commercial or industrial uses that would have an average annual consumptive use of water of less than 10 acre-feet, and other than those small-scale, low impact uses allowed under OAR 660-022-0030; and

(E) Any new uses of a tract of land, not including any farm use, that would have an average annual consumptive use of water in excess of 10 acre-feet, except as provided in paragraph (b), below.

(b) Special Use Provisions (Jefferson County). The following uses and development in the portion of Area 2 in Jefferson County are not subject to paragraph (a), above:

(A) Farm uses and forest uses allowed under Statewide Planning Goal 3 or Goal 4, including conditional uses of farm or forest lands allowed by Goal 3 or Goal 4 or their implementing rules (so long as any conditional use does not have an average annual consumptive use of water in excess of 5 acre-feet).

(B) Non-farm uses allowed under Statewide Planning Goal 3 and its implementing rules (so long as any non-farm use does not have an average annual consumptive use of water in excess of five acre-feet).

(C) The development of a small-scale recreation community within Township 13 South, Range 10 East, sections 20, 21, 28, and/or 29 in Jefferson County. The development authorized by this section consists of:

(i) Up to 100 residential units and up to twenty additional overnight accommodations in a lodge format, or including cabins on the lodge footprint, and accessory uses and activities including a small accessory restaurant and equestrian facilities or other recreation-oriented amenities (not including a golf course);

(ii) All units must be sited within up to 25 clusters that may be connected only by a road system, not to exceed 320 acres in size (access roads to the nodes and fire buffer areas are not included in the acreage limitation). The units and nodes must be designed to minimize conflicts with wildlife in consultation with the Oregon Department of Fish and Wildlife, the U.S. Forest Service and the Confederated Tribes of the Warm Springs;

(iii) Fire siting standards must meet or exceed the standards in Jefferson County zoning code section 426;

(iv) The average annual consumptive water use for this development may not exceed 60 acre-feet; however, this limitation does not include water for fire-fighting needs on or off-site;

(v) Individual residential lots may not exceed five acres in size, with a maximum disturbance area of 35 percent;

(vi) Roads to serve the residential lots may be private;

(vii) Jefferson County's review of development carried out under this section shall demonstrate compliance with the applicable provisions of this Management Plan, together with applicable county site plan and land division requirements, as set forth in Jefferson County's land use regulations;

(viii) This use is allowed notwithstanding any state statute in ORS chapters 197 or 215 to the contrary, and notwithstanding any Statewide Planning Goal or implementing rule to the contrary, and notwithstanding any land use regulation or comprehensive plan provision of Jefferson County to the contrary. If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential use or overnight accommodations (including any common facilities) must be dedicated as open space. In addition, if the owner elects to carry out this use, all other property owned by the owner or any affiliate of the owner within Area 1 and Area 2 may not be developed with farm, non-farm or forest dwellings that would otherwise be allowed under applicable state and local land use regulations.

(7) Special Use Provisions (Deschutes County). The following uses and development in the portion of Area 2 in Deschutes County are not subject to subsection (6), above:

(a) All uses allowed by the applicable provisions of Deschutes County's current acknowledged comprehensive plan and land use regulations, except the development of a new destination resort (completion of development already authorized for Black Butte Ranch is not limited by this Management Plan);

(b) Farm uses and forest uses allowed under Statewide Planning Goal 3 or Goal 4, including conditional uses of forest land allowed by Goal 4 or its implementing rules (so long as any

conditional use does not have an average annual consumptive use of water in excess of 5 acre-feet);

(c) Non-farm uses allowed under Statewide Planning Goal 3 and its implementing rules (so long as any non-farm use does not have an average annual consumptive use of water in excess of five acre-feet);

(d) The development of up to ten residential units within the area mapped as eligible for destination resort development by Deschutes County in Township 14 South, Range 9 East, Section 21. However, the development area for such units (the area of any lots and common facilities, but not including common open space) may not exceed ten acres. The units must be sited, clustered and designed to minimize wildfire risk and the costs of protection from wildfire in consultation with the Oregon Department of Forestry and the U.S. Forest Service. In addition, the annual average consumptive water use for this development may not exceed 5 acre-feet. This use is allowed not withstanding any state statute in ORS Chapters 197 or 215 to the contrary, and notwithstanding any Statewide Planning Goal or implementing rule to the contrary, and notwithstanding any land use regulation or comprehensive plan provision of Deschutes County to the contrary. If the owner of the property described in this paragraph elects to carry out this use, the property not used for residential units and common facilities must be dedicated as open space.

(8) Alternative Resort Siting Provisions (Jefferson County). Alternate Destination Resort Sites. Notwithstanding ORS 197.455(2) Jefferson County may map other locations as eligible for destination resort development (outside of the Area of Critical State Concern) without waiting 30-months from the previous destination resort map adoption. Mapping conducted, if any, pursuant to this provision must satisfy all other applicable provisions of law. This subsection sunsets on January 1, 2014.

EXHIBITS:

Exhibit A, Metolius Area of Critical State Concern, Area 1 and Area 2 (Map)

Exhibit B, Metolius ACSC Management Plan, April 2, 2009

Exhibit C, Metolius Area of Critical State Concern, Areas 1 and 2 Boundary — Jefferson County, Description of the lineage of the ACSC Data Set

Exhibit D, Metolius Area of Critical State Concern, Boundary Area Between Areas 1 and 2 — Description of the Lineage of the ACSC Data Set

Exhibit E, Metolius Area of Critical State Concern, Areas 1 and 2 Boundary — Deschutes County, Description of the Lineage of the ACSC Data Set.

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

Stat. Auth.: ORS 197.040 & HB 3298

Stats. Implemented: ORS 197.405 & 2009 OL Ch. 712

Hist.: LCDD 5-2010, f. & cert. ef. 5-13-10

DIVISION 44

METROPOLITAN GREENHOUSE GAS REDUCTION TARGETS

660-044-0000
Purpose

(1) This division implements provisions of chapter 865, section 37 (6), Oregon Laws 2009, and chapter 85, section 5 (1), Oregon Laws 2010, that direct the Land Conservation and Development Commission ("commission") to adopt rules setting targets for reducing greenhouse gas emissions from light vehicle travel for each of the state's metropolitan areas for the year 2035 to aid in meeting the state goal in ORS 468A.205 to reduce the state's greenhouse gas emissions in 2050 to 75 percent below 1990 levels.

(2) This division also implements provisions of Oregon Laws 2009, chapter 865, section 38 regarding land use and transportation scenario planning to reduce greenhouse gas emissions in the Portland metropolitan area. The commission's intent and expectation is that the requirements set forth in this rule will be integrated into and addressed as part of existing procedures for coordinated regional planning in the Portland metropolitan area. The requirements set forth in this division for scenario planning apply only to the Portland metropolitan area. Nothing in this division is intended to require other metropolitan areas to conduct scenario planning, or provide for commission or department review or approval of scenario plans that other metropolitan areas may develop or adopt. While a preferred scenario may include assumptions about state or federal policies, programs, or actions that would be put in place to reduce greenhouse gas emissions, nothing in this division or commission approval of a preferred scenario is intended to grant authority to the commission, Metro or local governments to approve or require implementation of those policies, programs or actions.

(3) The targets in this division provide guidance to local governments in metropolitan areas on the level of reduction in greenhouse gas emissions to achieve as they conduct land use and transportation scenario planning. Land use and transportation scenario planning to meet the targets in this division is required of the Portland metropolitan area and is encouraged, but not required, in other metropolitan areas. Success in developing scenarios that meet the targets will depend in large part on the state funding for scenario planning; on the state developing strategies and actions that reduce greenhouse gas emissions from light vehicle travel within metropolitan areas; and on state and local governments jointly and actively engaging the public on the costs and benefits of reducing greenhouse gas emissions.

(4) Land use and transportation scenario planning is intended to be a means for local governments in metropolitan areas to explore ways that urban development patterns and transportation systems would need to be changed to achieve significant reductions in greenhouse gas emissions from light vehicle travel. Scenario planning is a means to address benefits and costs of different actions to accomplish reductions in ways that allow communities to assess how to meet other important needs, including accommodating economic development and housing needs, expanding transportation options and reducing transportation costs.

(5) The expected result of land use and transportation scenario planning is information on the extent of changes to land use patterns and transportation systems in metropolitan areas needed to significantly reduce greenhouse gas emissions from light vehicle travel in metropolitan areas, including information about the benefits and costs of achieving those reductions. The results of land use and transportation scenario planning are expected to inform local governments as they update their comprehensive plans, and to inform the legislature, state agencies and the public as the state develops and implements an overall strategy to meet state goals to reduce greenhouse gas emissions.

(6) The greenhouse gas emissions reduction targets in this division are intended to guide an initial round of land use and transportation scenario planning over the next two to four years. The targets are based on available information and current estimates about key factors, including improvements in vehicle technologies and fuels. Pursuant to OAR 660-044-0035, the commission shall review the targets by June 1, 2015, based on the results of scenario planning, and updated information about expected changes in vehicle technologies and fuels, state policies and other factors.

(7) Success in meeting the targets will require a combination of local, regional and state actions. State actions include not only improvements in vehicle technology and fuels, but also other statewide efforts to reduce greenhouse gas emissions from light vehicle travel. These efforts—which are programs and actions to be implemented at the state level—are currently under review by the Oregon Department of Transportation as part of its Statewide Transportation Strategy to reduce greenhouse gas emissions. As metropolitan areas develop scenario plans to reduce greenhouse gas emissions and compare them to the targets in this division, it is incumbent that metropolitan areas and the state work as partners, with a shared responsibility of determining how local and statewide actions and programs can reach the targets.

(8) Nothing in this division is intended to amend statewide planning goals or administrative rules adopted to implement statewide planning goals.

Stat. Auth.: ORS 197.040; Chapter 865 Oregon Laws 2009 (House Bill 2001) §37(6) and (8); Chapter 85 Oregon Laws 2010 Special Session (Senate Bill 1059) §5

Stats. Implemented: Chapter 865 Oregon Laws 2009 (House Bill 2001) §37(6) and (8); Chapter 85 Oregon Laws 2010 Special Session (Senate Bill 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

660-044-0005
Definitions

For the purposes of this division, the definitions in ORS 197.015 and the statewide planning goals apply. In addition, the following definitions shall apply:

(1) "1990 baseline emissions" means the estimate of greenhouse gas emissions from light vehicle travel in each metropolitan area for the year 1990, as presented by the Department of Environmental Quality and the Oregon Department of Energy included in the Agencies' Technical Report.

(2) "2005 emissions levels" means an estimate of greenhouse gas emissions from light vehicle travel in a metropolitan area for the year 2005.

(3) "2035 greenhouse gas emissions reduction goal" means the percentage reduction in greenhouse gas emissions from light vehicle travel in a metropolitan area needed by the year 2035 in order to meet the state goal of a 75 percent reduction in greenhouse gas emissions from 1990 levels by the year 2050 as recommended by the Department of Environmental Quality and the Oregon Department of Energy in the Agencies' Technical Report.

(4) "Agencies' Technical Report" means the report prepared by the Oregon Department of Transportation, the Department of Environmental Quality and the Oregon Department of Energy and submitted to the commission on March 1, 2011, that provides information and estimates about vehicle technologies and vehicle fleet to support adoption of greenhouse gas reduction targets as required by chapter 865, section 37 (7), Oregon Laws 2009, and chapter 85, section 5 (2), Oregon Laws 2010.

(5) "Design type" means the conceptual areas described in the Metro Growth Concept text and map in Metro's regional framework plan, including central city, regional centers, town centers, station communities, corridors, main streets, neighborhoods, industrial areas and employment areas.

(6) "Framework plan" or "regional framework plan" means the plan adopted by Metro as defined by ORS 197.015(16).

(7) "Functional plan" or "regional functional plan" means an ordinance adopted by Metro to implement the regional framework plan through city and county comprehensive plans and land use regulations.

(8) "Greenhouse gas" means any gas that contributes to anthropogenic global warming including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. ORS 468A.210(2). Greenhouse gases are generally measured in terms of CO2 equivalents — CO2e — which means the quantity of a given greenhouse gas multiplied by a global warming potential factor provided in a state-approved emissions reporting protocol.

(9) "Greenhouse gas emissions reduction target" or "target" means the percent reduction in greenhouse gas emissions from light vehicle travel within a metropolitan area from 2005 emissions levels that is to be met by the year 2035 through scenario planning. Greenhouse gas emissions reduction targets are expressed as a percentage reduction in emissions per capita, i.e., total emissions divided by the population of the metropolitan area. Targets represent additional reductions from 2005 emissions levels beyond reductions in vehicle emissions that are likely to result by 2035 from the use of improved vehicle technologies and fuels and changes to the vehicle fleet. When determining whether a scenario meets a target, the reduction per capita is to be calculated as a percentage of the emissions per capita assuming 2005 light vehicle travel per capita and 2035 baseline assumptions for light vehicle technologies, fuels and fleet as set forth in Tables 1 and 2 of OAR 660-044-0010. The combined effect of the baseline assumptions for light vehicle technologies, fuels and fleet from 1990 to 2035, estimated changes to light vehicle travel from 1990 to 2005, and scenario planning to meet targets from 2005 to 2035 is to meet the greenhouse gas emissions reduction goal from 1990 to 2035.

(10) "Greenhouse gas emissions reduction toolkit" means the toolkit prepared by the Oregon Department of Transportation and the department to assist local governments in developing and executing actions and programs to reduce greenhouse gas emissions from light vehicle travel in metropolitan areas as provided in chapter 85, section 4, Oregon Laws 2010.

(11) "Land use and transportation scenario planning" means the preparation and evaluation by local governments of two or more land use and transportation scenarios and the cooperative selection of a preferred scenario that accommodates planned population and employment growth while achieving a reduction in greenhouse gas emissions from light vehicle travel in the metropolitan area. Land use and transportation scenario planning may include preparation and evaluation of alternative scenarios that do not meet targets specified in this division.

(12) "Light vehicles" means motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.

(13) "Light vehicle travel within a metropolitan area" means trips made by light vehicles that begin and end within the same metropolitan planning area, and that portion of other trips made by light vehicles that occurs within the metropolitan planning area, including a portion of through trips (i.e., trips that pass through the metropolitan planning area but do not begin or end there) and that portion within the metropolitan planning area of other light vehicle trips that begin or end within the metropolitan planning area. Trips and portions of trips that are within the metropolitan planning area are illustrated by solid lines as shown in Figure 1. [Figures not included. See ED. NOTE.]

Figure 1. Light vehicle travel within a metropolitan area. Circles indicate trip origins and destinations. Arrows indicate the direction of travel. Solid lines indicate the portion of each type of trip that is considered travel within a metropolitan area for purposes of this definition.

(14) "Metro" means the metropolitan service district organized for the Portland metropolitan area under ORS chapter 268.

(15) "Metropolitan planning area" or "metropolitan area" means lands within the boundary of a metropolitan planning organization as of the effective date of this division.

(16) "Metropolitan planning organization" means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c). ORS 197.629(7). Included are metropolitan planning organizations for the following areas: the Portland metropolitan area, the Bend metropolitan area, the Corvallis metropolitan area, the Eugene-Springfield metropolitan area, the Salem-Keizer metropolitan area and the Rogue Valley metropolitan area.

(17) "Planning period" means the period of time over which the expected outcomes of a scenario plan are estimated, measured from a base year, typically 2005, to a future year that corresponds with greenhouse gas emission targets set forth in this division.

(18) "Preferred land use and transportation scenario" means a generalized plan for the Portland metropolitan area adopted by Metro through amendments to the regional framework plan that achieves the targets for reducing greenhouse gas emissions set forth in OAR 660-044-0020 as provided in 660-044-0040.

(19) "Scenario planning guidelines" means the guidelines established by the Oregon Department of Transportation and the department to assist local governments in conducting land use and transportation scenario planning to reduce greenhouse gas emissions from light vehicle travel in metropolitan areas as provided in chapter 85, section 3, Oregon Laws 2010.

(20) "Statewide Transportation Strategy" means the statewide strategy adopted by the Oregon Transportation Commission as part of the state transportation policy to aid in achieving the greenhouse gas emissions reduction goals set forth in ORS 468A.205 as provided in chapter 85, section 2, Oregon Laws 2010.

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

Stat. Auth.: ORS 197.040; Chapter 865 Oregon Laws 2009 (House Bill 2001) §37(6) and (8); Chapter 85 Oregon Laws 2010 Special Session (Senate Bill 1059) §5

Stats. Implemented: Chapter 865 Oregon Laws 2009 (House Bill 2001) §37(6) and (8); Chapter 85 Oregon Laws 2010 Special Session (Senate Bill 1059) §5

Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11; LCDD 10-2012, f. 12-4-12, cert. ef. 1-1-13

660-044-0010
Target Setting Process and Considerations

(1) This rule describes information and factors that provide the basis for greenhouse gas emissions reduction targets included in this division. The purpose of this rule is to inform local governments and the public about information that was relied upon to set greenhouse gas emissions reduction targets, to inform local governments as they conduct land use and transportation scenario planning, and to inform the department and commission in the review and evaluation of greenhouse gas emissions reduction targets as required in OAR 660-044-0035.

(2) Section 37 (6), chapter 865, Oregon Laws 2009, and section 5 (1), chapter 85, Oregon Laws 2010, direct the commission to adopt rules identifying greenhouse gas emissions reduction targets for emissions caused by light vehicle travel for each of the state's metropolitan areas. These statutes direct that the rules must reflect greenhouse gas emissions reduction goals set forth in ORS 468A.205 and must take into consideration the reductions in vehicle emissions that are likely to result by 2035 from the use of improved vehicle technologies and fuels. The statutes also direct that the rules must take into consideration methods of equitably allocating reductions among the metropolitan areas given differences in population growth rates. The commission has addressed these statutory considerations as follows:

(a) Reduction in greenhouse gas emissions from light vehicle travel needed in 2035 to achieve the state goal of a 75 percent greenhouse gas reduction by 2050. Based on recommendations from the Department of Environmental Quality and the Oregon Department of Energy in the Agencies' Technical Report, the commission concludes that a reduction of 52 percent in greenhouse gas emissions from light vehicle travel in metropolitan areas from 1990 levels is needed by the year 2035 to support achieving greenhouse gas emissions reduction goals for 2050 set forth in ORS 468A.205. Based on population projections, the overall 52 percent reduction corresponds to a 74 percent reduction in greenhouse gas emissions per capita from light vehicle travel in metropolitan areas from 1990 levels by the year 2035. This percentage reduction assumes steady year-by-year progress per capita through 2050 in reducing emissions and that the reduction in light vehicle emissions will be proportionate to the overall state goal for reducing greenhouse gas emissions. In reaching this conclusion, the commission notes that absent a Statewide Transportation Strategy and plan for achieving greenhouse gas emissions reductions there is no policy or other basis at this time for assuming that light vehicle travel in metropolitan areas should be responsible for a larger or smaller share of expected statewide greenhouse gas emissions reductions.

(b) Consideration of reductions in vehicle emissions likely to result by 2035 from use of improved vehicle technologies and fuels.

(A) The commission has considered recommendations from the Oregon Department of Transportation, the Department of Environmental Quality and the Oregon Department of Energy about expected changes to the light vehicle fleet, vehicle technologies and vehicle fuels through the year 2035 as set forth in the Agencies' Technical Report. The commission notes that the Agencies' Technical Report indicates considerable uncertainty and a broad range of possible outcomes for each of the relevant factors. The commission concludes that a midpoint in the range of plausible fleet, technologies and fuel outcomes provides a reasonable basis for greenhouse gas emissions reduction targets to guide an initial round of land use and transportation scenario planning. The baseline assumptions for 2035 light vehicle fleet, light vehicle technologies and vehicle fuels for each metropolitan area are set forth in Tables 1 and 2.

(B) The greenhouse gas emissions reduction targets in this division are for greenhouse gas emissions reductions to be met through land use and transportation scenario planning and are in addition to reductions estimated to result from changes to the light vehicle fleet, light vehicle technologies and light vehicle fuels in Tables 1 and 2.

(C) In evaluating whether a proposed land use and transportation scenario combined with actions and programs included in the Statewide Transportation Strategy meets greenhouse gas emissions reduction targets in this division, a local government or metropolitan planning organization may include:

(i) Policies or actions included in the Statewide Transportation Strategy that the Oregon Department of Transportation estimates are likely to result in changes to vehicle fleet, technologies or fuels above and beyond the values listed in Tables 1 and 2;

(ii) Local or regional programs or actions identified in a land use and transportation scenario plan that are likely to result in changes to vehicle fleet, technologies or fuels above and beyond the values listed in Tables 1 and 2. One example of such an action would be a local or regional program that is estimated to result in use of hybrid or electric vehicles in a metropolitan area at greater than the eight percent statewide assumption for the 2035 model year provided in Table 1; and

(iii) Policies or actions included in the Statewide Transportation Strategy, other than those attributable to changes in vehicle fleet, technologies or fuels. Examples of such an action would be increased inter-city transit or pay-as-you-drive insurance. The Oregon Department of Transportation would coordinate with local governments and metropolitan planning organizations in each metropolitan area on estimating the amount of greenhouse gas emissions reductions expected to result within the metropolitan area from these programs and actions.

(c) Equitable allocation of responsibility for greenhouse gas emissions reductions among metropolitan areas considering differences in population growth rates. The greenhouse gas emissions reduction targets in this division are in the form of percentage reductions in emissions per capita. The greenhouse gas emissions reduction targets for individual metropolitan areas range from 17 percent to 21 percent per capita. The commission concludes that setting the targets in the form of per capita reductions and adoption of comparable per capita reductions for each of the state's six metropolitan areas assures that those metropolitan areas that are expected to experience higher than average rates of population growth between 1990 and 2035 do not bear a greater responsibility for emissions reductions than metropolitan areas that are expected to grow more slowly.

(d) Use of 2005 as a reference year for greenhouse gas emissions reduction targets. The greenhouse gas emissions reduction targets in this division are set forth as reductions to be achieved from 2005 emissions levels. 2005 is specified as a reference year for greenhouse gas reduction targets because more detailed data on emissions and light vehicle travel in metropolitan areas is available for this date than for 1990, the base year set by statute, and because it corresponds better with adopted land use and transportation plans and will thus enable local governments to better estimate what changes to land use and transportation plans might be needed to achieve greenhouse gas emissions reduction targets. While the targets are specified as reductions from 2005 emissions levels, the targets have been set at a level that corresponds to the required reduction from 1990 levels to be achieved by 2035.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) §37(6); Ch. 85 OL 2010 Special Session (SB 1059) §5
Stats. Implemented: Ch. 865 OL 2009 (HBl 2001) §37(6), Ch. 85 OL 2010 Special Session (SBl 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11

660-044-0020
Greenhouse Gas Emissions Reduction Target for the Portland Metropolitan Area

(1) Purpose and effect of targets

(a) Metro shall use the greenhouse gas emissions reduction targets set forth in section (3) of this rule as it develops two or more alternative land use and transportation scenarios that accommodate planned population and employment growth while achieving a reduction in greenhouse gas emissions from light vehicle travel in

the metropolitan area as required by section 37 (6), chapter 865, Oregon Laws 2009.

(b) This rule does not require that Metro or local governments in the Portland metropolitan area select a preferred scenario or amend the Metro regional framework plan (as defined in ORS 197.015(16)), functional plans, comprehensive plans or land use regulations to meet targets set in this rule. Requirements for cooperative selection of a preferred land use and transportation scenario and for implementation of that scenario through amendments to comprehensive plans and land use regulations as required by section 37 (8), chapter 865, Oregon Laws 2009, shall be addressed through a separate rulemaking that the commission is required to complete by January 1, 2013.

(2) This rule applies to the Portland metropolitan area.

(3) The greenhouse gas emissions reduction target, as set forth in OAR 660-044-0005(6), for the Portland metropolitan area is a 20 percent reduction per capita in greenhouse gas emissions in the year 2035 below year 2005 emissions levels.

(4) The greenhouse gas emissions reduction target in section (3) of this rule identifies the level of greenhouse gas emissions reduction to be met through land use and transportation scenario planning consistent with baseline assumptions and guidance in OAR 660-044-0010(2)(b)(A) to (C), including reductions expected to result from actions and programs identified in the Statewide Transportation Strategy.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) §37(6); Ch. 85 OL 2010 Special Session (SB 1059) §5
Stats. Implemented: Ch. 865 OL 2009 (HBl 2001) §37(6), Ch. 85 OL 2010 Special Session (SBl 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11

660-044-0025
Greenhouse Gas Emissions Reduction Targets for Other Metropolitan Areas

(1) Purpose and effect of targets

(a) Local governments in metropolitan planning areas listed in section (2) of this rule may use the relevant targets set forth in section (3) of this rule as they conduct land use and transportation scenario planning to reduce expected greenhouse gas emissions from light vehicle travel in the metropolitan planning area.

(b) This rule does not require that local governments or metropolitan planning organizations conduct land use and transportation scenario planning. This rule does not require that local governments or metropolitan planning organizations that choose to conduct land use or transportation scenario planning develop or adopt a preferred land use and transportation scenario plan to meet targets in section (3) of this rule.

(2) This rule applies to the following metropolitan planning areas:

(a) Bend,

(b) Corvallis,

(c) Eugene-Springfield,

(d) Rogue Valley, and

(e) Salem-Keizer.

(3) Targets, as set forth in OAR 660-044-0005(6), for other metropolitan areas are as follows:

(a) The greenhouse gas emissions reduction target for the Bend metropolitan planning area is an 18 percent reduction per capita in greenhouse gas emissions in the year 2035 below year 2005 emissions levels.

(b) The greenhouse gas emissions reduction target for the Corvallis metropolitan planning area is a 21 percent reduction per capita in greenhouse gas emissions in the year 2035 below year 2005 emissions levels.

(c) The greenhouse gas emissions reduction target for the Eugene-Springfield metropolitan planning area is a 20 percent reduction per capita in greenhouse gas emissions in the year 2035 below year 2005 emissions levels.

(d) The greenhouse gas emissions reduction target for the Rogue Valley metropolitan planning area is a 19 percent reduction per capita in greenhouse gas emissions in the year 2035 below year 2005 emissions levels.

(e) The greenhouse gas emissions reduction target for the Salem-Keizer metropolitan planning area is a 17 percent reduction per capita in greenhouse emissions in the year 2035 below year 2005 emissions levels.

(4) The greenhouse gas emissions reduction targets in section (3) of this rule identify the level of greenhouse gas emissions reduction to be met through land use and transportation scenario planning consistent with baseline assumptions and guidance in OAR 660-044-0010(2)(b)(A) to (C), including reductions expected to result from actions and programs identified in the Statewide Transportation Strategy.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) §37(6); Ch. 85 OL 2010 Special Session (SB 1059) §5
Stats. Implemented: Ch. 865 OL 2009 (HBl 2001) §37(6), Ch. 85 OL 2010 Special Session (SBl 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11

660-044-0030
Methods for Estimating Greenhouse Gas Emissions and Emissions Reductions

(1) Local governments conducting land use and transportation scenario planning to meet greenhouse gas emissions reductions targets established in this division may use information and methods for estimating greenhouse gas emissions levels from light vehicle travel recommended by the Oregon Department of Transportation and the department as set forth in the greenhouse gas emissions reduction toolkit, or as otherwise approved by the director of the department and the director of the Oregon Department of Transportation.

(2) Local governments conducting land use and transportation scenario planning to meet the greenhouse gas emissions reduction targets established in this division may use methods recommended by the Oregon Department of Transportation, Oregon Department of Environmental Quality and the Oregon Department of Energy to account for additional greenhouse gas emissions resulting from increased traffic congestion or reductions in emissions resulting from measures that reduce traffic congestion in estimating greenhouse gas emissions from light vehicles.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) §37(6); Ch. 85 OL 2010 Special Session (SB 1059) §5
Stats. Implemented: Ch. 865 OL 2009 (HBl 2001) §37(6), Ch. 85 OL 2010 Special Session (SBl 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11

660-044-0035
Review and Evaluation of Greenhouse Gas Reduction Targets

(1) The commission shall by June 1, 2015, and at four year intervals thereafter, conduct a review of the greenhouse gas emissions reduction targets in OAR 660-044-0020 and 660-044-0025.

(2) The review by the commission shall evaluate whether revisions to the targets established in this division are warranted considering the following factors:

(a) Results of land use and transportation scenario planning conducted within metropolitan planning areas to reduce greenhouse gas emissions from light vehicles;

(b) New or revised federal and state laws or programs established to reduce greenhouse gas emissions from light vehicles;

(c) State plans or policies establishing or allocating greenhouse gas emissions reduction goals to specific sectors or subsectors;

(d) Policies and recommendations in the Statewide Transportation Strategy adopted by the Oregon Transportation Commission;

(e) Additional studies or analysis conducted by the Oregon Department of Transportation, the Department of Environmental Quality, the Oregon Department of Energy or other agencies regarding greenhouse gas emissions from light vehicle travel in metropolitan areas, including but not limited to changes to vehicle technologies, fuels and the vehicle fleet;

(f) Changes in population growth rates, metropolitan planning area boundaries, land use or development patterns in metropolitan planning areas that affect light vehicle travel in metropolitan areas;

(g) Efforts by local governments in metropolitan areas to reduce greenhouse gas emissions from all sources;

(h) Input from affected local governments and metropolitan planning organizations;

(i) Land use feasibility and economic studies regarding land use densities;

(j) State funding and support for scenario planning and public engagement; and

(k) The share of light vehicle travel within a metropolitan area not attributable to residents of that area.

(2) The department shall, in consultation and collaboration with affected local governments, metropolitan planning organizations and other state agencies, prepare a report addressing factors listed in section (2) of this rule to aid the commission in determining whether revisions to targets established in this division are warranted.

Stat. Auth.: ORS 197.040; Ch. 865 OL 2009 (HB 2001) §37(6); Ch. 85 OL 2010 Special Session (SB 1059) §5
Stats. Implemented: Ch. 865 OL 2009 (HBl 2001) §37(6), Ch. 85 OL 2010 Special Session (SBl 1059) §5
Hist.: LCDD 5-2011, f. 5-26-11, cert. ef. 6-1-11

660-044-0040
Cooperative Selection of a Preferred Scenario; Initial Adoption

(1) Metro shall by December 31, 2014, amend the regional framework plan and the regional growth concept to select and incorporate a preferred land use and transportation scenario that meets targets in OAR 660-044-0020 consistent with the requirements of this division.

(2) In preparing and selecting a preferred land use and transportation scenario Metro shall:

(a) Consult with affected local governments, the Port of Portland, TriMet, and the Oregon Department of Transportation;

(b) Consider adopted comprehensive plans and local aspirations for growth in developing and selecting a preferred land use and transportation scenario;

(c) Use assumptions about population, housing and employment growth consistent with the coordinated population and employment projections for the metropolitan area for the planning period;

(d) Use evaluation methods and analysis tools for estimating greenhouse gas emissions that are:

(A) Consistent with the provisions of this division;

(B) Reflect best available information and practices; and,

(C) Coordinated with the Oregon Department of Transportation.

(e) Make assumptions about state and federal policies and programs expected to be in effect in over the planning period, including the Statewide Transportation Strategy, in coordination with the responsible state agencies;

(f) Evaluate a reference case scenario that reflects implementation of existing adopted comprehensive plans and transportation plans;

(g) Evaluate at least two alternative land use and transportation scenarios for meeting greenhouse gas reduction targets and identify types of amendments to comprehensive plans and land use regulations likely to be necessary to implement each alternative scenario;

(h) Develop and apply evaluation criteria that assess how alternative land use and transportation scenarios compare with the reference case in achieving important regional goals or outcomes;

(i) If the preferred scenario relies on new investments or funding sources to achieve the target, evaluate the feasibility of the investments or funding sources including:

(A) A general estimate of the amount of additional funding needed;

(B) Identification of potential/likely funding mechanisms for key actions, including local or regional funding mechanisms; and,

(C) Coordination of estimates of potential state and federal funding sources with relevant state agencies (i.e. the Oregon Department of Transportation for transportation funding); and,

(D) Consider effects of alternative scenarios on development and travel patterns in the surrounding area (i.e. whether proposed policies will cause change in development or increased light vehicle travel between metropolitan area and surrounding communities compared to reference case).

(3) The preferred land use and transportation scenario shall include:

(a) A description of the land use and transportation growth concept providing for land use design types;

(b) A concept map showing the land use design types;

(c) Policies and strategies intended to achieve the target reductions in greenhouse gas emissions in OAR 660-044-0020;

(d) Planning assumptions upon which the preferred scenario relies including:

(A) Assumptions about state and federal policies and programs;

(B) Assumptions about vehicle technology, fleet or fuels, if those are different than those provided in OAR 660-044-0010;

(C) Assumptions or estimates of expected housing and employment growth by jurisdiction and land use design type; and

(D) Assumptions about proposed regional programs or actions other than those that set requirements for city and county comprehensive plans and land use regulations, such as investments and incentives;

(e) Performance measures and targets to monitor and guide implementation of the preferred scenario. Performance measures and targets shall be related to key elements, actions and expected outcomes from the preferred scenario. The performance measures shall include performance measures adopted to meet requirements of OAR 660-012-0035(5); and

(f) Recommendations for state or federal policies or actions to support the preferred scenario.

(4) When amending the regional framework plan, Metro shall adopt findings demonstrating that implementation of the preferred land use and transportation scenario meets the requirements of this division and can reasonably be expected to achieve the greenhouse gas emission reductions as set forth in the target in OAR 660-044-0020. Metro's findings shall:

(a) Demonstrate Metro's process for cooperative selection of a preferred alternative meets the requirements in subsections (2)(a)–(j);

(b) Explain how the expected pattern of land use development in combination with land use and transportation policies, programs, actions set forth in the preferred scenario will result in levels of greenhouse gas emissions from light vehicle travel that achieve the target in OAR 660-044-0020;