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DIVISION 1

PROCEDURAL RULES

660-001-0000
Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, the Department of Land Conservation and Development shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least twenty one (21) days prior to the effective date of this rule.

(2) By mailing a copy of the notice to persons on the Department of Land Conservation and Development's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule.

(3) By mailing a copy of the notice to the persons, groups of persons, organizations, and associations who the department considers to be interested in such adoption.

(4) The Associated Press and Capitol Press Room.

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

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

Stat. Auth.: ORS Ch. 183
Stats. Implemented: ORS Ch. 183
Hist.: LCD 7, f. & ef. 6-4-76; LCDC 1-1995, f. & cert. ef. 1-4-95

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 September 9, 1995, except for OAR 137-003-0092 regarding the amount of time required to act on a stay request.

(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 Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS Ch 183.341 & 183.457
Hist.: LCD 3, f. 1-9-75, ef. 2-11-75; Renumbered from 660-10-005; 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

660-001-0007
Request for Stay — Agency Determination

(1) Unless otherwise agreed to by the agency and the parties, within a reasonable time following delivery or mailing to the agency of the Request for Stay, the agency shall:

(a) Conduct such further proceedings as the parties mutually agree upon; or

(b) Conduct a contested case hearing, which may be limited to hearing rebuttal testimony; or

(c) Allow the petitioner within a time certain to submit affidavits to answer any of the intervenor's evidence.

(2) Unless otherwise agreed to by the agency and the parties, within 75 days of the delivery or mailing to the agency of the Request for Stay, the agency shall:

(a) Grant the stay request in writing and impose reasonable conditions including but not limited to requirements of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or

(b) Deny the stay request in writing and explain that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or

(c) Deny the stay request in writing and specifically state why, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order, to grant the stay would result in substantial public harm.

(3) Nothing in OAR 137-003-0090 to 137-003-0091 prevents an agency from receiving evidence from agency staff concerning the public harm which may result if a stay request was granted. Such evidence shall be presented by affidavit.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS Ch. 183, 195, 196, 197 & OAR Ch. 137
Hist.: LCDC 2-1985, f. & ef. 3-13-85

City Annexations — and Application of Goals Within Cities

660-001-0300
Purpose

The purpose of this rule is to clarify existing goals and provide guidance to local govern-ments and local government boundary commissions regarding annexations of land to cities under the goals. This rule specifies the satisfactory method of applying the Statewide Goals and Guidelines, during annexation proceedings.

Stat. Auth.: ORS Ch. 183, 196 & 197
Stats. Implemented: ORS Ch. 183, 195, 196, 197 & OAR Ch. 137
Hist.: LCD 3-1978, f. & ef. 2-15-78; LCDC 3-1990, f. & cert. ef. 6-6-90

660-001-0310
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) shall be considered by Land Conservation and Development 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 Ch. 183, 196 & 197
Stats. Implemented: ORS Ch. 183, 195, 196, 197 & OAR Ch. 137
Hist.: LCD 3-1978, f. & ef. 2-15-78; LCDC 3-1990, f. & cert. ef. 6-6-90

660-001-0315
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 #3 (Agricultural Lands) and 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 Land Conservation and Development Commission as part of the appropriate comprehensive plan.

Stat. Auth.: ORS Ch. 183, 196 & 197
Stats. Implemented: ORS Ch. 183, 195, 196, 197 & OAR Ch. 137
Hist.: LCD 3-1978, f. & ef. 2-15-78; LCDC 3-1990, f. & cert. ef. 6-6-90

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.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.040, 045 & 090
Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88

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) Establish procedures by which each county shall annually review and report to the Commission on the status of comprehensive plans within each such county in accordance with ORS 197.360. Such procedures shall provide the opportunity for public comment and transmission of such comments to the Commission;

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

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

(5) Request that the Commission schedule a hearing to consider and 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 (8);

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

(7) May prepare and execute written orders, on behalf of the Commission, implementing any action taken by the Commission on any matter;

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

Stat. Auth.: ORS Ch. 183, 196 & 197
Stats. Implemented: ORS 197.040, 045 & 090
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

660-002-0015
Notice of Director's Actions

(1) The Director shall establish procedures which shall be reasonably calculated to provide notice to interested members 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 Ch. 183 and 197
Stats. Implemented: ORS 197.040, 045 & 090
Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88

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.

(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 Ch. 183, 196 & 197
Stats. Implemented: ORS 197.040, 045 & 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

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 conforms 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 conformity 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 OAR 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 of Land Conservation and Development at its Salem, Oregon office.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.015 & 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

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, Salem, OR 97310.

(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 acknowledg-ment 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;

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

(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 OAR 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 acknowledg-ment 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 Ch. 183 & 197
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

660-003-0015
Notice

The Director of 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 Ch. 183, 196 & 197
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

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 in which the commentor or objecting person alleges that the local government's plan, ordinances or land use regulations do or do not conform 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 Ch. 183 & 197
Stats. Implemented: ORS 197.251 & 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

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 Commission, the Director 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 Director may investigate and resolve issues raised in the comments and objections or upon the Director's own review of the comprehensive plan and land use regulations. The Director 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 Director'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 OAR 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 OAR 660-003-0020(1) shall have ten calendar days from the date of mailing of the Director's report to file with the Director 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 or affected commentors or objectors. The Director shall promptly submit exceptions to the Commission.

(3) Written exceptions to the Director'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 Director 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 Director 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 (4) 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 OAR 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 Commislsion unless the Commission determines that such evidence could not have been presented to the local government or to the Director in accordance with OAR 660-003-0020(1) or 6section (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 OAR 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 pursuant to 197.251(1).

(8) Commission orders for acknowledgment, continuance or denial shall be provided to the local government requesting acknowledgment, commentors, and objectors.

(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 acknowledg-ment submission into conformance with the Statewide Planning Goals found not to be complied with in the previous review, unless conformance with other Goals is affected by the corrections.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.251, 254, 340, 747 & 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

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 OAR 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 Director'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 subsection (1)(a) 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 Ch. 183 & 197
Stats. Implemented: ORS 197.251
Hist.: LCD 9-1981(Temp), f. & ef.10-1-81; LCD 13-1981, f. & ef. 12-15-81

660-003-0033
Expedited Notice Procedure for Acknowledg-ment

(1) When during an acknowledg-ment 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 Commisssion. 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 previous commentors and objectors 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 previous commentors and objectors and to the Department in Salem. If the jurisdiction fails to send a copy of the notice to all previous commentors and objectors, the Director shall provide notice in the manner established in OAR 660-003-0020(1) or 660-003-0032(1).

(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 Ch. 197
Hist.: LCDC 6-1983, f. & ef. 7-20-83

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 perons 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 Ch. 183 & 197
Stats. Implemented: ORS 197.251
Hist.: LCDC 6-1985, f. & ef. 11-15-85

DIVISION 4

INTERPRETATION OF GOAL 2 EXCEPTION PROCESS

660-004-0000
Purpose

(1) The purpose of this rule is to explain the three types of exceptions set forth in Goal 2 "Land Use Planning, Part II, Exceptions". Except as provided for in OAR Chapter 660, Division 14, "Application of the Statewide Planning Goals to the Incorporation of New Cities" this Division interprets the exception process as it applies to statewide Goals 3 to 19.

(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 which explain why the proposed use not allowed by the applicable goal 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 Ch. 197
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

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 the provisions of this Division.

(2) "Resource Land" is land subject to the statewide Goals listed in OAR 660-004-0010(1)(a) through (f) except subsection (c).

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

Stat. Auth.: ORS Ch. 197
Stats. Implemented ORS 197.015 & 197.732
Hist.: LCDC 5-1982, f. & ef 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

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 which prescribe or restrict certain uses of resource land. 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 permitted in an exclusive farm use (EFU) zone under ORS Chapter 215;

(b) Goal 4 "Forest Lands";

(c) Goal 14 "Urbanization" except as provided for in paragraphs (l)(c)(A) and (B) of this rule, and OAR 660-014-0000

through 660-014-0040:

(A) An exception is not required to an applicable goal(s) for the establishment of an urban growth boundary around or including portions of an incorporated city when resource lands are included within that boundary. Adequate findings on the seven Goal 14 factors, accompanied by an explanation of how they were considered and applied during boundary establishment, provide the same information as required by the exceptions process findings;

(B) When a local government changes an established urban growth boundary 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 which has been acknowledged by the Commission under ORS 197.251. Revised 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 which 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.

(d) Goal 16 "Estuarine Resources";

(e) Goal 17 "Coastal Shorelands"; and

(f) Goal 18 "Beaches and Dune".

(2) The exceptions process is generally not applicable to those statewide goals which establish planning procedures and standards which do not prescribe or restrict certain uses of resource land because these goals contain general planning guidance or 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";

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

(c) Goal 7 "Natural Disasters and Hazards";

(d) Goal 8 "Recreational Needs";

(e) Goal 9 "Economy of the State";

(f) Goal 10 "Housing" except as provided for in section (4) of this rule;

(g) Goal 11 "Public Facilities and Services", except as provided for in OAR 660, Division 14 for the provision of urban facilities and services to the incorporation of new cities or new urban development;

(h) Goal 12 "Transportation";

(i) Goal 13 "Energy Conservation";

(j) Goal 15 "Willamette Greenway" except as provided for in OAR 660-004-0022(4); and

(k) Goal 19 "Ocean Resources".

(3) An exception to one goal or goal requirement does not assure 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.

(4) Goal 10: The exception procedural requirements apply when a local government cannot provide for needed housing pursuant to ORS 197.303 through 197.307, OAR 660-007-0000 and 660-008-0000. A local government may satisfy the substantive standards for exceptions upon a demonstration in the local housing needs projection 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.

Stat. Auth.: ORS Ch. 183 & 197

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

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 which demonstrate that the standards for an exception have been met. The applicable standards are those in Goal 2, Part II(c), OAR 660-004-0020(2) and 660-004-0022. 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 which 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 Ch. 197

Stats. Implemented ORS 197.732

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

660 004-0018
Planning and Zoning for Exception Areas

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

(2) "Physically Developed" and "Irrevocably Committed" Exceptions to goals other than Goals 11 and 14. Plan and zone designations shall limit uses to:

(a) Uses which are the same as the existing types of land use on the exception site; or

(b) Rural uses which meet the following requirements:

(A) The rural uses are consistent with all other applicable Goal requirements; and

(B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses are compatible with adjacent or nearby resource uses.

(c) Changes to plan or zone designations are allowed consistently with subsection (a) or (b) of this section, or where the uses or zones are identified and authorized by specific related policies contained in the acknowledged plan.

(d) Uses not meeting the above requirements may be approved only under provisions for a reasons exception as outlined in OAR 660-004-0020 through 660-004-0022.

(3) "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 and activities to only those uses and activities which

are justified in the exception;

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

(4) Applicability of OAR 660-004-0018. This rule applies only to plan and zoning designations and exceptions adopted by local government following the effective date of this rule.

Stat. Auth.: ORS Ch. 197
Stats. Implemented ORS 197.732
Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1986, f. & ef. 3-20-86

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, the justification shall be set forth in the comprehensive plan as an exception.

(2) The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

(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 which do not require a new exception cannot reasonably accommodate the use":

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which 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 which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor 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 rural centers, 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?

(C) This alternative areas standard can 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 can describe why there are 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 other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for 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, 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 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 defined under OAR 660-022-0010. The exception requirements 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;

(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; 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 uses with the unincoporated community requires inclusion of lower priority land in order to provide public facilities and services to higher priority land.

Stat. Auth.: ORS Ch. 197
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

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

An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). 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:

(1) For uses not specifically provided for in subsequent sections of this rule or OAR 660, Division 14, 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 Statewide Goals 3 to 19; and either

(b) 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 subsection 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

(c) 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 which 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 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; or

(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 compara-tive 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 which support the decision.

(4) Expansion of Unincorporated Communities: For the expansion of an unincorporated community defined under OAR 660-022-0010, appropriate reasons and facts include but are not limited to the following:

(a) 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 (i.e., near a rural energy facility, or near products available from other activities only in the surrounding area; or 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 accommo-dated in an existing exception area or UGB, and is most appropriate at the particular proposed location. The reasons cannot be based on market demand for housing, nor on a projected continua-tion of past rural population distributions.

(b) Need must be coordinated and consistent with the comprehensive plan for other exception areas, unincorporated communities, and UGBs in the area. "Area" encompasses those communities, exception areas, and UGBs which may be affected by an expansion of a community boundary, taking into account market, economic, and other relevant factors;

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

(5) Willamette Greenway: Within an urban area designated on the approved Willamette Greenway Boundary maps, the siting of uses which are neither water-dependent nor water-related within the setback line required by Section C.3.k of the Goal 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 LCDC under ORS 390.322.

(6) Goal 16 — Water Dependent Development: To allow water dependent industrial, commercial, or recreational uses in development and conservation estuaries which require an exception 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) Factors of Goal 9 or for recreational uses the factors of Goal 8;

(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; and

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

(e) The economic analysis must be based on Goal 9 element of the County Comprehensive Plan and 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.

(7) 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 541, in any of the following circumstances:

(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 can not 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 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 nonwater- dependent use or a nonsubstantial fill for a private nonwater-dependent use (as provided for in ORS 541.625) where:

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

(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) That 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 (6)(a) to (e) of this rule, the exception must demonstrate that proposed use and alteration (including, where applicable, disposal of dredged materials) will be carried out in a manner which minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats.

(8) Goal 17 — Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to allow certain uses in Coastal Shoreland areas:

(a) These 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 especially suited for water dependent uses;

(C) Designated dredged material disposal sites;

(D) Designated mitigation sites.

(b) To allow a use which is incompatible with Goal 17 requirements for coastal shoreland areas listed in subsection (7)(a) of this rule the exception must demonstrate:

(A) A need, based on the factors in 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 which 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 which 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, be designed and located and, where appropriate, buffered to protect natural values of the remainder of the site.

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

(a) Only to the grade of the dwelling;

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

(c) Sand is retained in the dune system by placement on the beach in front of the dwelling; and

(d) The provisions of Goal 18 Implementation Requirement 1 are met.

(10) Goal 18—Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", implementation requirement (2). Reasons which justify why this state policy embodied in Goal 18 should not apply shall demonstrate compliance with the following:

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

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

(c) The provisions of OAR 660-004-0020 shall also be met.

Stat. Auth.: ORS Ch. 197

Stats. Implemented ORS 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

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.

(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 Ch. 197

Stats. Implemented ORS 197.732

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

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(1)(b), Goal 2, Part II(b), and with the provisions of this rule;

(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 section, 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(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. 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".

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which 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 which 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 make 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 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 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 which 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.

(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

(a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and

(b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.

Stat. Auth.: ORS Ch. 197
Stats. Implemented: ORS
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

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, when a plan amendment is reviewed pursuant to OAR Chapter 660, Division 18, or when a periodic review is conducted pursuant to ORS 197.640.

Stat. Auth.: ORS Ch. 197
Stats. Implemented ORS 197.610-625, 197.628-646 & 732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

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 Land Use Board of Appeals, 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 660-003-0000.

(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.

Stat. Auth.: ORS Ch. 197
Stats. Implemented ORS 197.610-625, 732 & 830
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f & ef. 12-30-83

DIVISION 6

GOAL 4 FOREST LANDS

660-006-0000
Purpose

(1) The purpose of the Forest Lands Goal is to conserve forest lands and to carry out the legislative policy of ORS 215.700.

(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 Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
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

660-006-0003
Applicability

(1) OAR Chapter 660, Division 6 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 Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
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

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 ten 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 Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws

Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

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) "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 Soil Conservation Service. Where SCS data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data and be approved by the Department of Forestry.

(3) "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 Soil Conservation Service. Where SCS data rae not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data and be approved by the Department of Forestry.

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

(7) "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.

(8) "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 Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws

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

660-006-0010
Inventory

Governing bodies shall include an inventory of "forest lands" as defined by Goal 4 in the comprehensive plan. Lands inventoried as Goal 3 agricultural lands or lands for which an exception to Goal 4 is justified pursuant to ORS 197.732 and taken are not required to be inventoried under this rule. Outside urban growth boundaries, this inventory shall include a mapping of forest site class. If site information is not available then an equivalent method of determining forest land suitability must be used. Notwithstanding this rule, governing bodies are not required to reinventory forest lands if such an inventory was acknowledged previously by the Land Conservation and Development Commission.

Stat. Auth.: ORS Ch. 183 & 197

Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws

Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90

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 which 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), or 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. 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 which clearly indicate where the zone(s) will be applied.

(2) When lands satisfy the definition require-ments 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 Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws

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

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 Ch. 183 & 197

Stats. Implemented: ORS 197.040, 230, 245 & Ch. 792, 1993 Oregon Laws

Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90

660-006-0025
Uses Authorized in Forest Zones

(1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopt-ing 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 215.720 to 215.750; and

(e) Other dwellings under prescribed con-ditions.

(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 which 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 which 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 which 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 including public road and highway projects as described in ORS 215.213(1)(m) through (p) and 215.283(1)(k) through (n);

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

(j) Caretaker residences for public parks and 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 hydro-carbons, 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 197.465 and Goal 8;

(o) Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation; and

(p) 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.

(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 pro-cessing of forest products;

(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) Parks and campgrounds. For the purpose of this rule a campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Camp-grounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations;

(f) 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;

(g) Television, microwave and radio com-munication facilities and transmission towers;

(h) Fire stations for rural fire protection;

(i) Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than ten acres from use as a commercial forest operation unless an exception is taken pursuant to OAR Chapter 660, Division 4;

(j) Aids to navigation and aviation;

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

(l) Reservoirs and water impoundments;

(m) Firearms training facility;

(n) Cemeteries;

(o) 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 Speciality Code**;

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

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

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

(p) 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) with rights-of-way 50 feet or less in width;

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

(r) Home occupations as defined in ORS 215.448;

(s) A mobile home 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 mobile home 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 mobile home will use a public sanitary sewer system, such condition will not be required. 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;

(t) Expansion of existing airports;

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

(v) Private accommodations for fishing occupied on a temporary basis may be allowed subject to section (5) of this rule, OAR 660-006-0029, 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 Speciality 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.

(w) Forest management research and experi-mentation facilities as defined by ORS 526.215 or where accessory to forest operations.

(5) A use authorized by section (4) of this rule may be allowed provided the following require-ments or their equivalent are met. These require-ments 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 which 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), (l), (r), (s) and (v) of this rule.

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

(7) In addition to uses authorized in sections (1) to (6) of this rule, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-12-065

[Publications**:** The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws

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

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; and

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

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

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

(2) New land divisions less than the parcel size in section (1) of this rule may be approved only for the uses listed in OAR 660-006-0025(3)(m) through (o) and (4)(a) through (n) provided that such uses have been approved pursuant to OAR 660-006-0025(5). Such divisions shall create a parcel that is the minimum size necessary for the use.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws

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

660-006-0027
Dwellings in Forest Zones

(1) Dwellings authorized by OAR 660-006-0025(1)(d) are:

(a) A dwelling 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. The road shall not be a U.S. Forest Service road or Bureau of Land Management road and shall be maintained and either paved or surfaced with rock;

(b) A dwelling 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. The road shall not be a U.S. Forest Service road or Bureau of Land Management road and shall be maintained and either paved or surfaced with rock;

(c) If a dwelling is not allowed pursuant to subsection (a) or (b) of this section, a dwelling may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract:

(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 (6) of this rule for all tracts that are used to meet the acreage requirements of this paragraph;

(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 (6) of this rule for all tracts that are used to meet the acreage requirements of this paragraph.

(d) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling 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 0 to 49 cubic feet per acre per year of wood fiber if:

(i) 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

(ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels.

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

(i) 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

(ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels.

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

(i) 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

(ii) At least three dwelling existed on January 1, 1993 on the other lots or parcels.

(e) In eastern Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling 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 0 to 20 cubic feet per acre per year of wood fiber if:

(i) 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

(ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels.

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

(i) 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

(ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels.

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

(i) 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

(ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels.

(f) A dwelling authorized under subsection (a) or (b) of this section shall comply with the following requirements:

(A) 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;

(B) 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.

(g) A dwelling authorized under subsections (a) and (b) of this section may be allowed only if the lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(A) Prior to January 1, 1985; or

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

(h) For purposes of subsection (g) 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.

(2) If a tract 60 acres or larger described under subsection (1)(d) or (e) of this rule abuts a road or perennial stream, the measurement shall be made by using 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 or stream. 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. However, one of the three required dwellings shall be on the same side of the road or stream as the tract, and:

(a) Be located within 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 or stream;

(b) Be within 1/4 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.

(3) If the tract under subsection (1)(d) or (e) 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.

(4) A proposed 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 or 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 (6) of this rule for the other lots or parcels that make up the tract are met;

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

(5) The following definitions shall apply to this rule:

(a) "Tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway;

(b) "Commercial Tree Species" means trees recognized under rules adopted under ORS 527.715 for commercial production.

(6)(a) The applicant for a dwelling authorized by paragraph (1)(c)(A) or (B) of this rule that requires one or more lot or parcel to meet minimum acreage requirements 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;

(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 of Land Conservation and Development 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 which 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 which 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.

[ED NOTE: Appendix 1 referred to in this rule is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws

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

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 660-006-0035 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; or

(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) 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. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;

(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 the department determines that the tract does not meet those requirements, the 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 pursuant to ORS 321.372.

Stat. Auth.: ORS 197.040, 197.245 & 1215.730
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
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

660-006-0030 [Renumbered to 660-006-0060]

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

The following fire siting standards or their equivalent shall apply to 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 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

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 Ch. 183 & 197
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90

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 Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 230, 245, 215.213, 283, 700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
Hist.: LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 1-1994, f. & cert. ef. 3-1-94

660-006-0055
New Land Division Requirements in Agricul-ture/Forest

Zones

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.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 230, 245, 215.213. 283. 700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
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

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 Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.040, 230, 245, 215.213, 283, 700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
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

660-006-0060
Regulation of Forest Operations

The Forest Practices Act (ORS 527.620 to 527.990) as implemented through Oregon Board of Forestry rules (OAR 629-024-0101 to 629-024-0648) regulates forest operations on forest lands. The relationship between the Forest Practices Act and land use planning is described in
527.722 to 527.726. OAR 660-006-0025 does not authorize county governing bodies to regular forest operations or other uses allowed by ORS 527.620 to 527.990 and OAR 629-024-0101 to 629-024-0648.

Stat. Auth.: ORS Ch. 183, 197 & 215
Stats. Implemented: ORS 197.040, 230, 245, 215.700, 705, 720, 740, 750, 780 & Ch. 792, 1993 Oregon Laws
Hist.: LCDC 8-1982, f. & ef. 9-1-82; LCDC 1-1990, f. & cert. ef. 2-5-90; Renumbered from 660-06-030; LCDC 7-1992, f. & cert. ef. 12-10-92

DIVISION 7

METROPOLITAN HOUSING

660-007-0000
Statement of Purpose

The purpose of this rule is to assure 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 Ch. 183 & 197
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

660-007-0005
Definitions

For the purposes of this rule, the definitions in ORS 197.015 and l97.295 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 vacant and, at the option of the local jurisdiction, redevelopable land within the Metro urban growth boundary that is not severely constrained by natural hazards (Statewide Planning Goal 7) or subject to natural resource protection measures (Statewide Planning Goals 5 and 15). Publicly owned land is generally not considered available for residential use. Land with slopes of 25 percent or greater unless otherwise provided for at the time of acknowledgment and land within the 100-year floodplain is generally considered unbuildable for purposes of density calculations.

(4) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.

(5) "Government Assisted Housing" means housing that is financed in whole or part by either a federal or state housing agency or a local housing authority as defined in ORS 456.005 to 456.720, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

(6) "Housing Needs Projection" refers to a local determination, justified in the plan, as to the housing types 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.

(7) "Manufactured Dwelling" means:

(a) Residential trailer, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962;

(b) Mobile home, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction;

(c) Manufactured home, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction;

(d) Does not mean any building or structure subject to the structural specialty code adopted pursuant to ORS 455.100 to 455.450 or any unit identified as a recreational vehicle by the manufacturer.

(8) "Manufactured Dwelling Park" means any place where four or more manufactured dwellings as defined in ORS 446.003 are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for

occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

(9) "Manufactured Homes" means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with National Manufactured Housing Construction and Safety Standards Act of 1974 (**42 U. S. C. Sections 5401 et seq.**), as amended on August 22, 1981.

(10) "Mobile Home Park" means any place where four or more manufactured dwellings as defined in ORS 446.003 are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Mobile home park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

(11) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.

(12) "Needed Housing" defined. Until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "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. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:

(a) Housing that includes, but is not limited to, 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 home on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and

(e) Subsections (12)(a) and (d) of this rule shall not apply to:

(A) A city with a population of less than 2,500;

(B) A county with a population of less than 15,000.

(13) "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 Ch. 183, 196, & 197

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

660-007-0015
Clear and Objective Approval Standards Required

Local approval standards, special conditions and procedures regulating the development of needed housing must be clear and objective, and must not have the effect, either of themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 10-1981, f. & ef. 12-11-81

660-007-0018
Specific Plan Designations Required

(1) Residential plan designations shall be assigned to all buildable land, and 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 Ch. 183 & 197

Hist.: LCDC 1-1987, f. & ef. 2-18-87

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 Ch. 183 & 197

Hist.: LCD 10-1981, f. & ef. 12-11-81

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(a) and 197.307(3).

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 1-1987, f. & ef. 2-18-87

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 Ch. 183 & 197

Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

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 Ch. 183 & 197

Hist.: LCDC 1-1987, f. & ef. 2-18-87

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 Ch. 183 & 197
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

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 Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

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 city(ies) 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) xxxxxxxxxxTotal Units (TU).

(B) Total units divided by Total Acres = New Density Standard;

(C) Example:

(i)(I) Cities A and B have 100 acres and a 6-unit-per-acre standard: (100 x 6 = 600 units);

(II) City B has 300 acres and a 10-unit-per-acre standard: (300 x 10 = 3000 units);

(III) County has 200 acres and an 8-unit-per-acre standard: (200 x 08 = 1600 units);

(IV) 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 Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

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 Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

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 OAR 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 Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

DIVISION 8

INTERPRETATION OF GOAL 10 HOUSING

660-008-0000
Purpose

(1) The purpose of this rule is to assure 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 rule is intended to define standards for compliance with Goal 10"Housing" and to implement ORS 197.303 through 197.307.

(2) OAR 660-007-0000 et seq., Metropolitan Housing, are intended to complement and be consistent with OAR 660-008-0000 et seq., Goal 10 Housing. Public facilities and services are planned for buildable land as defined in OAR 660-007-0140 within the Metropolitan Portland urban growth boundary. Should differences in interpretation between OAR 660-008-0000 and OAR 660-007-0000 arise, the provisions of OAR 660-007-0000 shall prevail for cities and counties within the Metro urban growth boundary.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 3-1982, f. & ef. 7-21-82

660-008-0005
Definitions

For the purpose of this rule, 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 vacant and, at the option of the local jurisdiction, redevelopable land within the Metro urban growth boundary that is not severely constrained by natural hazards (Statewide Planning Goal 7) or subject to natural resource protection measures (Statewide Planning Goals 5 and 15). Publicly owned land is generally not considered available for residential use. Land with slopes of 25 percent or greater unless otherwise provided for at the time of acknowledgment and land within the 100-year floodplain is generally considered unbuildable for purposes of density calculations.

(3) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.

(4) "Government Assisted Housing" means housing that is financed in whole or part by either a federal or state housing agency or a local housing authority as defined in ORS 456.005 to 456.720, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

(5) "Housing Needs Projection" refers to a local determination, justified in the plan, of the mix of housing types 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.

(6) "Manufactured Dwelling" means:

(a) Residential trailer, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962;

(b) Mobile home, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction;

(c) Manufactured home, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction;

(d) Does not mean any building or structure subject to the structural specialty code adopted pursuant to ORS 455.100 to 455.450 or any unit identified as a recreational vehicle by the manufacturer.

(7) "Manufactured Dwelling Park" means any place where four or more manufactured dwellings as defined in ORS 446.003 are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

(8) "Manufactured Homes" means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with National Manufactured Housing Construction and Safety Standards Act of 1974 (**42 U.S.C. Sections 5401 et seq.**), as amended on August 22, 1981.

(9) "Mobile Home Park" means any place where four or more manufactured dwellings as defined in ORS 446.003 are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Mobile home park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

(10) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.

(11) "Needed Housing" defined. Until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "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. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:

(a) Housing that includes, but is not limited to, 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) Subsections (12)(a) and (d) of this rule shall not apply to:

(A) A city with a population of less than 2,500;

(B) A county with a population of less than 15,000.

(12) "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.

(13) "Suitable and Available Land" means residentially

designated vacant and redevelopable land within an urban growth boundary that is not constrained by natural hazards, or subject to natural resource protection measures, and for which public facilities are planned or to which public facilities can be made available. Publicly owned land generally is not considered available for residential use.

Stat. Auth.: ORS Ch. 183, 196 & 197
Hist.: LCDC 3-1982, f. & ef. 7-21-82; LCDC 3-1990, f. & cert. ef. 6-6-90

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 Ch. 197
Hist.: LCDC 3-1982, f. & ef. 7-21-82

660-008-0015
Clear and Objective Approval Standards Required

Local approval standards, special conditions and procedures regulating the development of needed housing must be clear and objective, and must not have the effect, either of themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 3-1982, f. & ef. 7-21-82

660-008-0020
Specific Plan Designations Required

(1) Residential plan designations shall be assigned to all buildable land, and 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 Ch. 197
Hist.: LCDC 3-1982, f. & ef. 7-21-82

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.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 3-1982, f. & ef. 7-21-82

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 Ch. 197
Hist.: LCDC 3-1982, f. & ef. 7-21-82

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. The standards listed in section (1) of this rule shall not apply to the exceptions process authorized by OAR 660-007-0360.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 3-1982, f. & ef. 7-21-82

660-008-0040
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 include a determination of housing need according to tenure as part of the local housing needs projection.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 3-1982, f. & ef. 7-21-82

DIVISION 9

INDUSTRIAL AND COMMERCIAL DEVELOPMENT

660-009-0000
Purpose

The purpose of this division is to aid in achieving the requirements of Goal 9, Economy of the State (OAR 660-015-0000(9)), by implementing the requirements of ORS 197.712(2)(a) - (d). The rule 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 plans are based on available information about state and national economic trends. (ORS 197.717(2)).

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1986, f. & ef. 10-10-86

660-009-0005
Definitions

(1) "Department": The Department of Land Conservation and Development.

(2) "Planning Area": The whole area within an urban growth boundary including unincorporated urban and urbanizable land, except for cities and counties within the Portland, Salem-Keizer and Eugene-Springfield metropolitan urban growth boundaries which shall address the urban areas governed by their respective plans as specified in the urban growth management agreement for the affected area.

(3) "Locational Factors": Features which affect where a

particular type of commercial or industrial operation will locate. Locational factors include but are not limited to: proximity to raw materials, supplies, and services; proximity to markets or educational institutions; access to transportation facilities; labor market factors (e.g., skill level, education, age distribution).

(4) "Site Requirement": The physical attributes of a site without which a particular type or types of industrial or commercial use cannot reasonably operate. Site requirements may include: a minimum acreage or site configuration, specific types or levels of public facilities and services, or direct access to a particular type of transportation facility such as rail or deep water access).

(5) "Suitable": A site is suitable for industrial or commercial use if the site either provides for the site requirements of the proposed use or category of use or can be expected to provide for the site requirements of the proposed use within the planning period.

(6) "Serviceable": A site is serviceable if:

(a) Public facilities, as defined by OAR Chapter 660, Division 11 currently have adequate capacity to serve development planned for the service area where the site is located or can be upgraded to have adequate capacity within one year; and

(b) Public facilities either are currently extended to the site, or can be provided to the site within one year of a user's application for a building permit or request for service extension.

(7) "Short-Term Element of the Public Facility Plan": means the portion of the public facility plan covering year one through five of the facility plan per OAR 660-011-0005(3).

(8) Other definitions: For purposes of this division the definitions in ORS 197.015 shall apply

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1986, f. & ef. 10-10-86

660-009-0010
Application

(1) OAR Chapter 660, Division 9 applies only to comprehensive plans for areas within urban growth boundaries. Additional planning for industrial and commercial development outside urban growth boundaries is not required or restricted by this rule. Plan and ordinance amendments necessary to comply with this rule shall be adopted by affected jurisdictions.

(2) Comprehensive plans and land use regulations shall be reviewed and amended as necessary to comply with this rule at the time of each periodic review of the plan (ORS 197.712(3)). Jurisdictions which have received a periodic review notice from the Department (pursuant to OAR 660-019-0050) prior to the effective date of this rule shall comply with this rule at their next periodic review unless otherwise directed by the Commission during their first periodic review.

(3) Jurisdictions may rely on their existing plans to meet the requirements of this rule if they:

(a) Review new information about state and national trends and conclude there are no significant changes in economic development opportunities (e.g., a need for sites not presently provided for by the plan); and

(b) Document how existing inventories, policies, and implementing measures meet the requirements in OAR 660-009-0015 through 660-009-0025.

(4) The effort necessary to comply with OAR 660-009-0015 through 660-009-0025 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on local, state and national 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 rule.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1986, f. & ef. 10-10-86

660-009-0015
Economic Opportunities Analysis

Cities and counties shall review and, as necessary, amend comprehensive plans to provide the information described in sections (1) through (4) of this rule:

(1) Review of National and State and Local Trends. The economic opportunities analysis shall identify the major categories of industrial and commercial uses that could reasonably be expected to locate or expand in the planning area based on available information about national, state and local trends. A use or category of use could reasonably be expected to locate in the planning area if the area possesses the appropriate locational factors for the use or category of use;

(2) Site Requirements. The economic opportunities analysis shall identify the types of sites that are likely to be needed by industrial and commercial uses which might expand or locate in the planning area. Types of sites shall be identified based on the site requirements of expected uses. Local governments should survey existing firms in the planning area to identify the types of sites which may be needed for expansion. Industrial and commercial uses with compatible site requirements should be grouped together into common site categories to simplify identification of site needs and subsequent planning;

(3) Inventory of Industrial and Commercial Lands. Comprehensive plans for all areas within urban growth boundaries shall include an inventory of vacant and significantly underutilized lands within the planning area which are designated for industrial or commercial use:

(a) Contiguous parcels of one to five acres within a discrete plan or zoning district may be inventoried together. If this is done the inventory shall:

(A) Indicate the total number of parcels of vacant or significantly underutilized parcels within each plan or zoning district; and

(B) Indicate the approximate total acreage and percentage of sites within each plan or zone district which are:

(i) Serviceable, and

(ii) Free from site constraints.

(b) For sites five acres and larger and parcels larger than one acre not inventoried in subsection (a) of this section, the plan shall provide the following information:

(A) Mapping showing the location of the site;

(B) Size of the site;

(C) Availability or proximity of public facilities as defined by OAR Chapter 660, Division 11 to the site;

(D) Site constraints which physically limit developing the site for designated uses. Site constraints include but are not limited to:

(i) The site is not serviceable;

(ii) Inadequate access to the site; and

(iii) Environmental constraints (e.g., floodplain, steep slopes, weak foundation soils).

(4) Assessment of Community Economic Development Potential. The economic opportunities analysis shall estimate the types and amounts of industrial and commercial development likely to occur in the planning area. The estimate shall be based on information generated in response to sections (1) through (3) of this rule and shall consider the planning area's economic advantages and disadvantages of attracting new or expanded development in general as well as particular types of industrial and commercial uses. Relevant economic advantages and disadvantages to be considered should include but need not be limited to:

(a) Location relative to markets;

(b) Availability of key transportation facilities;

(c) Key public facilities as defined by OAR Chapter 660, Division 11 and public services;

(d) Labor market factors;

(e) Materials and energy availability and cost;

(f) Necessary support services;

(g) Pollution control requirements; or

(h) Educational and technical training programs.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1986, f. & ef. 10-10-86

660-009-0020
Industrial and Commercial Development Policies

(1) Comprehensive plans for planning areas subject to this

division shall include policies stating the economic development objectives for the planning area.

(2) For urban areas of over 2,500 in population policies shall be based on the analysis prepared in response to OAR 660-009-0015 and shall provide conclusions about the following:

(a) Community Development Objectives. The plan shall state the overall objectives for economic development in the planning area and identify categories or particular types of industrial and commercial uses desired by the community. Plans may include policies to maintain existing categories, types or levels of industrial and commercial uses;

(b) Commitment to Provide Adequate Sites and Facilities. Consistent with policies adopted to meet subsection (a) of this section, the plan shall include policies committing the city or county to designate an adequate number of sites of suitable sizes, types and locations and ensure necessary public facilities through the public facilities plan for the planning area.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1986, f. & ef. 10-10-86

660-009-0025
Designation of Lands for Industrial and Commercial Uses

Measures adequate to implement policies adopted pursuant to OAR 660-009-0020 shall be adopted. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, and public facility plans:

(1) Identification of Needed Sites. The plan shall identify the approximate number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. The need for sites should be specified in several broad "site categories", (e.g., light industrial, heavy industrial, commercial office, commercial retail, highway commercial, etc.) combining compatible uses with similar site requirements. It is not necessary to provide a different type of site for each industrial or commercial use which may locate in the planning area. Several broad site categories will provide for industrial and commercial uses likely to occur in most planning areas.

(2) Long-Term Supply of Land. Plans shall designate land suitable to meet the site needs identified in section (1) of this rule. The total acreage of land designated in each site category shall at least equal the projected land needs for each category during the 20-year planning period. Jurisdictions need not designate sites for neighborhood commercial uses in urbanizing areas if they have adopted plan policies which provide clear standards for redesignation of residential land to provide for such uses. Designation of industrial or commercial lands which involve an amendment to the urban growth boundary must meet the requirements of OAR 660-004-0010(1)(c)(B) and 660-004-0018(3)(a).

(3) Short-Term Supply of Serviceable Sites. If the local government is required to prepare a public facility plan by OAR Chapter 660, Division 11 it shall complete subsections (a) through (c) of this section at the time of periodic review. Requirements of this rule apply only to local government decisions made at the time of periodic review. Subsequent implementation of or amendments to the comprehensive plan or the public facility plan which change the supply of serviceable industrial land are not subject to the requirements of this rule. Local governments shall:

(a) Identify serviceable industrial and commercial sites. Decisions about whether or not a site is serviceable shall be made by the affected local government. Local governments are encouraged to develop specific criteria for deciding whether or not a site is "serviceable". Local governments should 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 commercial land likely to be needed during the short-term element of 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 short-term element of the public facilities plan so that a three-year supply of serviceable sites is scheduled for each year, including the final year, of the short-term element of the public facilities plan. Amendments appropriate to implement this requirement include but are not limited to the following:

(A) Changes to the short-term element of the public facilities plan to add or reschedule projects which make more land serviceable;

(B) Amendments to the comprehensive plan which redesignate additional serviceable land for industrial or commercial use; and

(C) Reconsideration of the planning area's economic development objectives and amendment of plan policies based on public facility limitations.

(d) If the local government is unable to meet this requirement it shall identify the specific steps needed to provide expanded public facilities at the earliest possible time.

(4) Sites for Uses with Special Siting Requirements. Jurisdictions which adopt objectives or policies to provide for specific uses with special site requirements shall adopt policies and land use regulations to provide for the needs of those uses. Special site requirements include but need not be limited to large acreage sites, special site configurations, direct access to transportation facilities, or sensitivity to adjacent land uses, or coastal shoreland sites designated as especially suited for water-dependent use under Goal 17. Policies and land use regulations for these uses shall:

(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 to those which would not interfere with development of the site for the intended use; and

(c) Where necessary to protect a site for the intended industrial or commercial use include measures which either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1986, f. & ef. 10-10-86

DIVISION 10

CITIZEN INVOLVEMENT

660-010-0005 [Renumbered to 660-01-005]

660-010-0060 [Renumbered to 660-15-000]

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), by implementing 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.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1984, f. & ef. 10-18-84

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 660-11-045.

(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 Ch. 183 & 197
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 660-0110-005(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 Ch. 183 & 197
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 Ch. 183 & 197
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 Ch. 183 & 197
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) or197.835(4).

Stat. Auth.: ORS Ch. 183 & 197
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 Ch. 183 & 197
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 Ch. 183 & 197
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 Ch. 183 & 197
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 Ch. 183 & 197
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 660-0110-010(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 Ch. 183 & 197
Hist.: LCDC 4-1984, f. & ef. 10-18-84

DIVISION 12

TRANSPORTATION PLANNING

660-012-0000
Purpose

The purpose of this Division is to implement Statewide Planning Goal 12 (Trans-portation). It is also the purpose of this Division to explain how local governments and state agencies responsible for transportation planning demon-strate compliance with other statewide planning goals and to identify how transportation facilities are provided on rural lands consistent with the goals. The division sets requirements for coordination among affected levels of government 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 planning required under ORS 197.712 (2)(e), Goal 11 and OAR Chapter 660, Division 11, as they relate to transportation facilities. Through measures designed to reduce reliance on the automobile, the rule is also intended to assure that the planned transportation system supports a pattern of travel and land use in urban areas which will avoid the air pollution, traffic and livability problems faced by other areas of the country. 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 Ch. 183 & 197.040
Stats. Implemented: ORS 195.025, 197.015, 197.040, 197.230, 197.245, 197.712 & 197.717
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91

660-012-0005
Definitions

For the purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals and OAR Chapter 660 shall apply. In addition the definitions listed below shall apply:

(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 channeliza-tion 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) 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.

(5) "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.

(6) "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, and trip-reduction ordinances.

(7) "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.

(8) "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, insti-tutional 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 develop-ment, not be considered a major facility in a larger or more densely developed area with larger or more intense development or facilities.

(9) "Major transit stop" means:

(a) Existing and planned light rail stations and transit transfer stations, except for temporary facilities;

(b) 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.

(10) "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 MPO is not considered an MPO for the purposes of this rule.

(11) "ODOT" means the Oregon Department of Transportation.

(12) "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.

(13) "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.

(14) "Pedestrian district" means a comprehen-sive 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 circulations.

(15) "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 entrance or an intersection and connect directly to adjacent sidewalks, walkways, transit stops and building. A plaza including 150-250 square feet would be considered "small".

(16) "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.

(17) "Planning Period" means the twenty year period beginning with the date of adoption of a TSP to meet the requirements of this rule.

(18) "Preliminary Design" means an engineer-ing design which specifies in detail the location and alignment of a planned transportation facility or improvement.

(19) "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.

(20) "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.

(21) "Roads" means streets, roads and high-ways.

(22) "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 pedes-trian paths to support high levels of pedestrian access within the TOD and high levels of transit use.

(23) "Transportation Facilities" means any physical facility that moves or assist in the move-ment of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage and water systems.

(24) "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 improve-

ments, traffic control devices including installing medians and parking removal, channelization, access management, ramp metering, and restriping of high occupancy vehicle (HOV) lanes.

(25) "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.

(26) "Transportation Needs, Local" means needs for movement of people and goods within com-munities and portions of counties and the need to provide access to local destinations.

(27) "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.

(28) "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.

(29) "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.

(30) "Transportation Service" means a service for moving people and goods, such as intercity bus service and passenger rail service.

(31) "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.

(32) "Urban Area" means lands within an urban growth boundary or two or more contiguous urban growth boundaries.

(33) "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.

(34) "Walkway" means a hard surfaced area intended and suitable for use by pedestrians, including sidewalks and surfaced portions of accessways.

Stat. Auth.: ORS Ch. 183 & 197.040, 197.2456

Stats. Implemented: ORS 195.025, 197.015, 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

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 Ch. 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 Trans-portation 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 731, Division 15;

(b) State transportation project plans shall be compatible with acknowledged comprehensive plans as provided for in OAR 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 660-12-040 may be adopted as a supporting document to the comprehensive plan.

(5) The preparation of TSPs shall be coor-dinated 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 compre-hensive 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 Ch. 183 & 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

660-012-0020
Elements of Transportation System Plans

(1) A TSP shall establish a coor-dinated 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 TSPs shall be consistent with functional classifications of roads in state and regional TSPs 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 trans-portation 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 660-0120-045;

(i) For areas within an urban growth boundary containing a population greater than 2500 persons, a transportation financing program as provided in OAR 660-0120-040.

(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 levels of service;

(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 Ch. 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

660-012-0025
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 which:

(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) Demonstrate that the refinement effort will be completed within three years or 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 Ch. 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

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 660-09 and Goal 9 (Economic Development).

(2) Counties or MPOs preparing regional TSPs shall rely on the analysis of state transportation needs in adopted elements of the state TSP. Local governments preparing local TSPs shall rely on the analyses of state and regional transportation needs in adopted elements of the state TSP and adopted regional TSPs.

(3) Within urban growth boundaries, the determination of local and regional transportation needs shall be based upon:

(a) Population and employment forecasts and distributions which are consistent with the acknowledged comprehensive plan, including those policies which implement Goal 14, including Goal 14's requirement to encourage urban development on urban lands prior to conversion of urbanizable lands. Forecasts and distributions shall be for 20 years and, if desired, for longer periods;

(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.

0 Stat. Auth.: ORS Ch. 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

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 govern-ments 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 densities (i.e., minimum floor area ratios) in new commercial office and retail developments;

(c) Designating lands for neighborhood shopping centers within convenient walking and cycling distance of residential areas;

(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.

(e) Establishing maximum parking limits for office and institutional developments consistent with OAR 660-012-0045(5)(c) which reduce the amount of parking available at such developments.

(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 con-sistent 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 Manage-ment 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;

(e) The transportation system shall avoid principal reliance on any one mode of trans-portation and shall 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 the following objectives for reducing automobile vehicle miles travelled (VMT) per capita for the MPO area:

(a) No increase within ten years of adoption of a plan as required by OAR 660-012-0055(1);

(b) A 10% reduction within 20 years of adoption of a plan as required by OAR 660-012-0055(1); and

(c) Through subsequent planning efforts, a 20 percent reduction within 30 years of adoption of a plan as required by OAR 660-012-0055(1).

(5) Regional TSPs shall specify measurable objectives for each of the following and demonstrate how the combination selected will accomplish the objectives in section (4) of this rule:

(a) An increase in the modal share of non-automobile trips (i.e., transit, bicycle, pedestrian); for example, a doubling of the modal share of non-automobile trips;

(b) An increase in average automobile occupancy (i.e., persons per vehicle) during; for example, an increase to an average of 1.5 persons per vehicle; and

(c) Where appropriate, a decrease in the number or length of automobile vehicle trips per capita due to demand management programs, rearranging of land uses or other means.

(6) Regional and local TSPs shall include interim benchmarks to assure satisfactory progress towards meeting the requirements of this section at five year intervals over the planning period. MPOs and local governments shall evaluate progress in meeting interim benchmarks at five year intervals from adoption of the regional and local TSPs. Where interim benchmarks are not met, the relevant TSP shall be amended to include new or additional efforts adequate to meet the requirements of this section.

(7) The Commission shall, at five year intervals from the adoption of this rule, evaluate the results of efforts to achieve the

reduction in VMT and the effectiveness of the standard in achieving the objective of reducing reliance on the automobile. This shall include evaluating the requirements for parking plans and a reduction in the number of parking spaces per capita.

(8) Where existing and committed trans-portation facilities and services have adequate capacity to support the land uses in the acknowl-edged comprehensive plan, the local government shall not be required to evaluate alternatives as provided in this section.

(9) 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 (11) of this rule, will not significantly reduce peak hour travel time for the route as determined pursuant to section (10) 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.

(10) 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% 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.

(11) A "transportation improvement project" described in section (9) 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 transporta-tion project.

Stat. Auth.: ORS Ch. 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 3-1995, f. & cert. ef. 3-31-95; LCDC 4-1995, f. & cert. ef. 5-8-95

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:

(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) Determination of rough cost estimates for the transportation facilities and major improve-ments identified in the TSP.

(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 ORS 197.610(1) and (2) or ORS 197.835(4).

(5) The transportation financing program shall implement comprehensive plan policies which provide for phasing of major improvements to encourage infill and redevelopment of urban lands prior to facilities which would cause premature development of urbanizable areas or conversion of rural lands to urban uses.

Stat. Auth.: ORS Ch. 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

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)(m) through (p) and ORS 215.283(1)(k) through (n), consistent with the provisions of 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 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.

(g) Regulations assuring that amendments to land use desig-

nations, densities, and design standards are consistent with the functions, capacities and levels of service 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 accom-modating 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)-(f) 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 (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 (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 660-012-0035(4).

(c) Implements a parking plan which:

(A) Achieves a 10% 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 660-012-0035(4);

(C) Includes land use and subdivision regulations setting minimum and maximum parking requirements; and,

(D) Is consistent with demand management programs, tran-

sit-oriented development requirements and planned transit service.

(d) 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 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 subsection (1) or (3) of this section, local street standards adopted to meet this requirement need not be adopted as land use regulations.

Stat. Auth.: ORS Ch. 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

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;

(d) A process for developing and adopting findings of compliance with applicable acknowl-edged 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 involves land use decision-making to the extent that issues of compliance with applicable requirements remain outstanding at the project development phase. Issues may include, but are not limited to, compliance with 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. Where 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. To the extent compliance 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) 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 Ch. 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

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 an MPO, cities and counties shall adopt local TSPs and implementing measures within one year following completion of the regional TSP. Urban areas designated as MPOs subsequent to the adoption of this rule shall adopt TSPs in compliance with applicable requirements of this rule within three years of designation.

(2) For areas outside an MPO, cities and counties shall complete and adopt regional and local TSPs and implementing measures by May 8, 1997.

(3) 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 OAR 660-012-0045(3), (4)(a)-(e) and (5)(d). Affected cities and counties which do not have acknowledged ordinances addressing the require-ments of this section by the deadlines listed above shall apply OAR 660-012-0045(3),(4)(a)-(f) and (5)(d) directly to all land use decisions and all limited land use decisions.

(4)(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 subsection 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.

(5) 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. This shall include a reevaluation of the land use designations, densities and design standards in the following circumstances:

(a) If the interim benchmarks established pursuant to OAR

660-012-0035(6) have not been achieved; or

(b) If a refinement plan has not been adopted consistent with the requirements of OAR 660-012-0025(3).

(6) The director may grant a whole or partial exemption from the requirements of this division to cities under 2,500 population outside MPO areas and counties under 25,000 population. Eligible jurisdictions may, within five years following the adoption of this rule or at subsequent periodic reviews, request that the director approve an exemption from all or part of the requirements in this division until the jurisdiction's next periodic review:

(a) The director's decision to approve an exemp-tion 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).

(7) 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 Acknowledgement Procedures.

Stat. Auth.: ORS Ch. 183, 197.040 & 197.245

Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.610 -625, 197.628 - 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

660-012-0060
Plan and Land Use Regulation Amendments

(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:

(a) Limiting allowed land uses to be consistent with the planned function, capacity and level of service of the transportation facility;

(b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

(a) Changes the functional classification of an existing or planned transportation facility;

(b) Changes standards implementing a functional classification system;

(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

(d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.

(3) Determinations under sections (1) and (2) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(4) 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.

Stat. Auth.: ORS Ch. 183 & 197.040

Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.610 - 625, 197.628 - 646, 197.712, 197.717 & 197.732

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91

660-012-0065
Transportation Improvements on Rural Lands

(1) This rule identifies trans-portation 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 660, Division 6 (Forest Lands);

(b) Transportation improvements that are allowed or conditionally allowed by ORS 215.213, 215.283 or OAR 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 level of service 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 subsection (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. Until adoption of a local TSP pursuant to the requirements of OAR 660-012-0035, the jurisdiction shall consider design and operations alternatives within the project area that would not result in a substantial reduction in peak hour travel time for projects in the urban fringe that would significantly reduce peak hour travel time. A determination that a project will significantly reduce peak hour travel time is based on OAR 660-012-0035(10). The jurisdiction need to consider alternative 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 660-0120-035(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 Ch. 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

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.

(2) Where an exception to Goals 3, 4, 11, or 14 is required, the exception shall be taken pursuant to ORS 197.732(1)(c), Goal 2, OAR Chapter 660, Division 4 and this division.

(3) An exception adopted as part of a TSP or refinement plan 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;

(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. 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 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.

(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.

(7) To address Goal 2, Part II(c)(3), the exception shall:

(a) Compare the economic, social, environmental and energy consequences of the proposed location and other alternative locations requiring exceptions;

(b) Determine whether the net adverse impacts associated with the proposed exception site 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;

(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.

(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 non-farm or highway oriented development on areas made more accessible by the transportation improvement;

(b) 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.

Stat. Auth.: ORS Ch. 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

DIVISION 14

ADMINISTRATIVE RULE FOR APPLICATION OF THE STATEWIDE PLANNING GOALS TO THE INCORPORATION OF NEW CITIES

660-014-0000
Purpose

ORS 197.175 requires cities and counties to exercise their planning and zoning responsibilities in compliance with the State-

wide Planning Goals. This includes, but is not limited to, 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 incorporation of new cities under the Goals. This rule specifies the satisfactory method of applying Statewide Planning Goals 2, 3, 4, 11 and 14 to the incorporation of new cities.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

660-014-0010
Application of the Statewide Planning Goals to Incorporation of New Cities

(1) When a county authorizes an incorporation election for an area outside of an acknowledged urban growth boundary, it shall take an exception to Goals 11 and 14 to allow urban uses to be established on rural lands. If the land proposed for incorporation is also agricultural land or forest land, the County's exception to Goal 11 and Goal 14 will also be considered an exception to Goals 3 and 4. 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 decision by a county court or board of commissioners to authorize 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 which 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. 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!mE2Q!x as defined in ORS 197.015(10).

(4) Comprehensive plans prepared and adopted by newly incorporated cities shall be reviewed either through the plan acknowledgment review process set forth in OAR 660-003-0000, or the post acknowledgment plan amendment review process:

(a) Comprehensive plans for new cities outside of acknowledged urban growth boundaries shall be reviewed for compliance against all applicable Statewide Planning Goals through the plan acknowledgment review process set forth in OAR 660-003-0000;

(b) Review of comprehensive plans for new cities within acknowledged urban growth boundaries shall occur through the post acknowledgment plan amendment review procedures established pursuant to ORS Chapter 197. The review shall be limited to portions of the city or county's comprehensive plan policies, designations, and land use regulation which vary from the provisions previously acknowledged by the Commission.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

660-014-0020
Incorporation of New Cities Within Acknowledged Urban Growth Boundaries

(1) Cities and counties shall ensure that decisions on incorporation of new cities within acknowledged urban growth boundaries are consistent with the provisions of acknowledged city and county comprehensive plans and land use regulations applicable to the area proposed for incorporation.

(2) A city or county may use findings made in other land use decisions on the proposed incorporation. However, the use of such findings does not remove the city or county's responsibility to ensure that the incorporation is consistent with the applicable comprehensive plan and land use regulations.

(3) In its review and decision on a proposed incorporation, an affected city or county shall adopt findings of fact which demonstrate that the proposed incorporation is consistent with relevant provisions of acknowledged comprehensive plans and land use regulations. This includes adopted plans of special districts for providing public facilities or services in the area proposed for incorporation which have been coordinated and are consistent with the acknowledged plan and implementing measures under ORS 197.185. To approve the proposed incorporation, these findings of fact shall demonstrate that:

(a) The types and levels of public facilities proposed for the new city are consistent with those set forth in the acknowledged plan and adequate to serve urban development planned for the area in the acknowledged comprehensive plan; and

(b) The extent and location of the area proposed for incorporation will not interfere with implementation of acknowledged plan provisions for the timely, orderly and efficient provision of public facilities and services to other areas within the urban growth boundary.

(4) An order of a local government boundary commission adopted in compliance with ORS 199.410, 199.461 and 199.462 is equivalent to the application of standards listed in section (3) of this rule.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

660-014-0030
Incorporation of New Cities on 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 proposed for incorporation. 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 for incorporation 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) Larger parcels or ownerships on the periphery of an area committed to urban densities may only be considered committed to urban development and included in the area proposed for incorporation if findings of fact demonstrate:

(a) Urban levels of facilities are currently provided to the parcel; and

(b) The parcel is irrevocably committed to nonresource use or is not resource land; and

(c) The parcel can reasonably be developed for urban density uses considering topography, natural hazards or other constraints on site development.

(6) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be if the land is currently built upon at urban densities. Land which cannot be shown to be built to urban densities or committed to urban development may not be included within the area proposed for incorporation, except as provided for in OAR 660-014-0040.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

660-014-0040
Incorporation of New Cities 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 incorporation of a new city or establishment of new urban development on undeveloped rural land. Reasons which 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 which is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under this rule, a county must also show:

(a) That Goal 2, Part II(c)(1) and (c)(2) are met by showing the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development at existing rural centers;

(b) That Goal 2, Part II(c)(3) is met by showing 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 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;

(e) That incorporation of a new city or establishment or new urban development of undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for incorporation.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

DIVISION 15

STATE-WIDE PLANNING GOALS AND GUIDELINES

660-015-0000
State-Wide 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: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183, 197 & 215

Stats. Implemented: ORS 197.010, 013, 015, 040, 045, 225, 230, 235, 240 & 245

Hist.: LCDC 1, f. 12-31-74, ef. 1-25-75; Renumbered from 660-10-060; 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

660-015-0005
State-Wide Planning Goal and Guideline #15

#15 — Willamette Greenway.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183 & 197

Stats. Implemented: ORS 197.010, 013, 015, 040, 045, 225, 230, 235, 240, 245, 390.010-220 & 390.310-368

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

660-015-0010
State-Wide 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: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183 & 197

Stats. Implemented: ORS 197.010, 013, 015, 040, 045, 225, 230, 235, 240 & 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

DIVISION 16

REQUIREMENTS AND APPLICATION PROCEDURES FOR COMPLYING WITH STATEWIDE GOAL 5

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 Ch. 183 & 197
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

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:

(1) Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance pro-visions, as appropriate, which insure preservation of the resource site.

(2) 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 Ch. 183 & 197
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

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 660-16-000(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, not withstanding 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 Ch. 183 & 197
Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

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 660-16-000(5)(a), 660-16-005(1), and 660-16-010. 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 660-16-000(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 Ch. 183 & 197
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 involve-ment, although not identified as a Goal 5 requirement is in the opinion of the Commission, imperative.

Stat. Auth.: ORS Ch. 183 & 197
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 Ch. 183 & 197
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 and Guideline #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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 197
Hist.: LCD 12, f. & ef. 10-14-77

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 "over-depth"; 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 Ch. 197

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 Ch. 197

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 twenty-two 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 Ch. 197

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 Ch. 197

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 Ch. 197

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 Ch. 197

Hist.: LCD 12, f. & ef. 10-14-77

DIVISION 18

PLAN AND LAND USE REGULATION AMENDMENT REVIEW RULE

660-018-0005
Purpose

This administrative rule is intended to implement provisions of ORS 197.610 through 197.625. The overall purpose is to carry out the state policy outlined in ORS 197.010.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

660-018-0010
Definitions

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

(1) "Acknowledgement" means a Commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the Goals.

(2) "Commission" means the Land Conservation and Development Commission.

(3) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including, but not limited to, sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General Nature" means a summary of the policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity, or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies, and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(4) "Computation of Time" means unless otherwise provided in this rule, the time within which an act is to be done is computed by excluding the first day and including the last unless the last day falls upon any legal holiday or on Saturday, in which case the last day is also excluded.

(5) "Department" means the Department of Land Conservation and Development.

(6) "Director" means the Director of the Department of Land Conservation and Develop-ment or the designee thereof.

(7) "Filing" or "Submitted" shall mean that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon office.

(8) "Final Decision" as described in OAR 660-018-0040 and 660-018-0050 shall be the approval or approval as modified, by the local government, of a proposed amendment to or adoption of a comprehensive plan or land use regulation. A denial of a proposed amendment by the local government shall not be considered a "Final Decision" and therefore is not subject to review under this administrative rule. The date of the "Final Decision" as described in OAR 660-018-0040 shall be the date on which the local government takes final action on the amendment to or adoption of a comprehensive plan or land use regulation. In order to be deemed final, the local government action must include the adoption of all supplementary findings and data. In addition, the date of final action shall be the day following exhaustion of all appeal rights before local government.

(9) "Final Hearing on Adoption" as described in OAR 660-018-0020 and 660-018-0030 shall be the last hearing where all interested persons are allowed to present evidence and rebut testimony on the proposal to adopt or amend a comprehensive plan or land use regulation. "Final Hearing on Adoption" shall not include a hearing held solely on the record of a previous hearing held by the governing body or its designated hearing body. If a final hearing on adoption is continued or delayed, following proper procedures, the local government is not required to submit a new notice under OAR 660-018-0020.

(10) "Goals" mean the mandatory state-wide planning standards adopted by the Commission pursuant to ORS 197.005 to 197.430 and 197.610 to 197.650.

(11) "Land Use Regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan. "Land use regulation" does not include small tract zoning map amendments, conditional use permits, individual subdivision, partitioning or planned unit development approvals or denials, annexations, variances, building permits and similar administrative-type decisions.

(12) "Local Government" means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(13) "Map Change" as used in OAR 660-018-0020 means a change in the designation of an area as shown on the comprehensive plan map, zoning map or both.

(14) "New Land Use Regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land use regulations acknowledged under ORS 197.251.

(15) "Substantially Amended" as used in OAR 660-018-0045 shall mean any change in text which differs from the proposal submitted under OAR 660-018-0020 to such a degree that the notice under OAR 660-018-0020 did not reasonably describe the nature of the local government final action.

Stat. Auth.: ORS Ch. 183 & 197

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

660-018-0020
Filing of a Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation With the Director

(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be submitted to the Director at least 45 days before the final hearing on adoption. The proposal submitted shall be accompanied by appropriate forms provided by the Department and shall contain three copies of the text and any supplemental information the local government believes is necessary to inform the Director as to the effect of the proposal. The submittal shall indicate the date of the final hearing on adoption. In the case of a map change, the proposal must include a map showing the area to be changed as well as the existing and proposed designations. Wherever possible, this map should be on 8-1/2 by 11-inch paper, where a goal exception is being proposed, the submittal must include the proposed language of the exception. The Commission urges the local government to submit information that explains the relationship of the proposal to the acknowledged plan and the goals, where applicable.

(2) For purposes of this rule, "text" means the specific language being proposed as an addition to or deletion from the acknowledged plan or land use regulations. For purposes of this rule, "text" does not mean a general description of the proposal or its purpose. In the case of map changes "text" does not mean a legal description, tax account number, address or other similar general description.

Stat. Auth.: ORS Ch. 183 & 197

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

660-018-0021
Submittal of Joint Amendments

Where two or more local governments are required by plan provisions or statewide goals to jointly consider or agree on a comprehensive plan or land use regulation amendment, the local governments shall jointly submit the proposed amendment and adopted action. Notice of jointly proposed amendments shall be provided 45 days prior to the earliest scheduled final hearing. For purposes of notice and appeal, the date of the final decision shall be the date of the last local government's adoption.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 3-1987, f. & ef. 11-12-87

660-018-0022
Exemptions to Filing Requirements Under OAR 660-018-0020

(1) A local government is not required to submit a proposed amendment to the Director under OAR 660-018-0020 when the local government determines that the goals do not apply to a particular proposed amendment or new regulation.

(2) A local government may provide less than 45 days notice as required in OAR 660-018-0020 when the local government determines there are emergency circumstances requiring expedited review.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 12-1983, f. & ef. 12-29-83; LCDC 3-1987, f. & ef. 11-12-87

660-018-0025
Notice of Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation Sent to Those Requesting

Persons requesting notice of proposed amendments to acknowledged compre-hensive plans or land use regulations or adoptions of new land use regulations who have paid the fee established under the provisions of OAR 660-018-0140 shall be mailed a notice by the Department of the proposed action within 15 days of the receipt of notice from local government required by OAR 660-018-0020.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

660-018-0030
Report to Commission

The Director shall report the Department position on proposed comprehensive plan or land use regulation adoption or amendments to the Commission at least 20 days prior to the final hearing on adoption. This report shall indicate whether the Department will participate in local government proceedings and whether the Director believes the proposal violates the Goals.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

660-018-0035
Department Participation

If the Department is participating in a local government proceeding for which notice was received under OAR 660-018-0020, the Department shall notify the local government. The Department notification shall occur at least 15 days prior to the final hearing on adoption as specified in notice received under OAR 660-018-0020 and shall indicate any concerns with the proposal and recommendations considered necessary to address the concerns including, but not limited to, suggested corrections to achieve compliance with the Goals.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

660-018-0040
Submittal of Adopted Material

(1) Amendments to acknowledged comprehensive plans or land use regulations, new land use regulations adopted by local government and findings to support the adoption shall be mailed or otherwise submitted to the Director within five working days after the final decision by the governing body and shall be accompanied by appropriate forms provided by the Department. Local government must notify the Department of withdrawals or denials of proposals previously sent to the Department under requirements of OAR 660-018-0020. Notwithstanding the above requirements, adopted amendments which are part of periodic review shall be submitted within 20 days after the final decision as provided in ORS 197.641 and OAR 660-019-0070. The date of the "Final Decision" as described in this rule shall be the date on which the local government takes final action on the amendment to or adoption of a comprehensive plan or land use regulation and must include the adoption of all supplementary findings and data. In addition, the date of final action shall be the day following exhaustion of all appeal rights before the local government.

(2) The local government shall clearly indicate in its transmittal which provisions of OAR 660-018-0022 are applicable where the adopted amendment was not submitted for review 45 days prior to the final hearing on adoption.

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 though they were not required to be submitted for review prior to adoption.)

(3) Where amendments, including supple-mentary materials exceed 100 pages, a summary of the amendment briefly describing its purpose and requirements shall be submitted to the Director.

Stat. Auth.: ORS Ch. 183 & 197
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

660-018-0045
Changes in Proposals

If comprehensive plan or land use regulation amendments or new land use regulations which are adopted by local government have been substantially amended the local government shall specify the changes that have been made in the notice to the Director provided in OAR 660-018-0040.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

660-018-0050
Notice to Other Parties

In addition to notice requirements in OAR 660-018-0040, within five working days of the final decision by the governing body, local government shall send notice of the action to persons who participated in the proceedings leading to adoption and requested notice in writing. Notwithstanding the above requirements, adopted amendments which are part of periodic review shall be sent within 20 days after the final decision as provided in ORS 197.641 and OAR 660-019-0070. The notice required by these rules shall describe the action, state the date of the decision, indicate the time and place where the acknowledged comprehensive plan or land use regulation amendment or new land use regulation and findings can be reviewed. In addition, the notice shall indicate the requirements for appealing the local government action to the Land Use Board of Appeals.

Stat. Auth.: ORS Ch. 183 & 197
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

660-018-0055
Notice of Local Government Action by the Director

Within five working days of the receipt of notice under OAR 660-018-0040, the Director shall provide notice by mail or other submittal to those who have requested notice under OAR 660-018-0055 and have paid the fee established under the provisions of OAR 660-018-0140. This notice shall explain the requirements for appealing the local government action to the Land Use Board of Appeals and indicate the locations where the adopted documents may be reviewed.

Stat. Auth.: ORS Ch. 183 & 197
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

660-018-0060

Who May Appeal

(1) Persons who participated either orally or in writing in the local government proceedings leading to adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal the decision to the Land Use Board of Appeals under ORS 197.825 to 197.845.

(2) The director or any other person may file an appeal of the local government's decision to the Land Use Board of Appeals under ORS 197.825 to 197.845 if an amendment to a comprehensive plan or land use regulation or a new land use regulation differs from the proposal and notice submitted under OAR 660-018-0020 to such a degree that the notice did not reasonably describe the nature of the local government final action.

(3) The Director or any person may appeal a local government decision to adopt an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation to the Land Use Board of Appeals under ORS 197.825 to 197.845 when the local government does not provide the notice required by OAR 660-018-0020 under exemptions contained in OAR 660-018-0022.

(4) A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Land Use Board of Appeals not later than 21 days after the decision sought to be reviewed is mailed to parties entitled to notice under OAR 660-018-0040 and 660-018-0050.

NOTE: A decision not to adopt a legislative amendment or new land use regulation is not appealable.

Stat. Auth.: ORS Ch. 183, 196 & 197

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

660-018-0085
Action Where No Appeal or Objection is Timely Filed

Upon receipt of an affidavit from the Land Use Board of Appeals (LUBA) certifying that no timely appeal has been filed or that a local decision has been affirmed, the Director shall certify that an action taken subject to this rule is acknowledged. If LUBA sustains a local government action, or no appeal is timely filed, a local action under this Division is considered acknowledged. However, after issuance of the periodic review notice outlined in the Department's notification procedures (i.e., ORS 197.647(4)(b)), nothing in this rule shall prevent the Commission from entering an order pursuant to its statutory power to require a local government to respond to the standards of the legislature's periodic review factors and procedures (ORS 197.640(3) and (4)).

Stat. Auth.: ORS Ch. 183 & 197

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

660-018-0140
Fee for Notice

(1) An annual fee of $50 to defray the costs of notice provided under OAR 660-018-0025 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1982. The fee is payable in advance of any notice being provided under OAR 660-018-0025. For each subsequent fiscal year, the Department shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-018-0025.

(2) An annual fee of $150 to defray the costs of notice provided under OAR 660-018-0055 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1982. The fee is payable in advance of any notice being provided under OAR 660-018-0055. For each subsequent fiscal year, the Department shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-018-0055.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

DIVISION 19

PERIODIC REVIEW

660-019-0000
Purpose

The overall purpose of this division is to carry out the state policy outlined in ORS 197.010. This division is intended to implement provisions of ORS 197.640 through 197.649. The purpose for the Commission's periodic review of each local government's comprehensive plan and land use regulations is to insure that they are in compliance with the Statewide Planning Goals and are coordinated with the plans and programs of state agencies.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1982, f. & ef. 10-20-82; LCDC 7-1984, f. & ef. 11-30-84

660-019-0005
Definitions

For the purposes of this division, the definitions contained in ORS 197.015 and the following definitions, shall apply:

(1) "Acknowledgment" means a Commission order that certifies that a comprehensive plan and land use regulations or plan or regulation amendment complies with the goals.

(2) "Commission" means the State Land Conservation and Development Commission.

(3) "Commission Review Order" as described in OAR 660-19-090 is an order issued by the Commission adopting findings for each periodic review factor which:

(a) Supports the local government's determination in its final local review order that the factor does not apply; or

(b) Supports the local government's determination in its final local review order that the factor does apply, that any amendments to the plan or land use regulation satisfy the applicable factor and that the plan and land use regulations remain in compliance with the Statewide Goals and coordinated with the state agency plans and programs; or

(c) Does not support the local government's final local review order's findings and conclusions on the factor and requires that the plan or land use regulations be amended to satisfy the applicable factor to remain in compliance with the Statewide Goals and coordinated with state agency plans and programs.

(4) "Department" means the Department of Land Conservation and Development as defined in ORS 197.015.

(5) "Director" means the Director of the Department of Land Conservation and Development.

(6) "Director Termination Order" as described in OAR 660-19-085 is an order issued by the Director finding that the local government's final local review order has adequately addressed the periodic review factors and the Director has determined the following for each factor:

(a) The factor does not apply; or

(b) The factor applies, and the adopted amendment of the local government's plan or land use regulation satisfies the applicable factor.

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

(8) "Final Decision" as described in OAR 660-019-0070 and 660-019-0080 means the approval or approval as modified, by the local government, of its final local periodic review order, including supporting findings and any amendments to the comprehensive plan or land use regulations. A "Final Decision" occurs when the local government's decision has been reduced to writing bearing the signatures of the governing body or its designee. The date of the "Final Decision" shall be the day following exhaustion of all appeal rights before the local government.

(9) "Final Hearing on Adoption" as described in OAR 660-019-0060, 660-019-0065 and 660-019-0070 means the last hearing where all interested persons are allowed to present evidence and rebut testimony on the local government's proposed review order, including the proposed adoption of supporting findings and any amendments to the comprehensive plan or land

use regulations. "Final Hearing" shall not include a hearing held solely on the record of a previous hearing held by the governing body or its designated hearing body.

(10) "Final Local Review Order" as described in OAR 660-019-0070, 660-019-0075, 660-019-0080, 660-019-0085, and 660-019-0090 is the local government's final determination on the applicability of each of the periodic review factors, including adopted findings and any adopted amendments to the plan and land use regulations.

(11) "Goals" means the mandatory statewide planning standards adopted by the Commission pursuant to ORS 197.005 to 197.850.

(12) "Implementation Actions" as described in OAR 660-019-0055 refers to land use actions taken by the local government to implement and administer the comprehensive plan and land use regulations and which do not require the adoption of an amendment to the plan or land use regulations.

(13) "Land Use Regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan. "Land Use Regulation" does not include small tract zoning map amendments, conditional use permits, individual subdivision, partitioning or planned unit development approvals or denials, annexations, variances, building permits and similar administrative-type decisions.

(14) "Local Government" means any city, county, or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(15) "New Land Use Regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land use regulations acknowledged under ORS 197.251.

(16) "Periodic Review Factors" as described in OAR 660-019-0055 and 660-019-0057 are the four standards from ORS 197.640(3) utilized by local government and other persons to determine if the local plan and land use regulations remain in compliance with the Goals and coordinated with state agency plans and programs.

(17) "Periodic Review Notice" as described in OAR 660-019-0050 is the notice sent by the Director to each local government which informs the jurisdiction of its obligation to conduct periodic review, the date for submittal of its proposed review order, and the items to be addressed under the periodic review factors.

(18) "Periodic Review Schedule" as described in OAR 660-019-0045 and 660-019-0050 is an overall schedule approved by the Commission listing the date when each local government shall submit its proposed local review order to the Department.

(19) "Plan or Program Mandated by State Statute or Federal Law" as described in OAR 660-019-0055 means a plan or program relating to land use which a state agency is required by state statute or federal law to adopt or carry out. The statute or law mandating a plan or program may be specific or general in its terms and the alternatives available to the agency under the statute or law to pursue the plan or program may be narrowly or broadly stated.

(20) "Proposed Local Review Order" as described in OAR 660-019-0060 and 660-019-0065 is a draft order, findings, and any suggested plan and land use regulation amendments prepared by local government based upon its preliminary determination of the applicability of each of the periodic review factors.

(21) "Substantially Amended" as used in OAR 660-019-0080 means any change in text which differs from the proposal submitted under OAR 660-019-0060 and 660-019-0065 and which did not reasonably describe the local government's final decision.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 9-1982, f. & ef. 10-20-82; LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0010 [Renumbered to 660-019-0060]

660-019-0045
Periodic Review Schedule

(1) The Director shall prepare for Commission approval an overall schedule which lists the date when each local government's proposed review order is to be submitted to the Director. The schedule shall be developed in consultation with the affected local governments and state agencies.

(2) The review schedule shall provide, unless requested at an earlier date by local government, that:

(a) No comprehensive plan and land use regulations shall be reviewed sooner than two years after the plan and regulations are acknowledged under ORS 197.251;

(b) The first periodic review shall be two to five years after acknowledgment;

(c) All subsequent reviews shall be four to seven years after completion of the previous review;

(d) To the maximum extent practical, by the second periodic review cycle, the schedule shall provide for reviews to be conducted on a common geographic basis, and when possible, in accordance with the update dates in local plans; and

(e) The Department and Commission may conduct segmented periodic review for joint planning areas such as areas within urban growth boundaries, estuarine and shorelands areas or in other circumstances where planning issues warrant such segmented reviews.

(3) The Director may modify the schedule based on written requests from local governments and state agencies or where revised proposed orders are received from local governments. The Director may grant a schedule change where satisfactory progress is being made toward completion of periodic review and that additional time will further the public interest.

(4) The Director may deny a schedule or final hearing extension where such extension is not based on evidence of extenuating circumstances at the local government level.

(5) For extension requests of six months or longer the Director may condition the extension by requiring completion of specific tasks or projects related to the periodic review. The Director may also require a mutually acceptable work program for completion of periodic review prior to granting an extension or schedule change longer than six months. The Director may specify the contents of such a work program. Failure to meet mutually agreed upon dates identified in the work program is the equivalent of failure to meet the schedule date or hearing date and may result in enforcement action under ORS 197.320(h).

(6) The Director's action on schedule modifications or hearing extensions may be appealed to the Commission by filing a letter of appeal with the Department within thirty (30) days of the Director action. The Commission shall allow testimony on the appeal from the appellant and the local government. A recommendation will be made by the Department. The Commission may affirm, reverse or modify the Director's decision based on evidence presented and whether the Director's decision furthers the overall purpose of periodic review and statutory scheduling guidelines. The Commission's decision shall be in the form of an order issued by the Director.

(7) The Director shall mail the schedule to each local government and affected state agency and provide copies to other persons upon request. The Director shall ensure the timely distribution and availability of the periodic review schedule to provide maximum notice of when periodic reviews will occur. The Department shall incorporate schedule revisions authorized by OAR 660-019-0045 as they are made. The Department will mail the revised schedule to local governments, affected agencies and those who request copies annually.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0050
Periodic Review Notice

(1) Not later than 180 days before the date established by the Commission in the periodic review schedule explained in OAR 660-019-0045, the Director shall prepare and send to each local government its periodic review notice. The purpose of this notice

is to inform each local government of its responsibility to conduct a periodic review of its comprehensive plan and land use regulations.

(2) The periodic review notice sent to each local government shall contain the following information:

(a) A description or copies of the required items to be addressed by the jurisdiction as listed in OAR 660-019-0055(2) and 660-019-0057;

(b) A copy of the Periodic Review Adminis-trative Rule (OAR Chapter 660, Division 19);

(c) The date the proposed review order must be submitted; and

(d) Sample formats, examples of local findings and orders, or other technical materials produced by the Director to aid local governments.

(3) The Director shall provide copies of the periodic review notices to interested persons upon written request. Such request shall specify what local government notices are desired.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0055
Periodic Review Factors

(1) Each local government, pursuant to ORS 197.640(3) and the periodic review notice issued under OAR 660-019-0050(1) and (2), shall adopt a periodic review order that contains findings stating whether any of the four periodic review factors apply. Based on its periodic review order, the local government must take steps necessary to bring the local plan and land use regulations into compliance with the goals and make them consistent with state agency plans and programs.

(2) The four factors cited in ORS 197.640(3)(a) - (d) are as follows:

(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 goals;

(b) Previously acknowledged provisions of the comprehensive plan or land use regulations do not comply with the goals because of goals subsequently adopted or statewide land use policies adopted as rules interpreting goals under ORS 197.040;

(c) 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 the local government's comprehensive plan was acknowledged, and the agency has demonstrated that the plan or program:

(A) Is mandated by state statute or federal law;

(B) Is consistent with the goals; and

(C) Has objectives that cannot be achieved in a manner consistent with the comprehensive plan or land use regulations; or

(d) The city or county has not performed additional planning that:

(A) Was required in the comprehensive plan or land use regulations at the time of initial acknowledgment or that was agreed to by the city or county in the receipt of state grant funds for review and update; and

(B) Is necessary to make the comprehensive plan or land use regulations comply with the goals.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0057
Substantial Change in Circumstances

(1) To determine whether a "substantial change in circumstances" exists, each local government's periodic review order must contain findings on the following:

(a) Major developments or events which have occurred that the acknowledged plan did not assume or anticipate or major developments or events which have not occurred that the acknowledged plan did assume or anticipate. Local periodic review findings must describe any occurrences such as the construction of or decision not to build a large project like a major reservoir, a regional shopping center, a major energy or transportation facility; a significant change in the local government's natural resources or economic base; significant unexpected population growth; significant consecutive decline in population growth rate; failure or inability to provide public facilities and services in accordance with the plan, etc.;

(b) Cumulative effects resulting from plan and land use regulation amendments and implemen-tation actions on the acknowledged plan's factual base, map designations, and policies which relate to statewide goal requirements:

(A) For local governments responsible for plans inside urban growth boundaries, periodic review findings must describe the cumulative effects of plan and land use regulation amendments and implementation actions on the overall urban land supply for the plan's chosen (usually 20 years) time frame; on the amount of vacant buildable land remaining for needed housing and economic development; on the provision of public facilities and services to meet development needs identified in the plan; on the protection of Willamette Greenway values and resources; on the amount of vacant especially suited, water-dependent coastal shoreland areas; and on other specific Statewide Planning Goal matters that the Director includes on the local government's periodic review notice;

(B) For local governments responsible for plans outside urban growth boundaries, periodic review findings must describe the cumulative effects of plan and land use regulation amendments, including goal exceptions. Findings must assess the cumulative effects of implementation actions on the protection of agricultural and forestry lands; on the protection of Goal 5 and Willamette Greenway resources; on the protection of coastal resources including dredge material disposal and estuarine mitigation sites; on significant increases in densities in rural residential exception areas; and on other specific Statewide Planning Goal matters raised in the periodic review process.

(c) Oversight or a decision by the local government to delay or not carry out plan policies which relate to a statewide goal requirement. Local periodic review findings must describe why, for example, policies in the plan requiring a citizen involvement program evaluation, a revised inventory of natural hazards, or a date-specific, overall revision of the plan, etc., have not been completed;

(d) Incorporation into the plan of new inventory material which relates to a statewide goal made available to the jurisdiction after acknowledgment. Local periodic review findings must list what applicable published state or federal reports have been made available to the jurisdiction after acknowledgment containing new inventory material, for example, on groundwater availability, air quality, big game habitat, census information, soil surveys, natural hazards, etc., and describe what steps, including any amendments to the plan's factual base, policies, map designations and land use regulations, have been taken in response to this information;

(e) Consistency of the plan and land use regulations with new or amended statutes adopted since acknowledgment. Local periodic review findings must address new statutes adopted since initial acknowledgment and explain how the plan and land use regulations continue to meet the statutory requirements.

(2) Nothing in subsections (1)(a) - (e) of this rule is meant to limit or prevent any person from raising other issues or objections involving the "substantial change in circumstances" factor set forth in OAR 660-019-0057, as long as such concerns are submitted consistent with the requirements of OAR 660-019-0080.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0060
Local Periodic Review

(1) The local government shall conduct a review of its plan and land use regulations based on the periodic review factors, including those items identified in its periodic review notice issued pursuant to OAR 660-019-0050.

(2) Following receipt of the periodic review notice, the local government shall, as appropriate, undertake technical studies, analyses, and surveys in reaching its preliminary decisions about

the applicability of the periodic review factors under OAR 660-019-0055, the preparation of its periodic review findings and the need, if any, for plan or land use regulation amendments. The local government may contact the Director and other affected state agencies for assistance and information in undertaking the tasks in this section.

(3) The local government shall use its Commission-approved citizen involvement program to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government shall also issue a specific public notice consistent with the local citizen involvement program informing citizens in the community and other persons requesting such notice in writing about the initiation of the local periodic review.

(4) On or before the date set by the Commission in the peri odic review schedule as set forth in OAR 660-019-0045, the local government shall submit four (4) copies of its proposed local review order to the Director. The local government must also provide notice of proposed plan and land use regulation amendments on forms provided by the Department. Procedures and requirements for such notice are contained in OAR 660, Division 18. Joint submittals must be processed according to requirements of OAR 660-018-0021.

(5) As part of its submittal, the local government shall notify the Director of the date of the final local hearing on the proposed local review order. The date of this hearing shall be at least 90 but not longer than 120 days after the date the proposed review order is submitted to the Director unless the Director specifically grants a longer period upon written request of the local government. The final hearing may be continued or extended by local government for a period of up to six months in order to adequately consider and accommodate suggestions made prior to or at the final hearing. All commenters or objectors and the Department shall be notified of hearings continued for more than 30 days. Extensions beyond the six months allowed by this provision will be granted by the Director only if the extension meets requirement of OAR 660-019-0045.

(6) The local government's proposed local review order submitted to the Director shall contain either:

(a) Proposed findings that none of the periodic review factors apply; or

(b) Proposed findings that one or more of the periodic review factors apply. When the factors apply, local governments must send proposed amendments to the plan or land use regulations that are necessary to continue to maintain its compliance with the goals and coordination with state agency plans and programs.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 9-1982, f. & ef. 10-20-82; LCDC 7-1984, f. & ef. 11-30-84; Renumbered from 660-19-010; LCDC 4-1987, f. & ef. 11-12-87

660-019-0065
Director Notice of Proposed Local Review Order

(1) Upon receipt of the local government's proposed local review order or notice received pursuant to OAR 660-019-0095(3), the Director within 20 days shall mail or otherwise submit notice to persons who have requested notice pursuant to OAR 660-019-0100(1) that the jurisdiction's proposed local review order is pending, of their opportunity to participate in the local government's proceedings, and of the times and places where the jurisdiction's proposed order and accompanying documents may be reviewed.

(2) Not later than 15 days before the local government's final hearing on the proposed local review order, the Director shall notify the local government in writing of:

(a) Any concerns the Director has about the adequacy of the proposed local order's compliance with the periodic review factors; and

(b) Any advisory recommendations the Director considers to be needed to properly address its concerns identified in subsection (2)(a) of this rule;

(c) The Director may also provide other suggestions to improve the quality or organization of the local plan and land use regulations.

(3) At any time before the local government adopts its final local review order described in OAR 660-019-0070, it may submit to the Director a revised proposed review order as provided in OAR 660-019-0060. The new proposed local review order shall supersede the previous proposed local order and shall be subject to all the requirements of OAR Chapter 660, Division 19. No more than two revised orders may be submitted without first seeking a schedule change as required by OAR 660-019-0045.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0070
Adoption of Final Local Review Order

(1) Following the final hearing on the proposed review order, the local government shall adopt a final local review order. The local government shall mail or otherwise submit to the Director four copies of the material required by OAR 660-019-0070(2) not later than 20 days after the final decision by the local governing body.

(2) The Department shall review the final order and supplementary material within ten days to determine whether it is complete. In order to be deemed complete, the submittal shall contain:

(a) A cover letter indicating the nature of the submittal and requesting review;

(b) The final order of the local government;

(c) Plan and land use regulation amendments referenced in the final order;

(d) Supplemental materials referenced in the final order; and

(e) Evidence of adoption of the final order and plan or land use regulation amendments referenced in the final order.

(3) Based on the completeness check, the Director shall either:

(a) Determine the submittal is incomplete and notify the local government in writing of missing materials; or

(b) Determine the submittal is complete and issue notice required by OAR 660-019-0075.

(4) For purposes of this rule, a submittal which is incomplete is considered as not submitted.

(5) The local government shall specify in its submittal to the Director the changes that have been made in those cases where there have been substantial amendments between the proposed local review order and the final local review order.

(6) The local government shall also provide, not later than 20 days after the final decision, notice to persons who participated orally or in writing in the proceedings leading to adoption of the final local review order and who had requested the local government in writing that they receive such notice. The notice provided to persons requesting notice shall:

(a) Briefly describe the action taken by local government;

(b) Indicate the date of the decision;

(c) State the location and time when the final local review order, findings, and text may be reviewed; and

(d) Explain the requirements for submittal of written objections to the Director as described in OAR 660-019-0080.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0075
Director Notice of Final Local Review Order

(1) Not later than ten days after receipt of a complete local review order, the Director shall provide notice to any persons who have requested notice pursuant to OAR 660-019-0100(2).

(2) The notice shall explain the requirements for the submittal of written objections, the date by which objections must be received by the Director and local government, and the locations where the final local review order, findings, and text may be reviewed.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0080
Objections to Final Local Review Order

(1) Except as provided in section (2) of this rule, only those

persons who participated orally or in writing in the local government proceedings leading to the adoption of the final local review order may file an objection with the Director and the local government.

(2) Any person may file an objection to the final local review order if it has been substantially amended from the proposed local review order so that the proposed order received under OAR 660-019-0060(4) did not reasonably describe the local government's final decision.

(3) An objection filed against a final local review order shall:

(a) Be in writing;

(b) Be mailed or otherwise submitted to the Director and the local government not later than 30 days from the receipt of a complete final order by the Department;

(c) Be limited to those issues raised by the objector in the proceedings before the local government unless the final local review order has been substantially amended from the proposed local review order so that the proposed order received under OAR 660-019-0060(4) did not describe the nature of the local government's final decision; and

(d) Specify the alleged grounds upon which the final local review order does not meet the periodic review factors pursuant to OAR 660-019-0055 through 660-019-0057.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0085
Director Review of Final Local Review Order

(1) Not later than 60 days after receipt of the final local review order, unless extenuating circumstances exists, the Director shall review the local government's final order including any objections received pursuant to OAR 660-019-0080 and complete either subsection (a) or (b) of this section:

(a) Issue a Director termination order based on findings that the jurisdiction has met the requirements of the periodic review factors including the items in the periodic review notice under OAR 660-019-0050 or that the factors do not apply; or

(b) Submit to the Commission a report which addresses the requirements of the periodic review factors, the local governments final review order and any objections filed with the Director. The Director shall recommend to the Commission either approval of the local government's final local review order or issuance of an order requiring amendments to the plan or land use regulations and shall give reasons therefore.

(2) The Director shall notify in writing the local government and any objectors of the decision under subsection (1)(a) or (b) of this rule and shall give reasons therefore.

(3) An objector may file an appeal to the Commission of the Director's decision to issue a Director termination order. Objections to the Director's decision must be filed with the Director not later than 30 days of the mailing of the Director's action. In response to an appeal of the termination order, the Director shall prepare and submit a report to the Commission in the same manner as provided under subsection (1)(b) of this rule.

(4) Notwithstanding other provisions of this division, following submittal of a final order, the local government may make revisions to the order, findings, plan, land use regulations or other documents. The local government shall provide the Director, objectors and other participants with at least 20 days' advance notice of its hearing on proposed changes. The notice shall include the text of the proposed revisions or amendments. This notice shall also supersede notice requirements of ORS 197.610. Where such notice is given, the Director need not give any additional notice following submittal of the changed provisions. Submittal shall also include notice required by ORS 197.615. The Director shall revise the report prepared under section (1) of this rule to reflect the revised local order, plan, regulations or other documents.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0090
Commission Review of Director's Review Report

(1) Unless extenuating circum-stances exist or a different time is stipulated by all the parties, the Commission shall issue a final order within 60 days following submittal of a report filed either under OAR 660-019-0085(1)(b), 660-019-0085(3), or 660-019-0095(4).

(2) Upon completion of the Director's report, the Director shall mail a copy of the report to the local government and all persons who submitted objections at least 20 days before the Commission meeting at which review of the Director's report and the jurisdiction's final local review order are to be considered. As part of the mailing of this report, the Director shall inform the local government and the objectors of the date and location of the Commission meeting and the final date to file written exceptions to the report and to the objections. Exceptions to the report and to the objections shall be submitted to the Director not later than ten days after the mailing of the Director's report.

(3) The Commission shall provide for oral argument from the Director, the local government, and objectors in the conduct of its review of the Director's report and the final local review order.

(4) The Commission's record for the review of the Director's report and the final local review order shall consist of:

(a) Any objections filed with the Director pursuant to OAR 660-019-0080;

(b) The local government's final local review order, including findings, text of any amendments or new regulations, and other materials submitted by the local government;

(c) The acknowledged comprehensive plan and land use regulations of the local government; and

(d) The Director's report, the written exceptions filed to the Director's report, and the oral arguments.

(5) Following its review, the Commission shall adopt a Commission review order which either:

(a) Sustains the local government's final local review order and finds that it has adequately addressed the applicable periodic review factors and therefore remains in compliance with the goals and coordinated with state agency plans and programs; or

(b) Requires the local government to amend its acknowledged comprehensive plan and land use regulations to respond to requirements of the periodic review factors in order to remain in compliance with the goals and coordinated with state agency plans and programs.

(6) An order issued by the Commission pursuant to subsection (5)(b) of this rule shall specify a reasonable length of time for the local government to complete its plan and land use regulation amendments to comply with the Commission's order. Extensions of time may be granted by the Director in the same manner provided for by OAR 660-019-0045(3) to (6).

(7) The Director shall notify the Real Estate Division, the local government, and all persons who filed comments or objections to the Director's report and the jurisdiction's final review order.

(8) Appeal of the Commission's order under section (5) of this rule shall follow the procedure established by ORS 197.650(1)(b).

(9) Plan and land use regulation amendments completed in response to a Commission order pursuant to subsection (5)(b) of this rule shall be submitted for review and approval in the same manner as provided in OAR 660-019-0070 or 660-019-0085(4).

(10) Following issuance of the Commission's order, subsequent reviews of local government actions pursuant to the order shall be limited to whether revisions meet the requirements of the Commission's order. New objections may be raised only when required amendments affect other periodic review issues, which could not have been raised previously.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87; LCDC 7-1988, f. & cert. ef. 12-29-88

660-019-0095
Expedited Periodic Review Procedure

(1) Local governments who satisfy one or more of the following are eligible for the expedited periodic review procedure. The expedited review process applies to:

(a) Cities with a population under 2,500 within the urban growth boundary;

(b) Counties with a total population under 5,000; and

(c) Counties within which there are no cities with a population over 2,500 within the urban growth boundary.

(2) The Director shall utilize current census information including information from the Center for Population Research at Portland State University and consult as necessary with the applicable jurisdictions in identifying the affected local governments eligible for the expedited procedure. In case of conflicts over population figures, the Director's decision will be final.

(3) In response to its periodic review notice, a local government classified by the Director to be eligible for expedited review has three choices:

(a) The first choice is to submit a letter requesting delay in periodic review to the next review cycle. The letter must explain that substantial changes in circumstances have not occurred and therefore the plan continues to provide adequate guidance for land use decisions until the next review cycle; and what steps have been or will be taken to assure the plan is consistent with new or amended statutes, Statewide Planning Goals or administrative rules adopted since acknowledgment;

(b) The second choice is to submit a copy of its plan and land use regulations for DLCD review without a local periodic review order. DLCD would then have up to one year to conduct its review and inform the local government of any changes needed to meet periodic review requirements. As part of this review, the Director may determine that no periodic review is required as outlined under subsection (a) of this section and reschedule the review for the next cycle of periodic reviews; or

(c) The third choice is to follow the complete periodic review process as if the jurisdiction did not qualify for expedited review.

(4) Under subsections (3)(a) and (b) of this rule, notice of the initial submittal or request will be given as if the submittal were a final order pursuant to ORS 197.641(3). Persons who receive notice under this provision have 30 days to submit objections to DLCD. Following review of the submittal or request and objections, the Director will issue a report and determination, including requirements which the local government must meet to qualify for a delay to the next review cycle. The local government and any objectors then have an opportunity to appeal DLCD's report to the Commission pursuant to OAR 660-019-0085(3) and 660-019-0090. Required changes must be submitted pursuant to requirements of OAR 660-019-0085.

(5) The Director's decision on periodic review for expedited review jurisdictions shall be based on the following criteria:

(a) Whether substantial changes in circumstances exist that result in an inadequate planning framework for decision making until the next scheduled periodic review;

(b) Whether the plan and land use regulations are or will be made consistent with current state statutes, Statewide Planning Goals and LCDC administrative rules.

(6) Appeals of the Director's decision, in section (4) of this rule shall be based on criteria outlined in section (5) of this rule.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84; LCDC 4-1987, f. & ef. 11-12-87

660-019-0097
Codified Plan

(1) Based on ORS 197.260, 197.190 and the legislative policy described in ORS 197.010, each local government shall file three complete and accurate copies 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.

(2) These materials must be submitted to the Department within six months of completion of periodic review.

(3) The codified materials shall be accompanied by statement signed by the planning director or other city or county official certifying that the materials are an accurate copy of current planning documents and that they reflect changes made as part of periodic review.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1987, f. & ef. 11-12-87

660-019-0100
Fee for Notice

(1) An annual fee of $50 to defray the costs of notice provided under OAR 660-019-0065 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1985. The fee is payable in advance of any notice being provided under OAR 660-019-0065. For each subsequent fiscal year, the Director shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-019-0065.

(2) An annual fee of $50 to defray the costs of notice provided under OAR 660-019-0075 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1985. The fee is payable in advance of any notice being provided under OAR 660-019-0075. For each subsequent fiscal year, the Director shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-019-0075.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84

660-019-0105
Computation of Time

(1) For the purposes of this Division the time to complete required tasks shall be computed as follows. The first day of the designated period to complete the task shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday recognized
by the State of Oregon. In that event the period shall run until the end of the next day which is not a Saturday, Sunday or state legal holiday.

(2) When the period of time to complete the task is less than seven days, intervening Saturdays, Sundays or state legal holidays shall not be counted.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84

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**:** The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 390

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

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 Department of Transportation.

(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 Department of Transportation requesting submission of the amendment to LCDC for adoption of an administrative rule amending of the Department of Transportation's (DOT) Greenway Plan. This request shall include the proposed plan change, and reasons why such a plan change is necessary. The Department of Transportation shall, within 30 days submit the request with comments to LCDC.

(3) If the plan change is initiated by the Department of Transportation, the request shall be made in writing to LCDC:

(a) Requesting that LCDC adopt by adminis-trative rule certain changes to DOT Greenway Plan;

(b) Explaining the proposed change to the plan;

(c) Explaining why the proposed change to the plan is necessary. The Department of Transportation 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 Department of Transportation, and the boundary change(s) shall be recorded on the DOT and LCDC Greenway maps as well as the local Greenway map(s) in the appropriate County Recorder's office.

Stat. Auth.: ORS Ch. 183, 197 & 390
Hist.: LCD 5-1980, f. & ef. 7-2-80

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660-020-0060
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[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 390
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

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(3) If the plan change is initiated by the Department of Transportation, the request shall be made in writing to LCDC:

(a) Requesting that LCDC adopt by adminis-trative rule certain changes to DOT Greenway Plan;

(b) Explaining the proposed change to the plan;

(c) Explaining why the proposed change to the plan is necessary. The Department of Transportation 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 Department of Transportation, and the boundary change(s) shall be recorded on the DOT and LCDC Greenway maps as well as the local Greenway map(s) in the appropriate County Recorder's office.

Stat. Auth.: ORS Ch. 183, 197 & 390
Hist.: LCD 5-1980, f. & ef. 7-2-80

DIVISION 21

URBAN RESERVE AREAS

660-021-0000
Purpose

This division authorizes 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 which would impede urbanization.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

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 Area": Lands outside of an urban growth boundary identified as highest priority for inclusion in the urban growth boundary when additional urbanizable land is needed in accordance with the requirements of Goal 14.

(2) "Resource Land": Land subject to the Statewide Planning Goals listed in OAR 660-004-0010(1)(a) through (f), except sub-

section (c).

(3) "Nonresource Land": Land not subject to the Statewide Planning Goals listed in OAR 660-004-0010(1)(a) through (f) except subsection (c). Nothing in this definition is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land.

(4) "Exception Areas": Rural lands for which an exception to Statewide Planning Goals 3 and 4, as defined in OAR 660-04-005(1), has been acknowledged.

(5) "Developable Land": Land that is not severely constrained by natural hazards, nor designated or zoned to protect natural resources, and is either entirely vacant or has a portion of its area unoccupied by structures or roads.

(6) "Adjacent": Lands either abutting or at least partially within a quarter of a mile of an urban growth boundary.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0020
Authority to Establish Urban Reserve Areas

Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan area urban growth boundary, are authorized to designate urban reserve areas under the requirements of this rule, 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 reserve areas 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 areas in accordance with the requirements of this division.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0030
Determination of Urban Reserve Areas

(1) Urban reserve areas 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 time frame used to establish the urban growth boundary, except for the Portland Metropolitan Area Urban Growth Boundary, where the urban reserve area shall include an amount of land estimated to be a 30-year supply.

(2) Inclusion of land within an urban reserve area shall be based upon factors 3 through 7 of Goal 14 and the criteria for exceptions in Goal 2 and ORS 197.732. Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan Area Urban Growth Boundary, shall first study lands adjacent to the urban growth boundary for suitability for inclusion within urban reserve areas, as measured by Factors 3 through 7 of Goal 14 and by the requirements of OAR 660-004-0010. Local governments shall then designate for inclusion within urban reserve areas those suitable lands which satisfy the priorities in section (3) of this rule.

(3) Land found suitable for an urban reserve may be included within an urban reserve area only according to the following priorities:

(a) First priority goes to lands adjacent to an urban growth boundary which are identified in an acknowledged comprehensive plan as exception areas 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 ORS 197.247;

(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 as secondary if such category is defined by Land Conservation and Development Commission rule or by the legislature;

(d) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, fourth 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) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands; or

(b) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or

(c) Maximum efficiency of land uses within a proposed urban reserve area 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 above consideration shall be included in the comprehensive plans of affected jurisdictions.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0040
Urban Reserve Area Planning and Zoning

(1) Lands in the urban reserve area shall continue to be planned and zoned for rural uses, 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 area 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 in the future. These measures shall be adopted by the time the urban reserve area is designated, and 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;

(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 lands in urban reserve areas, land use regulations shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted by acknowledged zoning applied as of the date of establishment of the urban reserve area.

(4) Resource lands which are included in urban reserve areas shall continue to be planned and zoned under the requirements of applicable Statewide Planning Goals.

(5) Urban reserve area agreements consistent with applicable comprehensive plans and meeting the requirements of OAR 660-021-0050 shall be adopted for urban reserve areas.

(6) Cities and counties are authorized to plan for the eventual provision of urban public facilities and services to urban reserve areas. However, this division is not intended to authorize urban levels of development or services in urban reserve areas prior to their inclusion in the urban growth boundary. This division also is not intended to prevent any planning for, installation of, or connection to public facilities or services in urban reserve areas consistent with acknowledged comprehensive plan and land use regulations.

(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 area.

Stat. Auth.: ORS Ch. 183, 197.040, 197.050 & 197.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94

660-021-0050
Urban Reserve Area Agreements

Urban reserve area planning shall include urban reserve agreements between cities and counties and among cities, counties and special districts serving or projected to serve the designated urban reserve area. These agreements shall be adopted by each applicable jurisdiction and shall contain:

(1) Designation of the local government responsible for building code administration and land use regulation in the urban reserve area, both at the time of reserve designation and upon inclusion of these areas 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 Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0060
Urban Growth Boundary Expansion

(1) All lands within urban reserve areas 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 area.

(2) The interim requirements of OAR 660-021-0100 are not intended to prohibit urban growth boundary amendments meeting state and local requirements.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0070
Adoption and Review of Urban Reserve Areas

(1) Designation and amendment of urban reserve areas shall follow the procedures in ORS 197.610 through 197.650.

(2) For purposes of review, a decision designating or amending an urban reserve area shall not be final until affected cities and counties, or the Metropolitan Service District and affected local governments for the Portland Metropolitan Area Urban Growth Boundary, have adopted the following:

(a) Urban reserve area policies and related requirements in the comprehensive plan and land use regulations; and

(b) Appropriate amendments to comprehensive plan and zoning maps.

(3) Disputes between jurisdictions regarding urban reserve area boundaries, planning and regulation, or urban reserve agreements may be mediated by the Department or the Commission upon request by an affected local government or special district.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0080
Applicability

(1) The provisions of this rule are effective upon filing with the Secretary of State.

(2) All local governments may designate urban reserve areas under the requirements of this division. The Commission may require a local government to designate an urban reserve area during its periodic review in accordance with the standards for periodic review under ORS 197.628.

(3) The Commission may require a local government to designate an urban reserve area outside of periodic review if:

(a) On November 4, 1993, the local government is located inside a Primary Metropolitan Statistical Area or a Metropolitan Statistical Area as designated by the Federal Census Bureau; and

(b) The local government was required to designate an urban reserve area by rule adopted prior to November 4, 1993;

(c) Pursuant to subsections (a) and (b) of this section, local governments with planning and zoning responsibility for lands in the vicinity of the following urban growth boundaries shall designate urban reserve areas in accordance with the requirements of this division: The Cities of Medford, Newberg, and Sandy, and the Portland Metropolitan Service District for the Portland Area Urban Growth Boundary.

(4) Where the requirements of OAR 660-021-0090(1) are not satisfied, and the director has not approved additional time under OAR 660-021-0090(2), the following shall apply until the requirements of OAR 660-021-0090(1) have been met, as authorized by ORS 197.646(3):

(a) No subdivisions or partitions shall be approved in exception areas and nonresource lands within two miles of the urban growth boundary;

(b) In addition, the Commission may review whether or not enforcement action under ORS 197.646(3) shall be initiated.

(5) Upon a finding by a county that a city listed in section (3) of this rule has failed to negotiate in good faith toward meeting the requirements of OAR 660-021-0090(1)(a), the Commission may authorize the county to unilaterally adopt an urban reserve area for the applicable urban area.

(6) Jurisdictions not listed under section (3) of this rule with acknowledged plan and/or zone provisions that designate specific rural areas as priority for future inclusion in an urban growth boundary shall review and amend such provisions as necessary to ensure consistency with the requirements of this division as part of the evaluation required at the jurisdiction's next regularly scheduled periodic review.

Stat. Auth.: ORS Ch. 183, 197.040, 197.050 & 197.145
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94

660-021-0090
Implementation Schedule

(1) Local governments listed in OAR 660-021-0080(3) shall complete urban reserve area planning under the following schedule:

(a) Adopt final urban reserve area boundaries, including all mapping, planning, and land use regulation requirements specified in OAR 660-021-0040 within 24 months from the effective date of this rule; and

(b) Adopt urban reserve area agreements meeting OAR 660-021-0050 within one year from adoption of urban reserve areas.

(2) The Director may grant an extension to time lines under subsections (1)(a) or (b) of this rule if the Director determines that the local government has provided proof of good cause for failing to complete urban reserve requirements on time.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0100
Interim Protection of Potential Reserve Areas

For local governments listed in OAR 660-021-0080(3) the following requirements for land use decisions in all exception areas and nonresource lands within two miles of the urban growth boundary shall immediately apply. These requirements shall remain in effect until application of planning and land use regulations and acknowledgement of urban reserve areas meeting OAR 660-021-0090(1)(a):

(1) Prohibit land use regulation or map amendments allowing higher residential density than allowed by acknowledged provisions in effect prior to the effective date of this rule; and

(2) Prohibit land use regulation or map amendments allowing commercial or industrial uses not allowed under acknowledged provisions in effect prior to the effective date of this rule, except that mineral and aggregate sites inventoried in the plan may be

rezoned to authorize mining activities;

(3) For review of divisions on parcels currently ten acres or larger, notify the department consistent with local notification requirements which must at minimum conform with the procedures of notice contained in ORS 215.402 - 215.428, 227.162 - 227.178, and 197.763. In addition, local review of land divisions of parcels currently ten acres or larger shall ensure that the proposed division will not allow development patterns which interfere with the timely, orderly and efficient transition from rural to urban uses, and the efficient expansion of urban areas in the future.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

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
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) "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.

(6) "Rural Community" is an unincorporated community which consists primarily of residential uses 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.

(7) "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 dwellings.

(8) "Urban Unincorporated Community" is an unincorporated community which has the following characteristics:

(a) Includes at least 150 permanent dwelling units including manufactured homes;

(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.

(9) "Unincorporated Community" means a settlement with these characteristics:

(a) It is made up of lands subject to an exception to Statewide Planning Goal 3, Goal 4 or both;

(b) It was designated in a county's acknowledged comprehensive plan as a "rural community", "service center", "rural center", or similar term before this rule was adopted;

(c) It lies outside the urban growth boundary of any city;

(d) It is not incorporated as a city; and

(e) It meets the definition of one of the four types of unincorporated communities in sections (5) through (8) of this rule.

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

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 determine boundaries of unincorporated communities in order to distinguish lands within the community from adjacent exception areas, resource lands and other rural lands.

(3) The boundaries of unincorporated commu-nities shall be shown on the county comprehensive plan map at a scale sufficient to determine accurately which properties are included. Only land meeting the following criteria may be included within an unincorporated community:

(a) Land which has been acknowledged as an exception area and historically considered to be part of the community;

(b) Land planned and zoned for farm or forest use which is contiguous to the community area and contains public uses considered to be part of the community, provided such land remains planned and zoned under Goals 3 or 4.

(4) Communities which meet the definitions in both OAR 660-022-0010(5) and (8) shall be classified and planned as either resort communities or urban unincorporated communities.

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

660-022-0030
Planning and Zoning of Unincorporated Communities

(1) For rural communities, resort communities and urban unincorporated commu-nities, 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 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 served 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.

(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 UBG;

(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 uses authorized within unincorpo-rated communities do no adversely affect agricul-tural 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 unincorpo-rated communities shall ensure that the cumula-tive 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 this section, 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 this section, a small-scale, low impact industrial use is one which takes place in an urban unincorporated community in a building or buildings not exceeding 20,000 square feet of floor space, or in any other type of unincor-porated community in a building or buildings not exceeding 10,000 square feet of floor space.

Stat. Auth.: ORS 197.040 & 197.245

Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

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 during regularly scheduled periodic review 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 by the time of the county's next regularly scheduled periodic review.

Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

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, or a community sewage or water system is projected to be needed by the next periodic review.

(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
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

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 opportunities in accordance with their acknowl-edged 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
Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94

660-022-0070
Applicability

For each unincorporated commu-nity 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
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

(1) 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 other-

wise:

(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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 manage-ment 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 infor-mation 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 depart-ment, 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 regula-tions 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 OAR 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 determi-nations 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, notwith-standing the possible impacts on the resource site. The ESEE analysis must demon-strate 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 stan-dards), 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 deter-mined under OAR 660-023-0040(5) and 660-023-0050(1).

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 acknowl-edgment 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 require-ments 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 imag-inary 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(2).

(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; and

(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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

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 acknowl-edged 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 sub-section, 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 acknowl-edged 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 manage-ment 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 govern-ments 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

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 OAR 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 manage-ment 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 reason-ably likely to move toward and reach that water well, spring, or wellfield.

(2) Local governments shall amend acknowl-edged 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 ground-water-limited areas designated by the Oregon Water Resources Commission (OWRC), 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 ground-water-limited areas designated by order of the OWRC pursuant to ORS 537.505 et seq. 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 660-022-0030(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 Environ-mental Quality (DEQ) under OAR 340-040-0180.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

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 re-

creation 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 and gravel, decomposed granite, lime, pumice, cinders, and other naturally occurring solid materials used in road building.

(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 sections 4(b) and (5) of this rule).

(c) "Existing site" is a significant aggregate site that is lawfully operating, or is included on an inventory in an acknowledged plan, on the applicable date of this rule.

(d) "Expansion area" is an aggregate mining area contiguous to an existing site.

(e) "Mining" is the extraction and processing of mineral or aggregate resources, in the manner provided under ORS 215.298(3).

(f) "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.

(g) "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.

(h) "Processing" means the activities described in ORS 517.750(11).

(i) "Protect" means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site and to limit or prohibit new conflicting uses within the impact area of the site.

(j) "Width of 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.

(k) "Willamette Valley" means Benton, Clackamas, Columbia, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties and the portion of Lane County 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 PAPA, or at periodic review as specified in OAR 660-023-0180(7). The requirements of this rule either 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 as modified by subsection (b) of this section. When a local government is following the inventory process for a mineral or aggregate resource site filed under a PAPA, it shall follow only the applicable requirements of OAR 660-023-0030, except as provided in sections (3) and (6) of this rule;

(b) Local governments shall apply the criteria in section (3) of this rule 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 (4) of this rule in deciding whether to authorize the mining of a significant mineral or aggregate resource site; and

(d) For significant mineral and aggregate sites where mining is allowed, 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 Oregon Department of Transportation (ODOT) specifi-cations for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 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 is on an inventory of significant aggregate sites in an acknowledged plan on the applicable date of this rule.

(d) Notwithstanding subsections (a) through (c) 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 the date of this rule; 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 the date of this rule, unless the average width 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) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving a significant aggregate site, the process for this decision is set out in subsections (a) through (g) of this section. For a PAPA involving a significant aggregate site, a local government must complete the process within 180 days after receipt of a complete application that is consistent with section (6) of this rule, or by the earliest date after 180 days allowed by local charter. The process for reaching decisions about aggregate mining is as follows:

(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 operation 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 impoun-dments. This paragraph shall not apply after the effective date of commission rules adopted pursuant to Chapter 285, Oregon Laws 1995;

(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.

(5) 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 (4) of this rule, the local government decides that mining will not be authorized at the site.)

(6) 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 a PAPA concerning a significant aggregate site 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 (4)(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.

(7) 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, except as provided under OAR 660-023-0250(7).

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

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 469.503; 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

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 Preser-vation. Where possible, local governments should develop a local historic context statement and adopt a historic preservation plan and a historic preser-vation 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 partic-ipate 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 Preser-vation 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 inven-tories, 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 govern-ments 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 govern-ment 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 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 demon-strating 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 Ch. 183 & 197
Stats. Implemented: ORS 197.040 & 297.225 to 197.245
Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

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. This division is intended to implement provisions of ORS 197.628 through 197.646. The purpose for periodic review of each local government's comprehensive plan and land use regulations is to assure that comprehensive plans and land use regulations are achieving the statewide planning goals adopted pursuant to ORS 197.230 and are coordinated as described in ORS 197.015(4). Periodic review also provides the opportunity for local government to update its comprehensive plan and land use regulations to carry out local goals and objectives. Periodic Review is a cooperative process between the state, local governments and other interested persons.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0020
Definitions

For the purposes of this division, the definitions contained in ORS 197.015 and the following definitions, shall 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 program task, 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) "Objection" means a written complaint concerning the adequacy of an evaluation, proposed work program or completed work task.

(4) "Work Program" means a detailed listing of tasks necessary to revise or amend the local comprehensive plan or land use regulations to assure the plan and regulations achieve the statewide planning goals. A work program shall indicate the date that each work task shall be submitted to the Department for review.

(5) "Work Task" means a work program task that is included on an approved work program.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.015 & 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0030
Periodic Review Schedule

(1) The Commission shall approve, and update as necessary, a schedule for periodic review. The schedule shall include the date when each local government shall be sent a letter by the Department requesting the local government to commence the periodic review process.

(2) No local government comprehensive plan and land use regulations shall be reviewed sooner than four years nor later than ten years from the date the Department or Commission:

(a) Approved a work program;

(b) Approved a decision that no work program is required; or

(c) Terminated the previous periodic review pursuant to former ORS 197.640 through 197.647.

(3) The Commission may modify the schedule based on written requests from local governments, state agencies or the Director.

(4) The Director shall maintain and implement the schedule. Copies of the schedule shall be provided upon request.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0040
Exclusive Jurisdiction of LCDC

The commission, pursuant to ORS 197.644(2), shall have exclusive jurisdiction for the review of the evaluation, work program and all work program tasks for compliance with the statewide planning goals. The Land Use Board of Appeals shall have exclusive jurisdiction over land use decisions made in periodic review for issues that do not involve compliance with the statewide planning goals, and over all other land use decisions as provided in ORS 197.825.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0050
Commencing Periodic Review

(1) The Department shall commence the periodic review process by sending a letter to the affected local government pursuant to the schedule. The Department may provide advance notice to a local government of the upcoming review and shall encourage local governments to review their citizen involvement provisions prior to beginning periodic review.

(2) The periodic review commencement letter shall 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 evaluation and work program or evaluation and decision that no work program is required shall be submitted;

(c) Applicable evaluation forms; and

(d) Other information the Department considers relevant.

(3) The Director shall provide copies of the materials sent to the local government to interested persons upon written request.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

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 shall 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 shall 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 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) Consideration by the Commission. The Commission shall consider the recommendations, if any, of the Periodic Review Assistance Team(s).

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0070
Periodic Review Standards

The purpose of periodic review is to assure that comprehensive plans and land use regulations are achieving the statewide planning goals adopted pursuant to ORS 197.230. The following standards establish the scope of review for periodic review of comprehensive plans and land use regulations:

(1) 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;

(2) That implementation decisions or the effects of implementation decisions, including the application of acknowledged plan and land use regulation provisions are inconsistent with the goals; and

(3) That 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 provisions of the goals.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0080
Citizen Involvement

(1) The local government shall use its acknowledged or otherwise approved citizen involvement program to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government shall 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 shall also provide written notice of the initiation of the local periodic review to other persons who, in writing, request such notice.

(2) Each local government shall review its citizen involvement program and assure that there is an adequate process for citizen involvement in all phases of the periodic review process. Citizen involvement opportunities shall, at a minimum, include:

(a) Interested persons shall have the opportunity to comment in writing in advance of or at one or more hearings on the periodic review evaluation. Citizens and other interested persons shall have the opportunity to present comments orally at one or more hearings on the periodic review evaluation. Citizens and other interested persons shall have the opportunity to propose periodic review work program tasks prior to or at one or more hearings. Citizens and other interested persons shall receive a response to their comments at or following the hearing on the evaluation.

(b) Interested persons shall have the opportunity to comment in writing in advance of or at one or more hearings on a periodic review work task. Citizens and other interested persons shall have the opportunity to present comments orally at one or more hearings on a periodic review work task. Citizens and other interested persons shall receive a response to their comments at or following the hearing on a work task.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0090
Evaluation, Work Program or Decision That No Work is Necessary

(1) The local government shall conduct an evaluation of its plan and land use regulations based on the periodic review standards in ORS 197.628 and OAR 660-025-0070. The evaluation shall include submittal of completed evaluation forms that are appropriate to the jurisdiction as determined by the Director. Evaluation forms shall be based on the jurisdiction's size, growth rate, geographic location and other factors which 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 within evaluation forms.

(2) The local government shall follow its citizen involvement program for conducting the evaluation and determining the scope of a work program. During the evaluation and work program process, the Department or members of the Periodic Review Assistance Team may provide comment and assistance to the local government. The local government shall provide opportunities for the involvement of the Department and Periodic Review Assistance Team. 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 shall be considered by the local government.

(3) The local government shall submit the evaluation to the Department within four months of the date the Department sends the letter initiating the periodic review process. If a local government fails to submit its evaluation within the four month period, the Director may grant an extension for submitting the evaluation if the Director determines that the local government has proven good cause for failing to submit its evaluation within the time specified. An interested person or the local government may request a contested case hearing on the Director's decision concerning the extension. The Director shall schedule a contested case hearing before a hearings officer as required by ORS 197.636 when requested or where the Director determines the local government has not proven good cause for the failure to submit by the time specified. The Director may cancel the contested case hearing if the evaluation is submitted prior to the date set for the hearing. One purpose of the hearing shall be to determine if the local government has proven there is good cause for the failure to submit the required materials on time. Another purpose of the hearing may be to recommend appropriate sanctions authorized by ORS 197.636(1).

(4) The local government shall provide copies of the evaluation to members of the Periodic Review Assistance Team, if formed, and others who have, in writing, requested copies. The purpose of submitting the evaluation prior to a determination of the need for a work program is to encourage discussion between the local government and interested persons.

(5) The local government shall provide at least 21 days for local review and comment on the evaluation prior to submitting a work program or decision that no work program is necessary. After the local review of the evaluation and comments from interested persons, the local government shall submit a work program or decision that no work program is necessary, approved by the governing body, to the Department. The local government shall submit to the Department a list of persons who requested notice of the evaluation and work program or evaluation and decision that no work program is necessary. The local government may also submit a revised evaluation based on input from the Periodic Review Assistance Team or other interested persons.

(6) The maximum time for submittal of the work program or decision that no work program is necessary shall be eight months from the transmittal to the local government of the letter initiating the process. If a local government fails to submit its work program or decision that no work program is required within eight months, the Director may grant an extension for submitting the work program or decision that no work program is necessary if the Director determines that the local government has proven good cause for failing to submit a work program or decision that no work program is necessary within the time specified. An interested person or the local government may request a contested case hearing on the Director's decision concerning the extension. The Director shall schedule a contested case hearing before a hearings officer as required by ORS 197.636 when requested or where the Director determines there is not good cause for the failure to submit by the time specified. One purpose of the hearing shall be to determine if the local government has proven that there is good cause for the failure to submit the required materials on time. Another purpose of the hearing may be to recommend appropriate sanctions authorized by ORS 197.636(1).

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

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 shall notify the Department, Periodic Review Assistance Team members and persons who have requested such notice in writing. The local government notice shall contain the following information:

(a) The notice shall state 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 notice shall state that an objection to the evaluation, work program or decision that no work program is necessary must be in writing;

(c) The notice shall state that persons must file an objection with the Department no later than 21 days from the date the notice is mailed;

(d) The notice shall state that objectors must give a copy of the objection to the local government;

(e) The notice shall state that objectors must satisfy all criteria of section (2) of this rule.

(2) To be valid, an objection shall:

(a) Be filed within the 21-day objection period;

(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; and

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local review process.

(3) Objections which do not meet the requirements of section (2) of this rule shall 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 evaluation and work program or decision that no work program is required. Regardless of whether valid objections are received, the Department may make its own determination of the sufficiency of the evaluation and work program or determination that no work program is necessary.

(5) If valid objections are received or the Department conducts its own review, the Department shall issue a report. The report shall focus on the issues raised in valid objections and concerns of the Department. The report shall identify specific work tasks to resolve valid objections or Department concerns. A valid objection shall either be sustained or rejected by the Department or Commission based on the standards set forth in OAR 660-025-0070.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0110
Director Action (Work Program Phase)

(1) The Director may:

(a) Issue an order approving the evaluation and work program or evaluation and determination that no work program is necessary;

(b) Issue an order rejecting the evaluation and work program or evaluation and determination that no work program is necessary and suggest modifications to the local government including a date for resubmittal; or

(c) Refer the evaluation and work program or evaluation and determination that no work program is necessary to the Commission for review and action.

(2) The Director may postpone action, pursuant to subsections (1)(a) - (c) 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 evaluation and determination that no work program is necessary.

(3) The Director shall 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 local government, or a person who filed an objection, or other person who participated orally or in writing at the local level, may appeal the Director's decision to the Commission.

(a) Appeal of the Director's decision shall 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 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.

(5) If no such appeal is filed, the Director's decision shall be final.

(6) In response to an appeal, the Director may prepare and submit a report to the Commission.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197..628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0120
Commission Review of Referrals and Appeals (Work Program Phase)

(1) Upon completion of a report, the Department shall mail a copy of the report to the local government, persons who submitted objections, and other persons who appealed the Director's decision. The report shall be mailed at least 21 days before the Commission meeting to consider the appeal or referral.

(2) Persons who filed valid objections or an appeal may file written exceptions to the Directors report within ten (10) days of the date the report is mailed. The Department may issue a response to exceptions and may make revisions to its report in response to exceptions. A response or revised report may be provided to the Commission at or prior to its hearing on the referral or appeal.

(3) At the request of a local government and a person who filed a valid objection or an appeal, 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 disagreements.

(4) The Commission shall hear referrals and appeals based on the written record unless the Commission requests new evidence or information at its discretion and allows the parties an opportunity to review and respond to the new evidence or information. No oral argument shall be allowed unless the director recommends it or the Commission on its own motion accepts it. In such case, the hearing may be postponed to allow parties to prepare for the hearing. If the Commission chooses to hear oral argument, such argument shall be limited to the Director, the local government and parties who filed objections or exceptions. Parties may address the Commission concerning only those issues raised in their objections or exceptions.

(5) Following its referral or appeal hearing, the Commission shall issue an order which either:

(a) Establishes a work program; or

(b) Determines that no work program is necessary.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0130
Submission of Completed Work Task

(1) A local government shall submit completed work tasks as provided in the approved work program. A local government shall

submit to the Department a list of persons who requested notice of the local government's final decision on a work task.

(2) After receipt of a work task, the Department shall determine whether the submittal is complete. To be complete a submittal shall be a final decision containing all required elements identified for that task in the work program.

(3) If the Department determines that a submittal is incomplete, it shall 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.

(4) If a local government fails to submit a complete work task by the submittal date in an approved work program, the Director may grant an extension for submitting the work task if the Director determines that the local government has proof of good cause for failing to submit the work task at the time specified. An interested person or the local government may request a contested case hearing on the Director's decision concerning the extension. The Director shall schedule a contested case hearing before a hearings officer as required by ORS 197.636 when requested or where the Director determines there is not proof of good cause for the failure to submit by the time specified. The Director may cancel the contested case hearing if the work task is submitted prior to the date set for the hearing. One purpose of the hearing shall be to determine if there is proof of good cause for the failure to submit the required materials on time. Another purpose of the hearing may be to recommend appropriate sanctions authorized by ORS 197.636(2).

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0140
Notice and Filing of Objections (Work Task Phase)

(1) After the local government makes a final decision on a work task, the local government shall notify the Department and persons who requested notice in writing. The local government notice shall contain the following information:

(a) The notice shall state 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 notice shall state that an objection to the work task must be in writing;

(c) The notice shall state that persons must file an objection with the Department no later than 21 days from the date the notice is mailed;

(d) The notice shall state that objectors must give a copy of the objection to the local government;

(e) The notice shall state that objectors must satisfy all criteria of section (2) of this rule;

(f) The notice shall state that for matters outside the jurisdiction of the Commission, objectors must appeal to the Land Use Board of Appeals as provided by ORS 197.825 through 197.830.

(2) To be valid, objections shall:

(a) Be filed within the 21-day objection period;

(b) Clearly identify an alleged deficiency in the work task;

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

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local review process.

(3) Objections which do not meet the requirements of section (2) of this rule shall 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 work task. Regardless of whether valid objections are received, the Department may make its own determination of the sufficiency and completeness of the work task. Except as provided in section (5) of this rule, if no objections are received and the Department does not notify the local government of a decision to conduct its own review within 60 days of the date the Department provided notice, the work task shall be deemed acknowledged. The Department shall provide a letter to the local government and persons who filed objections certifying that the work task is deemed acknowledged.

(5) When a subsequent work task conflicts with a work task that has been deemed acknowledged, or violates a statewide planning goal related to a previous work task, the Director or Commission shall not approve the submittal until all conflicts and goal 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 shall issue a report. The report shall focus on the issues raised in valid objections and concerns of the Department. The report shall identify specific work tasks to resolve valid objections or Department concerns. A valid objection shall either be sustained or rejected by the Department or Commission based on the standards set forth in OAR 660-025-0070.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0150
Director Action (Work Task Phase)

(1) The Director may:

(a) Issue an order approving the completed work task;

(b) Issue an order remanding the work task to the local government including a date for resubmittal; or

(c) Refer the work task and recommendation to the Commission for review and action.

(2) The Director shall send the order to the local government, persons who file objections, and persons who, in writing, request a copy of the action.

(3) The local government, a person who filed a valid objection, or other person who participated orally or in writing at the local level, may appeal the Director's decision to the Commission.

(a) Appeals of the Director's decision shall be filed with the Department within 21 days of the date the Director's action was mailed;

(b) A person appealing the Director's decision must show that the person participated in he local government decision. The person appealing the Director's decision must show a deficiency in the work task. The person appealing the Director's decision also must suggest a specific modification to the work task necessary to resolve the alleged deficiency.

(4) In response to a referral or appeal, the Director may prepare and submit a report to the Commission.

(5) If no appeal to the Commission is filed within the time provided by section (3) of this rule, the work tasks approved by the Director are considered acknowledged. The Department shall provide a letter to the local government and persons who filed objections certifying that the work task is acknowledged.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0160
Commission Review of Referrals and Appeals (Work Task Phase)

(1) The Department shall mail 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 shall mail the report at least 21 days before the Commission meeting to consider the referral or appeal.

(2) Persons who filed objections or an appeal may file written exceptions to the Director's report within ten (10) days of the date the report is mailed. The Director may issue a response to exceptions and may make revisions to its report in response to

exceptions. A response or revised report may be provided to the Commission at or prior to its hearing on the referral or appeal. A revised Director's report does not require mailing 21 days prior to the Commission hearing. Where the Director's report is substantially revised in response to exceptions, oral argument shall be allowed at the time of the scheduled Commission review. Oral argument shall be limited to issues resulting from the change in the Director's report.

(3) The Director may postpone the hearing on a revised report in order to allow the parties to submit written exceptions to the revised report. Such a postponement shall provide at least ten (10) days for filing exceptions. Where the Director postpones review for the purpose of filing exceptions to a revised Director's report Commission review shall be pursuant to section (5) of this rule.

(4) At the request of a local government and a person who files a valid objection or a person who 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 task disagreements.

(5) The Commission shall hear Appeals based on the written record unless the Commission requests new evidence or information at its discretion and allows the parties an opportunity to review and respond to the new evidence or information. The written record shall consist of the submittal, timely objections, the Director's report and timely exceptions to the Director's report. No oral argument shall be allowed unless the Director recommends it or the Commission on its own motion accepts it. In such case, the hearing may be postponed to the next regular meeting of the Commission to allow parties to prepare for the hearing. If the Commission chooses to hear oral argument, argument shall be limited to the Director, the local government and parties who filed objections or exceptions. Parties may address the Commission concerning only those issues raised in their objections or exceptions.

(6) Following its referral or appeal hearing, the Commission shall issue an order which does one or more of the following:

(a) Approves the work task;

(b) Remands the work task to the local government, including 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 be grounds for initiating a contested case hearing as outlined in ORS 197.636;

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

(e) Extends the dates for remaining work tasks on the approved work program in order to accommodate additional work on a remanded work task.

(7) If no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, the work tasks shall be deemed acknowledged. The Department shall provide a letter to the local government and persons who filed objections certifying that the work task is acknowledged.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0170
Modification of an Approved Work Program and Extensions

(1) The Director or the Commission may 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; or

(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.

(2) Failure to complete a modified work task shall be grounds to schedule a contested case hearing as if the work task originally approved had not been completed.

(3) A local government may request an extension for completion of a work task in advance of the date the task is due. Local government initiated extensions shall follow the procedures and standards in OAR 660-025-0130(4) dealing with late submittals.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

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, interested persons may request a stay of the local government 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 shall 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 work task or portion of a work task that is required by or carries out an approved work program. A temporary stay shall 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 Ch. 183 & 197
Stats. Implemented: ORS 197.628 - 646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92

660-025-0210
Updated Planning Documents

(1) Pursuant to ORS 197.260, 197.190 and the legislative policy described in ORS 197.010, each local government shall file two complete and accurate copies 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 or upon approval of the Department, an up-to-date copy on computer disk(s) or other electronic format.

(2) Materials described in section (1) of this rule shall be submitted to the Department within six months of completion of the last work task.

(3) The updated plan shall be accompanied by a statement signed by the Planning Director or other
city or county official certifying that the materials are an accurate copy of current planning documents and that they reflect changes made as part of periodic review.

(4) Jurisdictions who do not file an updated plan on time shall not be eligible for grants from the Department until such time as the required materials are provided to the Department.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS 197.190, 197.270 & 197.628 -646
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0220
Computation of Time

(1) For the purposes of OAR Chapter 660, Division 25, periodic review rule, the time to complete required tasks shall be computed as follows. The first day of the designated period to complete the task shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday recognized by the State of Oregon. In that event the period shall run until the end of the next day which is not a Saturday, Sunday or state legal holiday.

(2) When the period of time to complete the task is less than

seven (7) days, intervening Saturdays, Sundays or state legal holidays shall not be counted.

Stat. Auth.: ORS Ch. 183 & 197
Stats. Implemented: ORS Ch. 183 & 197
Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

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 Ch. 183 & 197
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, 197.640 to 197.649 and 197.625.

(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 Ch. 183 & 197
Hist.: LCD 12, f. & ef. 10-14-77; LCDC 6-1982, f. & ef. 7-22-82; LCDC 5-1986, f. & ef. 12-24-86

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 Ch. 183 & 197
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 re-

viewed, but shall be at least 30 days.

Stat. Auth.: ORS Ch. 183 & 197
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 Ch. 183 & 197
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 OAR 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

(g) 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 Ch. 183 & 197
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; or

(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 Ch. 183 & 197
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 appli-

cable 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 Ch. 183 & 197

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 Ch. 183 & 197
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 Ch. 183 & 197
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 Ch. 183 & 197
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 Ch. 183 & 197
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 Ch. 183 & 197
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 Ch. 197
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 Ch. 197
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;

(j) Public Utility Commissioner (PUC) — Railroad Highway Crossing Project.

Stat. Auth.: ORS Ch. 197
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: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Land Conservation and Development Commisssion.]

Stat. Auth.: ORS Ch. 197
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 Ch. 197
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 Ch. 197
Hist.: LCDC 2-1984, f. & ef. 2-27-84

660-031-0030
Effect of a Determination of Noncompliance orIncompatibility

In accordance with OAR 660-001-0025 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 Ch. 197
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 Ch. 197
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 Ch. 197
Hist.: LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

DIVISION 33

AGRICULTURAL LAND

660-033-0010

Purpose

The purpose of this division is to implement the requirements for agricultural land as defined by Goal 3.

Stat. Auth.: ORS Ch. 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

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. Soil Conservation Service (SCS) 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) "Farm Use" as that term is used in ORS Chapter 215 and this division means "farm use" as defined in ORS 215.203.

(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, Hullt, 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, Brennar and Chitwood;

(C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and

(D) Subclassification IVe, 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 Croftland Silty Clay Loam;

(B) Subclassification IIIe, specifically, Klooqueth Silty Clay Loam and Winchuck Silt Loam; and

(C) Subclassification IVw, specifically, Huffling Silty Clay Loam.

(f) The soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner submits a statement of agreement from the SCS that the soil class, soil rating or other soil designation should be adjusted based on new information;

(g) Soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the SCS in its most recent publication for that class, rating or designation before November 4, 1993.

(h) Lands designated as "marginal lands" according to the marginal lands provisions adopted before January 1, 1993, and according to the criteria in ORS 215.247 (1991), are excepted from this definition of "high-value farmlands";

(i) 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 ORS 215.247 (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.

(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.

(10) "Tract" means one or more contiguous lots or parcels in the same ownership.

(11) "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.

(12) "Willamette Valley" is Benton, Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Lane County lying east of the summit of the Coast Range.

Stat. Auth.: ORS Ch. 183, 197.040, 197.245 & Ch. 215
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700-710
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

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 OAR 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) Notwithstanding the definition of "farm use" in ORS 215.203(2)(a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3, "Agricultural Land", is applicable.

(6) More detailed data on soil capability than is contained in the U.S. Soil Conservation Service soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the U.S. Soil Conservation Service land capability classification system.

Stat. Auth.: ORS Ch. 183, 197 & 215
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700-710
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93

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.: ORS Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700-710
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 Farmland

Uses on high-value farmland shall be limited to those specified in OAR 660-033-0120. Counties shall apply zones that qualify as exclusive farm use zones under ORS Chapter 215 to high-value farmland.

Stat. Auth.: ORS Ch. 183, 197 & 215
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283 & 215.700-710
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93

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.

(3) To determine a minimum parcel size under this rule, 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.

(4) To determine whether there are distinct agricultural areas in a county, the county should consider soils, topography and landforms, 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.

(5) 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 (ASCS), Soil and Water Conservation Districts, the Oregon State University Extension Service and the county assessor's office.

(6) 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.

(7) 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).

(8) 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.

(9) 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 sections (3) - (6) of this rule.

(10) Counties may allow the creation of new parcels for nonfarm uses authorized by this division. 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 under paragraph (11)(a)(D) of this rule.

(11)(a) Counties may allow the creation of new lots or parcels for dwellings not in conjunction with farm use. 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.

(b) 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 215.283(5) and (6), 215.236 and OAR 660-033-0130(4).

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700-710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94

660-033-0120
Uses Authorized on Agricultural Lands

The specific development and uses listed in **Table 1** are permitted in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) **A** — Use may be allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS Chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(2) **R** — Use may be approved, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(3) * — Use not permitted.

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

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183, 197, 215 & 197.175 - 197.185

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700-710 & 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

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

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

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

(2) The use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.

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

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(i) Prior to January 1, 1985; or

(ii) By devise or by interstate succession from a person who acquired the lot or parcel prior to January 1, 1985.

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

(C) 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;

(D) 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;

(E) 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)(D) of this rule, a single-family dwelling may be sited on high-value farmland if:

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

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

(C) A hearings officer of the State Department of Agriculture, under the provisions of ORS 183.413 to 183.497, 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;

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

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area.

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

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

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

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

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

(iii) Twenty-one acres or less in size.

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

(ii) The tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary.

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

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

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

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

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

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

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

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

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

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

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

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

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated; 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(11)(a) of this rule, the use may be approved if:

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

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area; 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) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel 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. 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. 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 can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, it is not "generally unsuitable". 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 is unsuitable for one farm use does not mean it is not suitable for another farm use. 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. 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; and

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

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

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) - (8) for nonfarm dwellings on lands zoned exclusive farm use that

are not designated marginal or high-value farmland.

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

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

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

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

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

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

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling;

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

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

(10) A manufactured dwelling 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. When the hardships end, the governing bodies or their designate shall require the removal of such manufactured homes. Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) The housing shall also meet the requirements of ORS 197.685. For purposes of this rule, nine months means 273 days within any calendar year.

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

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

(14) Home occupations may be authorized in existing dwelling and structures accessory to an existing dwelling. Home occupations may not be authorized in structures accessory to resource use. A home occupation located on high-value farmland may employ only residents of the home.

(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 totalling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16) A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided.

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

(18) Existing facilities may be maintained, enhanced or expanded, 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.

(19) A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

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

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

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

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

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

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course. 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; 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., food and beverage service, pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(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 stimulate 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 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 the metropolitan 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. A Living History Museum is permitted only in counties that are subject to ORS 215.213 (Marginal Lands).

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

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on farms in the local agricultural area, including the sale of retail incidental items, if the sales of the incidental items make up no more than 25 percent of the total 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.

(24) An accessory farm dwelling may be considered customarily provided in conjunction with farm use if:

(a) It 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 assistance in the management of the farm use is or will be required by the farm operator; and

(B) The accessory dwelling will be located:

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

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

(iii) On a lot or parcel on which the principal farm dwelling is not located, when the accessory farm dwelling is a manufactured dwelling and a deed restriction is filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. An accessory farm dwelling approved pursuant to this rule may not be occupied by a person or persons who will not be principally engaged in the farm use of the land and whose assistance in the management of the farm use is not or will not be required by the farm operator. The manufactured dwelling may remain if it is reapproved under these rules; 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; and

(b) In addition to the requirements in subsection (a) of this section, the principal 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 principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least $40,000 (1994 dollars) 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; or

(B) On land identified as high-value farmland, the principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least $80,000 (1992 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the principal farm dwelling meets the standards and requirements of ORS 215.213(2)(a) or (b).

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

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

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183, 197.040, 197.245 & Ch. 215

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700-710 & 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 8-1995, f. & cert. ef. 6-29-95

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 land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale;

(d) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p), there is no other dwelling on the subject tract.

(2) 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 which includes all tracts wholly or partially within one mile from the perimeter of the subject tract; and

(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 subsection (a) of this section; and

(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 subsection (b) of this section; and

(d) The subject lot or parcel on which the dwelling is proposed is not less than ten acres in western Oregon or 20 acres in eastern Oregon; and

(e) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p), there is no other dwelling on the subject tract; and

(f) 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 subsection (c) of this section.

(3) In order to identify the commercial farm or ranch tracts to be used in section (2) of this rule, the gross sales capability or each tract in the study area including the subject tract must be determined, using the gross sales figures provided by the Commission pursuant to section (4) of this rule 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 section (4) of this rule. 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 subsection (3)(c) of this rule;

(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 subsections (2)(a) and (b) of this rule.

(4) The Commission shall annually provide each Oregon county with a table of the estimated potential gross sales per acre for each assessor land class (irrigated and nonirrigated) required in section (3) of this rule. 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:

(A) 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);

(B) 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;

(C) Determine the percentage each indicator crop's harvested acreage is of the total combined harvested acres for the three indicator crop types;

(D) Multiply the combined sales per acre for each crop type identified under paragraph (B) of this subsection by its percentage of harvested acres to determine a weighted sales per acre amount for each indicator crop;

(E) Add the weighted sales per acre amounts for each indicator crop type identified in paragraph (D) of this subsection. 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 308.345;

(d) Determine the percentage of the average land rent value for each specific land rent for each land classification determined in subsection (c) of this section. Adjust the combined weighted sales per acre amount identified in paragraph (b)(E) of this section using the percentage of average land rent (i.e., multiply the weighted average determined in paragraph (4)(b)(E) of this rule by the percent of average land rent value from subsection (4)(c) of this rule). 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 subsection (3)(c) of this rule.

(5) 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, that produced in the last two years or three of the last five years the lower of the following:

(A) At least $40,000 (1994 dollars) 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 as permitted in ORS 215.213(1)(r) and 215.283(1)(p), there is no other dwelling on the subject tract; and

(c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this section;

(d) In determining the gross income required by subsection (a) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(6) In counties that have adopted marginal lands provisions under 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) 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, that produced at least $80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years; and

(b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p), there is no other dwelling on the subject tract; and

(c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this section;

(d) In determining the gross income required by subsection (a) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700-710 & 215.780
Hist.: LCDC 3-1994, f. & cert. ef. 3-1-94

660-033-0140
Permit Expiration Dates

(1) 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.

Stat. Auth.: ORS Ch. 183, 197 & 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

660-033-0150
Notice of Decisions in Agriculture Zones

(1) Counties shall notify the department of all applications for dwellings and land divisions in exclusive farm use zones. Such notice shall be in accordance with the county's acknowledged comprehensive plan and land use regulations, and shall be mailed to the department's Salem office at least ten calendar days before any hearing or decision on such application.

(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 Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. e.f 3-1-94

660-033-0160
Effective Date

The provisions of this division shall become effective upon filing.

Stat. Auth.: ORS Ch. 183, 197.040, 197.230 & 197.245
Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94

DIVISION 35

FEDERAL CONSISTENCY

660-035-0000
Purpose

This administrative rule establishes state procedures for implementing the federal consistency requirements of the Federal Coastal Zone Management Act of 1972 as amended, Section 307(c).

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

660-035-0010
Definitions

For the purposes of this division 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, 197.640 to 197.649 and 197.625.

(2) "Applicant" means any individual or organization, except a federal agency, who applies for a federal license or permit or other form of permission which a federal agency is empowered to issue, to conduct an activity affecting land or water uses in the coastal zone.

(3) "Applicant Agency" means a state agency, city, county, special purpose district, or regional body which submits an application for federal financial assistance.

(4) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(5) "Associated Facilities" includes all forms of development:

(a) Which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or major part, to meet the needs of a federal action or federally permitted action; and

(b) Without which the federal action, as proposed, could not be conducted (**15 CFR 930.21**).

(6) "Certification of Consistency" means a declaration which is supported by the necessary data and information by an applicant or an OCS applicant that a proposed activity or development complies with the Oregon Coastal Management Program and that such activity shall be conducted in a manner consistent with the program.

(7) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, 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; and

(c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

(8) "CZMA" means the federal Coastal Zone Management Act of 1972, as amended.

(9) "Commission" means the Land Conservation and Development Commission.

(10) "Consistency Determination" means a decision by a federal agency, supported with findings, that a proposed project will be conducted in a manner consistent to the maximum extent practicable with the OCMP unless compliance is prohibited based on existing law applicable to the federal agency.

(11) "Director" means the Director of the Department of Land Conservation and Development.

(12) "Department" means the Department of Land Conservation and Development.

(13) "Excluded federal land" means lands in federal ownership within the boundaries of the Oregon coastal zone. All lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the federal government are excluded from the definition of coastal zone. The exclusion of federal lands from the definition of coastal zone does not remove the requirement that actions on such lands be consistent with the Oregon Coastal Management Program if such actions directly affect the Oregon coastal zone.

(14) "Federal Activity" means any function performed by or on behalf of a federal agency in the exercise of its statutory responsibilities. The term federal activity does not include the issuance of a federal license or permit to an applicant or OCS applicant or the granting of federal assistance to an applicant agency (**15 CFR 930.31**).

(15) "Federal Agency" means any department, agency, or other organization within the executive branch of the federal government, or any wholly owned federal government corporation.

(16) "Federal Assistance" means assistance provided under a federal program to an applicant agency through a grant, contract, loan, subsidy, guarantee, insurance or other form of financial aid (**15 CFR 930.91**).

(17) "Federal Development Project" means a federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources (**15 CFR 930.31**).

(18) "IRD" means the Oregon Intergovernmental Relations Division in the Executive Department. IRD operates the State Clearinghouse process which provides for the evaluation, review and coordination of federally assisted programs.

(19) "OCMP" means the Oregon Coastal Management Program which was approved by OCRM in 1977 and all federally approved amendments thereto.

(20) "OCRM" means the federal Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(21) "OCS Plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act, and the regulations under that Act, and which describes in detail activities requiring federal licenses or permits (**15 CFR 930.73**).

(22) "OCS Applicant" means any individual, organization, or government entity who submits to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

660-035-0020
Federal Consistency in the OCMP

(1) Designation of the Department of Land Conservation and Development as Lead Agency for Coastal Zone Management. The Department is the designated coastal zone management agency in Oregon pursuant to Section 306(c)(5) of the CZMA and ORS 196.435. All consistency determinations, consistency certifications and proposals for federal assistance shall be sent to and reviewed by the Department for consistency with the approved Oregon Coastal Management Program (OCMP).

(2) Federal Actions Reviewed. The Department is responsible for review of the following actions subject to federal consistency requirements.

(a) Federal agency activities directly affecting the coastal zone;

(b) Federal development projects within the coastal zone;

(c) Federal licenses or permits for activities affecting the coastal zone;

(d) Outer continental shelf exploration, development and production activities affecting the coastal zone; and

(e) Applicant agency requests for federal financial assistance for activities affecting the coastal zone.

(3) Review Standard. The OCMP is the review standard for all activities subject to federal consistency requirements.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

660-035-0030
Federal Agency Activities Directly Affecting the Coastal Zone and Federal Development Projects

(1) Federal Requirements. Pursuant to Section 307(c)(1) and (2) of the CZMA and **15 CFR 930.30 et seq.**, all federally conducted or supported activities, including development projects, which directly affect the coastal zone must be undertaken in a manner consistent to the maximum extent practicable with the OCMP.

(2) Activities Subject to Consistency Review. Federal agencies shall determine which of their activities either in or outside of the coastal zone directly affect the Oregon coastal zone. Federal agencies shall consider all development projects within the Oregon coastal zone to be activities directly affecting the coastal zone. (See the OCMP for further guidance.)

(3) Federal Activities Where Consistency Determinations are Not Required. When either of the following situations exists, a consistency determination is not required:

(a) The activity is the same or substantially similar to a past activity for which the Department agreed with a consistency determination; or

(b) A thorough consistency assessment has established that there would be no direct effects upon the coastal zone. In either case, the federal agency shall submit a statement to the Department saying that no consistency determination is needed at least 90 days before final approval of the activity. The statement shall include adequate information to support the agency's conclusion including findings on the effects of the activity on the coastal zone. If the Department disagrees with the federal agency's conclusion that a consistency determination is not required for a federal activity, either party may request mediation by the Secretary of Commerce as provided by the CZMA and as described in **15 CFR 930 Subpart G** and in OAR 660-035-0040(10).

(4) Notification by Federal Agency. When a federal agency proposes to undertake a federal activity likely to directly affect the coastal zone, including a development project, it shall notify the Department of the proposal in writing. Notification may be provided through the Clearinghouse Review process at IRD, Division of State Lands Waterway Project Permit Review process, National Environmental Policy Act environmental impact statements, or other method. The Department must be notified as early as possible in the planning or reassessment of the action. At a minimum, notification must be provided to the Department at least 90 days before final approval of the federal action, unless both the federal agency and the Department agree on a different schedule.

(5) Preliminary Consultation. It is recommended that federal agencies consult with the Department, affected local governments, and other agencies listed in the OCMP when assessing whether a federal activity will be consistent with the OCMP.

(a) Coastal cities and counties shall provide the federal agency with applicable comprehensive plan standards upon request.

(b) Federal agencies are not required to obtain state or local permits, unless specified in federal statute. Nonetheless, obtaining relevant state and local permits is recommended before making a consistency determination to reduce the time necessary for the Department to conduct its review.

(6) Content of Consistency Determination. A consistency determination shall include a brief statement indicating whether the project is consistent to the maximum extent practicable, plus:

(a) A detailed description of the proposed activity, and all associated facilities and services, and the effects of both the activity and associated facilities and services on the coastal zone;

(b)Environmental assessments, or environmental impact statements if applicable;

(c) A statement indicating how the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the OCMP; and

(d) A justification of the agency's determination of consistency, in light of all relevant provisions of the OCMP.

(7) Activities Where Federal Consistency is Prohibited By Law. Federal activities directly affecting the coastal zone shall be consistent with the OCMP to the maximum extent practicable unless federal law prohibits such compliance. If a federal agency asserts that compliance with the OCMP is prohibited, it shall clearly describe in its consistency determination the legal authority which it believes limits the federal agency's ability to be fully consistent with the provisions of the OCMP.

(8) General Consistency Determinations. In cases where federal agencies will be performing repeated activities, other than development projects, which cumulatively have direct effects on the coastal zone, the federal agency may develop a general consistency determination. A general consistency determination may be used only in situations where the activities are repetitive or periodic, substantially similar, and do not significantly affect the coastal zone when performed separately. If a federal agency issues a general consistency determination, it shall thereafter periodically consult with the Department concerning the manner in which the incremental actions are being undertaken. Such consultation process shall be established in the general consistency determination.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

660-035-0040
DLCD Review of Federal Activities and Development Projects

(1) Review Schedule. Each consistency determination shall be reviewed by the Department. The Department shall promptly notify the federal agency and affected local government in writing of the Department's agreement or disagreement. If the Department's agreement or disagreement has not been issued within 45 days of receipt of the federal agency's notification, the federal agency may presume the Department agrees, unless the Department, within the 45-day period, has requested an extension of time

for review. Federal agencies shall approve one request for an extension of up to 15 days. Approval of longer or additional requests is at the federal agency's discretion.

(2) Time of Review for Federal Activities Which Require EIS's. The Department shall review federal activities which require a National Environmental Policy Act (NEPA) environmental impact statement for consistency with the OCMP at the time of the final environmental impact statement (FEIS), unless an alternative schedule is agreed to by the Department and the federal agency. This shall not preclude the Department from coordinating with the federal agency prior to the FEIS submittal.

(3) Monitoring of Federal Activities. The Department shall monitor federal activities by use of the Clearinghouse Review process, review of National Environmental Policy Act environmental impact statements, and other available sources, including comments from interested persons, and shall notify federal agencies of federal activities which have not been subject to a consistency review but which, in the opinion of the Department, directly affect the coastal zone and require a federal agency consistency determination.

(4) Voluntary Withdrawal. If the Department determines that the federal agency's consistency determination does not contain the necessary information described in OAR 660-35-030(6), it may request the federal agency to withdraw its consistency determination in order to avoid a disagreement based on a finding that the federal agency failed to supply sufficient information.

(5) Public Notice. The Department will rely on federal notification procedures to provide public notice of federal consistency determinations to interested persons other than the Department. The Department may request the federal agency to undertake additional public notice as part of the consistency review process.

(6) Review by Local Government and State Agencies. The Department shall consult with relevant state and local agencies in making its decision whether a proposed federal activity is consistent with the OCMP. The Department shall circulate federal consistency determinations and supporting documentation to affected local governments and state agencies within a reasonable time of receipt of such determinations at the Department's Salem office. Affected local governments and state agencies shall provide their comments to the Department within 21 working days of receiving the consistency determination. If no comments are received within the 21-day period, the Department will presume that the local and state agencies concur with the federal agency's consistency determination.

(7) Review of Comments. The Department shall review the consider relevant written comments and objections from local governments, state agencies, and other interested persons in carrying out its consistency review. Local governments, state agencies, or interested persons may appeal the Department's decision to the Commission pursuant to section (11) of this rule.

(8) Notice of Disagreement. In the event the Department disagrees with the federal agency's consistency determination, the Department shall provide the federal agency with its reasons in writing. The Department's response shall describe how the proposed activity is inconsistent with the OCMP, and shall describe any alternative measures which would allow the activity to proceed in a manner consistent to the maximum extent practicable with the OCMP. If the Department's disagreement is based on a finding that the federal agency has failed to supply sufficient information, the Department's response shall describe the information needed. The Department shall send a copy of any such notice of disagreement with a federal agency's consistency determination to the Assistant Administrator and affected state and local government.

(9) Monitoring of Approved Activities. The Department shall monitor approved federal activities to ensure that the activities continue to be undertaken in a manner consistent to the maximum extent practicable with the OCMP. A schedule for monitoring may be established through the Department's agreement statement for the original activity. Interested members of the public also may identify compliance problems with ongoing federal activities to the Department. The Department will evaluate all comments to determine if the activity is being conducted in a manner consistent with the original approval. When the Department determines that a previously authorized activity is not being conducted in conformance with the original approval it may request that the federal agency take appropriate remedial action. If a serious disagreement persists, the Department or the federal agency may request the Secretary's mediation services described in section (10) of this rule.

(10) Secretary of Commerce's Mediation. When a disagreement between the Department and a federal agency regarding a consistency issue occurs, the Department shall first attempt to resolve the conflict through information discussions. The federal agency, the Department, or the Governor may request mediation by the Secretary of Commerce pursuant to **15 CFR 930.110**. If mediation efforts are unsuccessful or are not utilized, the Department may seek judicial review. Nothing in this section shall preclude the Department from seeking judicial review while utilizing mediation or in lieu of mediation.

(11) Appeal of Department Determination: Commission Review. Any party, as defined in ORS 183.310(6), who objects to the Department's agreement or disagreement with a federal agency's consistency determination may petition to have the action reviewed by the Commission. The petition shall include the information required in 660-035-0080(2). This does not preclude the federal agency involved from directly seeking mediation of a disagreement with the Department under **15 CFR 930.110**.

[Publications**:** The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

660-035-0050
Activities Requiring a Federal License or Permit

(1) Federal Requirements. Pursuant to Section 307(c)(3)(A) of the CZMA and **15 CFR 930.50** et seq., all federally licensed or permitted activities affecting the coastal zone shall be conducted in a manner consistent with the OCMP.

(2) Listed Permits. The OCMP lists certain federal license and permit activities which affect the coastal zone and which the Department shall review for consistency with the OCMP. (See **Appendix A**.)

(3) Unlisted Licenses and Permits. The Department shall monitor proposed federal licenses and permits which are not listed in the OCMP, through the Clearinghouse Review procedures, NEPA environmental impact statements, and other available sources including comments from interested persons. When the Department determines that a proposed license or permit which is not listed would affect the coastal zone, it shall so notify the affected federal agency, applicants, and the Assistant Administrator and request the Assistant Administrator's permission to review the license or permit. The Department shall notify the federal agency and applicant within 30 days of receiving notice of the unlisted license or permit application. In cases where the Department does not receive notice of the federal license or permit activity, this time limit shall not apply. Upon approval by OCRM of a Department request to review an unlisted license or permit activity, the federal agency and applicant shall comply with the consistency certification procedures of this rule.

(4) Consistency Certifications. When an applicant believes that the proposed activity is consistent with the provisions of the OCMP, the applicant shall provide a statement of consistency in its permit or license application to the federal agency. The statement shall be in the following form: **"The proposed activity complies with the Oregon Coastal Management Program and will be conducted in a manner consistent with such program"**. A copy of the statement shall also be provided to the Department along with supporting information.

(5) Supporting Information. Supporting information shall include a detailed description of the proposal, a brief assessment of likely effects on the coastal zone, and findings indicating that the proposed activity, its associated facilities, and their combined effects are all consistent with the provisions of the OCMP. Any

draft and final environmental impact statements and supplements shall also be included in the supporting information. The applicant may use the information it has provided for local, state and/or federal permits if such information also meets the requirements of this section.

(6) Request for Additional Information. The Department may request additional information from the applicant. The information request shall be in writing. Failure to submit the requested information may result in an objection to the applicant's consistency certification. The applicant shall comply with such request within ten days of receipt of such request or shall explain in writing within ten days why the request cannot be complied with.

(7) Department Review. The Department shall begin its review when it receives from the applicant a complete consistency certification and all necessary supporting information identified in section (5) of this rule. The Department shall review the application and determine:

(a) Whether the supporting information is adequate to assess coastal effects; and if so,

(b) Whether the activity is consistent with the OCMP. Following receipt of the application, the Department shall provide public notice of the proposed activity as provided in section (8) of this rule. Certifications for federally licensed or permitted activities which require environmental impact statements shall not be considered complete until the final environmental impact statement (FEIS) is submitted unless an alternative arrangement is agreed to by the Department, the applicant, and the federal agency. This shall not preclude the Department from coordinating with the applicant and federal agency prior to FEIS submittal.

(8) Public Notice. Public notice shall include a summary of the proposal, an announcement that public information submitted by the applicant is available for inspection, and a statement that comments may be submitted. Whenever possible, the Department shall jointly issue public notice with the federal license- or permit-issuing agency or with the state permit-issuing agency if a state permit is required.

(9) Review of Comments. The Department shall review and consider relevant written comments and objections from local governments, state agencies, and other interested persons in carrying out its consistency review. Local governments, state agencies, or interested persons may petition to have the Director's decision reviewed by the Commission pursuant to OAR 660-035-0080.

(10) Review Schedule. The Department shall promptly notify the applicant, affected local government, and federal agency of its objection to or concurrence with the applicant's certification. If the Department fails to object or concur within 180 days following commencement of Department review, the Department's concurrence shall be presumed. If the Department has not issued a decision within three months, it shall notify the applicant and the federal agency of the status of the review and the basis for further delay.

(11) Effect of Department Concurrence. If the Department concurs or is conclusively presumed to concur with the applicant's consistency certification, the federal agency may approve the federal license or permit application.

(12) Notice of Objection. If the Department objects to the applicant's consistency certification, it shall so notify the applicant, federal agency, affected state and local government, and Assistant Administrator. The Department shall describe how the proposed activity is inconsistent with the OCMP, as well as any alternative measures which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the OCMP. If the Department objects on the grounds of insufficient information, it shall describe the nature of the information requested and the necessity of having such information. The Department's objection shall include a statement informing the applicant of a right of appeal to the Secretary of Commerce as described in **15 CFR 930.120** et seq.

(13) Effect of Department Objection. Following receipt of a Department objection to a consistency certification, the federal permitting agency shall not issue the license or permit unless the Secretary of Commerce approves the activity on appeal.

[ED. NOTE: The exhibit(s) referenced in this rule are not printed in the OAR Compilation. Copies may be obtained from the Land Conservation and Development Commission.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

660-035-0060
Outer Continental Shelf (OCS) Activities

(1) Federal Requirements. Pursuant to Section 307(C)(3)(b) of the CZMA and **15 CFR 930.70** et seq., all federal license and permit activities described in OCS plans and which affect the coastal zone shall be conducted in a manner consistent with the OCMP. No federal license or permit activity described in an OCS plan may be approved by a federal agency until the requirements set forth in this rule are satisfied.

(2) Permits Not Included in OCS Plans. The OCS applicant and the Department shall comply with OAR 660-35-050 in processing permit activities which have not been included with OCS plans.

(3) Consistency Certifications. Any applicant submitting to the U.S. Department of Interior (DOI) a plan for the OCS offshore Oregon shall provide DOI with a consistency certification attached to the OCS plan. DOI shall provide the Department with a copy of the OCS plan and the consistency certification. The certification shall be in the following form: **"The proposed activities described in detail in this plan comply with the Oregon Coastal Management Program and will be conducted in a manner consistent with such program."** The certification shall be accompanied by the supporting information described in section (4) of this rule.

(4) Supporting Information. Supporting information to accompany the certification shall include:

(a) All comprehensive offshore, nearshore, and onshore data and material required by DOI's operating regulations governing exploration, development and production operations on the OCS (see **30 CFR Section 250.34**) and regulations pertaining to the DOI OCS information program (see **30 CFR Part 252**);

(b) An assessment of probable coastal zone effects, and an analysis of how the proposed activities, their associated facilities, and their combined effects will be consistent with the OCMP; and

(c) Draft and final environmental assessments, and draft and final impact statements and any supplements when the federal agency determines that an EIS is required.

(5) Department review. The Department's review shall commence when the Department receives the applicant's consistency certification and all supporting information specified in OAR 660-035-0060(4). The Department shall review the application and determine:

(a) Whether the supporting information is adequate to assess coastal effects; and if so;

(b) Whether the activity is consistent with the OCMP. Additional information may be requested by the Department pursuant to OAR 660-035-0050(6). After receiving this material, the Department shall provide public notice of the proposed activity as provided in OAR 660-035-0050(8). The Department will review comments pursuant to OAR 660-035-0050(9). Consistency certifications for OCS activities which require an environmental impact statement shall not be considered complete until the final environmental impact statement (FEIS) is submitted unless an alternative arrangement is agreed to by the Department, the applicant and DOI.

(6) Review Schedule. The Department shall promptly notify the OCS applicant, the Secretary of the Interior, affected local government and the Assistant Administrator of its objection to or concurrence with the OCS applicant's certification. If the Department fails to object or concur within 180 days following commencement of Department review, the Department's concurrence shall be presumed. If the Department has not issued a decision within three months, it shall notify, in writing, the Department of

the Interior, the applicant, and the Assistant Administrator of the status of the review and the basis for further delay.

(7) Effect of Department Concurrence. If the Department concurs or is conclusively presumed to concur with the OCS applicant's consistency certification, the OCS applicant shall not be required to submit additional consistency certifications and supporting information for Department review when the federal licenses and permits are actually applied for. The OCS applicant shall, however, supply the Department with copies of permit applications to allow the Department to monitor the approved OCS activities. Further, if regulatory actions by any other agency result in modification of the OCS plan, renewed consistency review of the modified plan shall be required.

(8) Notice of Objection. If the Department objects to the OCS applicant's consistency certification, it shall notify the OCS applicant, federal agency, affected state and local government, and Assistance Administrator of its objection. The Department's objection shall include a description of how the proposed activity is inconsistent with the OCMP. Such an objection shall also specify any alternatives which, if adopted by the OCS applicant, would enable the proposed activity to be conducted in a manner consistent with the OCMP. If an objection is based, in whole or in part, upon failure to provide information requested by the Department, the information requested shall be described. A Department objection shall include a statement informing the OCS applicant of the right of appeal to the Secretary of Commerce on the grounds described in **15 CFR 930.120** et seq.

(9) Effects of Department Objection. If a federal agency receives a Department objection to a consistency certification related to one or more of the federal license or permit activities described in an OCS plan, the agency shall not issue any of the licenses or permits unless the Secretary of Commerce approves the activity on appeal.

[Publications**:** The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

660-035-0070
Federal Financial Assistance to Applicant Agencies

(1) Federal Requirements. Pursuant to Section 307(d) of the CZMA and **15 CFR 930.90** et seq., federal assistance to applicant agencies for activities affecting the Oregon coastal zone shall be granted only when the activities are consistent with the OCMP.

(2) Notification by Applicant. An applicant agency shall notify the Intergovernmental Relations Division (IRD) Clearinghouse in writing of its intent to apply for federal assistance for an activity affecting the coastal zone.

(3) Clearinghouse Notification. The Clearinghouse shall give the Department an opportunity to review any notification for an activity affecting the coastal zone to determine whether the activity is consistent with the OCMP.

(4) Review Schedule. IRD shall provide a 45-day period for review of applications except those which are specifically limited by federal regulation to a 30-day review cycle. The review period begins at the time the Department receives the application. A 15-day extension may be requested by the Department, state and local agencies, and other reviewers.

(5) IRD Conflict Resolution. If any comments are received by IRD stating that a federal grant in or affecting Oregon's coastal zone is inconsistent with the OCMP, IRD will convene a conflict resolution meeting with interested reviewers and the Department for the purpose of modifying the proposal to remove any inconsistencies. If the conflict cannot be resolved to the satisfaction of all reviewers, the Department shall review all comments and make the consistency determination on behalf of the state.

(6) Effect of Department Approval. If the Department does not object to the proposed activity, the federal agency may grant the federal assistance to the applicant agency. Notwithstanding the Department's consistency approval for the proposed project, the federal agency may deny assistance to the applicant agency based on its own statutory requirements. The Department's approval of an assistance grant shall not preclude future Department consistency review if federal permits are required.

(7) Notice of Objection. If, during the Clearinghouse process, the Department objects to the proposed assistance application, it shall notify the applicant agency, affected local government, the federal agency, and the Assistant Administrator of the objection. The Department's objections shall describe how the proposed project is inconsistent with the OCMP and any alternative measures which, if adopted by the applicant agency, would permit the proposed project to be conducted in a manner consistent with the OCMP. If the Department objects on the grounds of insufficient information, it shall describe the nature of the information requested and the necessity of having such information. The Department's objection shall include a statement informing the applicant of its right of appeal to the Secretary of Commerce on the grounds described in **15 CFR 930.120** et seq.

(8) Effect of an Objection on Federal Agency. Following receipt of a Department objection to a consistency certification, the federal agency shall not grant the federal assistance unless the Secretary of Commerce approves the federal assistance activity on appeal.

[Publications**:** The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

660-035-0080
Commission Review

(1) Actions Reviewed. There are two methods by which the Commission may review actions under this division:

(a) Any action of the Director pursuant to this division shall be reviewed by the Commission upon petition filed by any "party" as defined in ORS 183.310(6) or upon the Commission's initiative.

(b) The Director may refer to the Commission any action taken under this division. The Commission shall act in accordance with the provisions of section (3) of this rule on matters referred to the Commission;

(c) Review by the Commission does not preclude the federal agency involved from directly seeking mediation of a disagreement with the Department under **15 CFR 930.110**.

(2) Content of Petition. Any petition filed pursuant to this division 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 this matter;

(c) Be filed with the Director or the Director's designee within 15 days of the date of the taking of the action sought to be reviewed.

(3) Commission Response to Petition. The Commission shall, by order, either affirm, reverse, or modify the action of the Director. Such order shall be issued within 60 days of the filing of the request, or within 120 days if good cause for the longer time is shown. The Director shall provide to all parties reasonable notice 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) Report to the Commission. The Department shall provide the Commission with a monthly report summarizing Department actions taken during the preceding month pursuant to this division and any written public comments received by the Department which pertain to those actions.

[Publications**:** The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Administration.]

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 7-1988, f. & cert. ef. 9-29-88

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: The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS 183.310 - 183.550, 196.465, 196.471 & 197.040

Stats. Implemented: ORS

Hist.: LCDC 5-1995, f. & cert. ef. 5-24-95

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 amend-ments to the **Ocean Resources Management Plan** as approved by the Ocean Policy Advisory Council on March 11, 1994 and June 10, 1994.

[Publications**:** The publication(s) referred to or incorporated by reference in this rule are available from the Land Conservation and Development Commission.]

Stat. Auth.: ORS 183.310 - 183.550, 196.465, 196.471 & 197.040

Stats. Implemented: ORS

Hist.: LCDC 5-1995, f. & cert. ef. 5-24-95

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 $.25¢/pg;

(c) For each page of an uncertified copy $.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 Ch. 183, 192 & 197

Hist.: LCD 12-1981, f. & ef. 12-15-81