MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner
Will Groves, Planning Manager
Peter Gutowsky, AICP, Director

DATE: January 29, 2025

SUBJECT: Department of Land Conservation and Development / Farm & Forest Modernization Program / Rule Changes

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Oregon's zoning-based farm and forest land conservation programs have been in place since 1973. Over the past 10 years, interested parties, the courts, and the Department of Land Conservation and Development (DLCD) have identified a number of issues needing review. In 2024, the Land Conservation and Development Commission (LCDC) initiated the Farm and Forest Modernization Project, which included rulemaking and the appointment of a rules advisory committee (RAC). Rulemaking was intended to improve the clarity and consistency of implementing Oregon's farm and forest program across the state. DLCD directed the RAC to consider:

- Codifying identified case law standards;
- Other EFU rule amendments;
- Conforming rule changes; and
- Providing additional clarity to counties and potential applicants with the intent of reducing unnecessary appeals.

LCDC ultimately adopted new Oregon Administrative Rules (OARs) on December 6, 2024 (Attachment). They became effective on January 1, 2025.

The Community Development Department will initiate housekeeping amendments shortly. These amendments will apply the changes below into Deschutes County Code, as well as incorporate some minor housekeeping changes from previous rulemaking or legislative changes that have not yet been captured locally. Staff will first provide the Planning Commission with a review per the legislative process outlined in DCC 22.12.040 and will then proceed to a work session and public hearing before the Board of County Commissioners.

I. Rule Amendments for Codifying Case Law

Common law (or case law) is the body of law derived from judicial decisions by the courts. In this context, these are interpretations of statutory provisions by the Oregon Land Use Board of Appeals (LUBA), the Oregon Court of Appeals, and the Oregon Supreme Court. A large body of common law exists on aspects of the farm and forest program. While these rulings have not been codified in statute or rule, they are routinely applied to reviews on appeal of land use decisions. County planning departments have varying degrees of ability to apply un-codified common law when reviewing applications. The result, according to DLCD, is local governments unequally implementing case law standards across the state and unnecessary legal challenges.

A. Farm Impacts Test for Conditional Uses in Exclusive Farm Use Zones

Exclusive Farm Use (EFU) zoning is established at the state level to protect agricultural land for farming. Use of land zoned as EFU is limited to farm use, uses the legislature has determined are compatible with farm and forest operations, or uses which the legislature has determined may be compatible with farm and forest operations, per Oregon Revised Statutes (ORS) 215.283. All conditional uses in EFU zones require a county to exercise discretion: counties must find that the use as proposed will not force a significant change in farm and forest practices and will not significantly increase the cost of farm and forest practices on the surrounding lands. This discretionary review requirement is in ORS 215.296 and is often referred to as the "farm impacts test." Counties routinely apply this test to a wide variety of EFU conditional uses to determine compatibility with farm and forest operations.

In case law, there is guidance from the courts on how to conduct a sufficient analysis to provide findings under the farm impacts test. These established case law standards have not been codified in statute or rule and are therefore applied inconsistently by counties throughout the state. RAC members considered several cases on the topic, most notably the Oregon Supreme Court's decision in *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 435 P3d 698 (2019).[1] LCDC relied on the case's step-by-step guidance to when it adopted the rule amendments.

B. "Incidental and Subordinate" and "Necessary to Support" standards as applied to ORS 215.213(11) and 215.283(4), the Agri-Tourism and Other Commercial Event Standards in Exclusive Farm Use Zones

In 2011, the legislature added a new use to EFU zones that allows for four different levels of agri-tourism events or other commercial events related to a farm use. The first three levels must pass the same standards for approval. The fourth level must meet more rigorous criteria to be approved. The four levels are:

1. Expedited review for a single, smaller event
2. One 72-hour event up to 500 people

[1] Other cases included: *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991); *Von Lubken v. Hood River County*, 118 Or App 246, 846 P2d 1178, rev den 316 Or 529 (1993); *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994); *Von Lubken v. Hood River County*, 133 Or App 286, 891 P2d 5 (1995); and *Friends of Marion County v. Marion County* (Jones/Agritainment), ___ Or LUBA ___ (LUBA No. 2021-088/089, April 21, 2022).

3. Up to six 72-hour events or a month and a half of long weekend events
4. Up to eighteen 72-hour events or four months of long weekend events

The requirements for these events are listed in ORS 215.213(11) and ORS 215.283(4). Since 2013, counties have issued more than a hundred agri-tourism event permits under these standards. All four levels of events authorized in ORS 215.213(11)/ORS 215.283(4) must demonstrate that they are "incidental and subordinate" to existing farm use of the property. This means that farm use must remain the predominant use of the property, and the event use should not become the proverbial "tail wagging the dog." For an application under the most intensive category — up to eighteen 72-hour events per year — the proposal must also be found to be "necessary to support" the commercial farm uses or the commercial agricultural enterprises in the area. LCDC codified case law that clarifies "incidental and subordinate" and "necessary to support" standards.[2]

C. Transportation Facilities on Rural Lands

The language in the Transportation Planning Rule (OAR 660-012-0065) that applies to rural transportation improvements applies to rural lands in general, meaning they apply to exception lands and nonresource lands as well as land protected under the farm and forest conservation program. LCDC adopted language that clarifies that when uses listed in OAR 660-012-0065(3) are proposed on land zoned farm or forest, they are subject to the farm impacts test or forest impacts test (as applicable). According to DLCD, this is consistent with the department's guidance on the topic and recent case law.[3]

D. Private Parks

A variety of activities ranging in intensity have been approved as "private parks" in resource zones. Approved private park uses include/have included: frisbee golf, shooting ranges, paintball parks, demonstration gardens, event venues, fish viewing areas, and motocross tracks. The RAC considered the holdings in *Central Oregon Landwatch v. Deschutes County*, 276 Or App 282 (2016) which addresses this topic, given concerns that current rules do not state when proposals for private parks become inappropriate for a rural environment. LCDC adopted language to clarify that a private park is primarily recreational in nature — where the focus of the recreation is on the enjoyment of the outdoors. DLCD referenced *Central Oregon Landwatch v. Deschutes County* to clarify that private parks are meant to be low intensity uses.

II. Other EFU Rule Amendments

A. Preparation of Products on Farmland

ORS 215.203 clarifies that the general definition of "farm use" includes the "preparation of products or by-products raised on land employed for farm use." OAR 660-033-0020(7) defines "products or by-products raised on such land" as "those products or by-products raised on the farm operation where the preparation occurs or on other farmland provided the preparation is occurring only on land being

[2] *Friends of Yamhill County v. Yamhill County* (DeBenedetti), 80 Or LUBA 135 (2019), rev'd and rem'd, 301 Or App 726, 458 P3d 1130 (2020).

[3] *Van Dyke v. Yamhill County*, 81 Or LUBA 427 (2020)

used for the primary purpose of obtaining a profit in money from the farm use of the land." Because "farm use of the land" includes preparation of products or by-products, the current definition contains a confusing, unintended circular reference. As a result, some counties have approved stand-alone, commercial preparation facilities with no associated farm operation as a "farm use." On land zoned for exclusive farm use, farm use is allowed outright with minimal, if any, county review. LCDC adopted rule language that creates a two-part definition for "product or by-products raised on such land."

B. Evidentiary Standard for the Verification of Income for Farm Dwellings and Farm Stands in Exclusive Farm Use Zones

One of the tests to obtain a permit for primary and accessory farm dwellings involves verifying that a certain amount of income was earned on the farm over a certain period from the sale of farm products produced on the property. According to DLCD, several counties communicated that it can be difficult to verify income in a reliable manner. Their concerns include that accountant statements and Internal Revenue Service (IRS) Schedule F (farm income) tax documents are not specific enough to be definitive, particularly about where the products were produced. County staff also noted that it is difficult to verify if a taxpayer filed the tax documents with the IRS. For dwellings in conjunction with farm use, income verification is only required at the time of application. There is no ongoing requirement to verify that the farming operation is continuing. For farm stands, there is an ongoing statutory requirement that the sales from incidental retail items and event fees not exceed 25 percent of the farm stand income. DLCD stressed that this ongoing limitation on the sale of retail items and fees from promotional activities is an existing statutory requirement that has been in place since the legislature added fee-based promotional activities to allowable farm stand uses in 2001.

LCDC adopted rule changes do not alter the income limitation. It only clarifies what method a county may use when it seeks to verify that the farm stand is complying with the income standard. The new language relies on the IRS tax return receipt as the minimum standard for verification of income. It also clarifies that a county may ask for any additional information it believes is necessary to demonstrate compliance with the standard.

C. Home Occupations in EFU Zones

According to DLCD, home occupations are the most common non-resource use approved in EFU zones. Home occupations are defined in statute as a use that occurs in dwellings or other buildings normally associated with exclusive farm use zones and are operated by a resident or employee of a resident of the property. Home occupations are limited to employing five full-time or part-time persons. Counties may choose to adopt more restrictive standards for this use.

Given the ambiguity and breadth of the definition of a home occupation, a very wide variety and intensity of activities are approved as home occupations in EFU zones: hair salons, firearms dealers, tasting rooms, medical offices, events venues, daycares, funeral homes, mechanic repair shops, veterinary clinics, restaurants, among others. Sometimes uses are approved as home occupations instead of being approved under the standards established for a particular activity by the legislature. Proposals that cannot meet the standards established for a particular use by the legislature often seek

approval under the more broadly defined "home occupation" option, which evades the legislature's specific standards set for that particular use.

LCDC adopted rule clarifies that uses with scale and scope no more intensive than those permitted by legislative standards can be reviewed as home occupations. It also clarifies that certain home occupation businesses must be accessory to a residential use.

III. Conforming Rule Changes

According to DLCD, these rule updates adopted by LCDC are necessary to align agency rules with new provisions of law enacted by the legislature that are currently in effect and remove circular references.

A. Replacement Dwelling Requirements

Changed the requirements for replacement dwellings in forest zones at ORS 215.755 to mirror the new requirements in ORS 215.291 which were previously applicable only to farm zones. Also, modified the requirements for replacement dwellings in farm zones.

B. Template Test Provisions

Language in Section 3 clarifying effective dates for the new template test provisions has been removed to conform to statute. Section 4 repealed Section 2 on January 2, 2024, which had allowed a one-time opportunity which expired at the end of 2023.

C. Childcare

Added childcare facilities, preschool recorded programs, or school-age recorded programs as a new use in EFU zones.

D. Nonconforming Schools

Modified the requirements for expansion of certain nonconforming schools in farm zones.

E. Campsites

Removed a circular reference.

F. Rabbit Processing

Adds rabbits and rabbit products to the list of farm products which may be processed at a farm product processing facility under ORS 215.255.

G. Farm Dwellings in Conjunction with Cranberry Operations

Section 3 repealed Section 2 on January 2, 2022, removing special provisions for farm dwellings in conjunction with cranberry operations.

Attachment:

LCDC Rule Changes

Attachment - LCDC Rule Changes

Underlines represent new rule language and deleted text by ~~strikethrough~~.

I. Codifying Case Law

A. Farm Impacts Test for Conditional Uses in EFU Zones

OAR 660-033-0130

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

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

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

(c) For purposes of subsection (a) and (b), a determination of forcing a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use or a determination of whether the use will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use requires:

(A) Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;

(B) An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices; and

(C) An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.

(D) For purposes of this subsection, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.

(E) For purposes of subsection (a) and (b), potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself for the purpose of conducting a review under subsections (a) and (b).

(F) In the consideration of potentially mitigating conditions of approval under ORS 215.296(2), the governing body may not impose such a condition upon the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs described in subsection (a) and (b).

B. Agri-Tourism Standards / Incidental and Subordinate and Necessary to Support Standards

OAR 660-033-0130

(42)(a) A determination under ORS 215.213(11) or 215.283(4) that an event or activity is 'incidental and subordinate' requires consideration of any relevant circumstances, including the nature, intensity, and economic value of the respective farm and event uses, that bear on whether the existing farm use remains the predominant use of the tract.

(b) A determination under ORS 215.213(11)(d)(A) or 215.283(4)(d)(A) that an event or activity is 'necessary to support' either the commercial farm uses or commercial agricultural enterprises in the area means that the events are essential in order to maintain the existence of either the commercial farm or the commercial agricultural enterprises in the area.

C. Transportation Facilities on Rural Lands

OAR 660-012-0065

(5) (a) For transportation uses or improvements listed in subsection (3) within an exclusive farm use (EFU) or forest zone, except for transportation uses or improvements permitted under ORS 215.213(1), ORS 215.283(1) or OAR 660-006-0025(1)-(3), a jurisdiction shall find that the proposal will comply with the standards described in ORS 215.296. In addition, transportation uses or improvements in a forest zone, except for transportation uses or improvements authorized under OAR 660-006-0025(1)-(3), must also comply with the standards described in OAR 660-006-0025(5).

(b) For transportation uses or improvements listed in subsections (3)(d) to (g) and (o) within an EFU or forest zone, a jurisdiction shall, in addition to demonstrating compliance with the requirements of ORS 215.296:

(i) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;

(ii) 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

(iii) 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.

D. Private Parks

OAR 660-033-0130

(43) As used in ORS 215.213(2)(e) or 215.283(2)(c), a 'private park' means an area devoted to low-intensity, outdoor, recreational uses for which enjoyment of the outdoors in an open space, or on land in its natural state, is a necessary component and the primary focus.

II. Other EFU Amendments

A. Preparation of Products on Farmland

OAR 660-033-0020

(7)(a) "Farm Use" as that term is used in ORS chapter 215 and this division means "farm use" as defined in ORS 215.203.

(b) As used in the definition of "farm use" in ORS 215.203 and in this division:

(A) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products; and

(B) "Products or by-products raised on such land" ~~means~~ includes;

(i) ~~that those p~~ Products or by-products ~~are~~ raised on the farm operation where the preparation occurs;

(ii) Products or by-products raised on other farmland provided:

(I) ~~or on other farm land provide the~~ The preparation is occurring only on ~~land~~ a tract ~~being use for the primary purpose of obtaining a profit in money from the farm use of the~~ currently employed for a farm use or farm uses other than preparation; and

(II) Such products or by-products are prepared in the same facilities as and in conjunction with products or by-products raised on the farm operation where the preparation occurs.

B. Verification of Income

Farmworker Dwellings

OAR 660-033-0130

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

(h) The applicant shall submit to the local government an IRS tax return transcript and any other information the county may require that demonstrates compliance with the gross farm income requirements in paragraph (b)(A) or (B), whichever is applicable.

Primary Farm Dwellings

OAR 660-033-0135

(3) On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(e) The applicant shall submit to the local government an IRS tax return transcript and any other information the local jurisdiction may require that demonstrates compliance with the gross farm income requirement.

(4) On land identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(e) The applicant shall submit to the local government an IRS tax return transcript and any other information the local jurisdiction may require that demonstrates compliance with the gross farm income requirement.

Farm Stands
OAR 660-033-0130

(23) A farm stand may be approved if:

(f) At the request of a local government with land use jurisdiction over the farm stand, the farm stand operator of a farm stand approved under this section shall submit to the local government evidence of compliance with the annual sales requirement of subsection (a). Such evidence shall consist of an IRS tax return transcript and any other information the local jurisdiction may require to document ongoing compliance with this section or any other condition of approval required by the county.

C. Home Occupations in EFU Zones
OAR 660-033-0130

(14) Home occupations and the parking of vehicles may be authorized.

(a) Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located.
(b) A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.
(c) A governing body may only approve a use provided in OAR 660-033-0120 as a home occupation if:
  (A) The scale and intensity of the use is no more intensive than the limitations and conditions otherwise specified for the use in OAR 660-033-0120, and
  (B) The use is accessory, incidental and subordinate to the primary residential use of a dwelling on the property.

III. Conforming Rule Changes

A. Replacement Dwellings in Forest and Farm Zones

Forest Dwellings
OAR 660-006-0025

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

(d) Dwellings authorized by ORS 215.705 to 215.757 ~~(ORS 215.757)~~; and

(o)(A) ~~Alteration, restoration or replacement of lawfully established dwelling that:~~ A lawfully established dwelling may be altered, restored or replaced if, when an application for a permit is submitted, the county finds to its satisfaction, based on substantial evidence that the dwelling to be altered, restored or replaced has, or formerly had:

(~~A~~i) ~~Has i~~Intact exterior walls and roof structures;

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

(~~C~~iii) ~~Has~~Interior wiring for interior lights; and

(iv) A heating system.

~~(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;~~

(B) An application under this subsection must be filed within three years following the date that the dwelling last possessed all the features listed under paragraph (o)(A).

(C) Construction of a replacement dwelling approved under this subsection must commence no later than four years after the approval of the application under this section becomes final.

(D) In addition to the provisions of paragraph (o)(A), the dwelling to be replaced meets one of the following conditions:

(i) If the value of the dwelling to be replaced was eliminated as a result of destruction or demolition, the dwelling was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction or demolition and since the later of:

(I) Five years before the date of the destruction or demolition; or

(II) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment; or

(ii) The value of dwelling to be replaced has not been eliminated due to destruction or demolition, and the dwelling was assessed as a dwelling for purposes of ad valorem taxation since the later of:

(I) Five years before the date of the application; or

(II) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment.

(E) For replacement of a lawfully established dwelling under this subsection:

(i) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055.

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

(iii) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of ORS 215.291 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

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

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

(II) The lots and parcels that do not qualify for the siting of a new dwelling under paragraphs (E) and (F), including a copy of the deed restrictions filed under subparagraph (iii) of this paragraph.

(F)(i) A replacement dwelling under this subsection must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.

(ii) The replacement dwelling may be sited on any part of the same lot or parcel.

(iii) The replacement dwelling must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

(iv) The replacement dwelling must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:

(I) The dwelling is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or

(II) No statewide map of wildfire risk has been adopted.

(G) If an applicant is granted a deferred replacement permit under this subsection, the deferred replacement permit:

(i) Does not expire but the permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred replacement permit is issued; and

(ii) May not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

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

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

Dwellings in Forest Zones

OAR 660-006-0027

6) A proposed "template" dwelling under this rule is allowed only if:

(c) No dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (~~8~~7) of this rule for the other lots or parcels that make up the tract are met;

(7)(a) ~~Subsection (3)(d), subsection (4)(d), and subsections (6)(c) through (h) of this rule apply: (A) On and after January 1, 2020 in Clackamas, Jackson, Lane, and Polk Counties. (B) On and after November 1, 2021 in Columbia, Coos, Curry, Deschutes, Douglas, Josephine, Linn, Marion, Washington, and Yamhill Counties. (C) On and after November 1, 2023 in Baker, Benton, Clatsop, Crook, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Multnomah, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties. (b) Prior to November 1, 2023, a county may allow the establishment of a single-family dwelling on a lot or parcel that was part of a tract on January 1, 2021, if; (A) No more than one other dwelling exists or has been approved on another lot or parcel that was part of the tract; and (B) The lot or parcel qualifies, notwithstanding subsection (6)(h), for a dwelling under sections (3) and (4) of this rule. (c) Subsection (b) of this section applies; (A) On and after January 1, 2020, in Clackamas, Jackson, Lane, and Polk Counties; and (B) On and after November 1, 2021, in Columbia, Coos, Curry, Deschutes, Douglas, Josephine, Linn, Marion, Washington, and Yamhill Counties.~~

~~(8)(a)~~ The applicant for a dwelling authorized by paragraph (A) or (B) below shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located.

Replacement Dwellings in Farm Zones
OAR 660-006-0130

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

(b) An application under this section must be filed within three years following the date that the dwelling last possessed all the features listed under subsection (a). ~~In addition to the provisions of subsection (a), the dwelling to be replaced meets one of the following conditions;~~

(c) Construction of a replacement dwelling approved under this section must commence no later than four years after the approval of the application under this section becomes final.

(d) In addition to the provisions of subsection (a), the dwelling to be replaced meets one of the following conditions;

(A) If the ~~dwelling was removed, destroyed or demolished;~~ value of the dwelling to be replaced was eliminated as a result of destruction or demolition, the dwelling was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction, or demolition and since the later of:
~~(i) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and~~
~~(ii) Any removal, destruction, or demolition occurred on or after January 1, 1973.~~

~~(B)~~ ~~If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or~~

(i) Five years before the date of the destruction of demolition; or

(ii) The date that the dwelling was erected upon or fixed to the land and became subject to the property tax assessment; or

(B) The value of dwelling to be replaced has not been eliminated due to destruction or demolition, and the dwelling was assessed as a dwelling for purposes of ad valorem taxation since the later of:

~~(C) A dwelling not described paragraph (A) or (B) of this subsection was assessed as a dwelling for the purposes of ad valorem taxation:~~

~~(i) For the previous five property tax years; or~~

~~(ii) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.~~

(i) Five years before the date of application; or

(ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment.

(~~c~~e) For replacement of a lawfully established dwelling under ORS 215.213(1)(q) or 215.283(1)(p):

(A) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055 or.~~:~~

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

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

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

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

(C) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of ~~2019 Oregon Laws, chapter 440, section~~ ORS 215.291 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

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

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

(ii) The lots and parcels that do not qualify for the siting of a new dwelling under subsection (~~c~~e) ~~of this section~~, including a copy of the deed restrictions filed under paragraph (C) of this subsection.

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

(B) The replacement dwelling may~~ust~~ be sited on any part of the same lot or parcel:

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

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

(C) The replacement dwelling must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

(D) The replacement dwelling must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:

~~(e) A replacement dwelling permit that is issued under ORS 215.213(1)(q) or 215.283(1)(p):~~

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

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

~~(ii) Is eligible for replacement under paragraph (b)(B) of this section; and~~

~~(B) Is not subject to the time to act limits of ORS 215.417.~~

(i) The dwelling is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or

(ii) No statewide map of wildfire risk has been adopted.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division is allowed. For the purposes of this section, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

C. Uses Authorized on Agricultural Lands - Childcare

OAR 660-033-0120

High Value Farm Land	All Other	Uses
R5	R5, 40	Child care facilities, preschool recorded programs or school-age recorded programs consistent with ORS 215.213(2)(aa) or 215.283(2)(dd).

"R" Use may be allowed, after required review. The use requires notice and the opportunity for a hearing.

Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

D. School Expansions

OAR 660-033-0130

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

(b) Notwithstanding ORS 215.130, 215.213, 215.283, or any local zoning ordinance or regulation, a public or private school, including all buildings essential to the operation of a school, formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, may be expanded provided:

(A) The expansion complies with ORS 215.296;

(B) The school was established on or before January 1, 2009;

(C) The expansion occurs on a tax lot:

(i) On which the school was established; or

(ii) Contiguous to and, on January 1, 2015, under the same ownership as the tax lot on which the school was established; and

(D) The school is a public or private school for kindergarten through grade 12.

E. Campsites

OAR 660-033-0130

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

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

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

~~internal cooking appliance.~~

F. Rabbit Processing

OAR 660-033-0130

28)(a) A facility for the processing of farm products is a permitted use under ORS 215.213(1)(u) and ORS 215.283 (1)(r) on land zoned for exclusive farm use, only if the facility:

(A) Uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. A county may not apply siting standards in a manner that prohibits the siting of a facility for the processing of farm products; or

(B) Notwithstanding any applicable siting standard, uses less than 2,500 square feet for its processing area. However, a local government shall apply applicable standards and criteria pertaining to floodplains, geologic hazards, beach and dune hazards, airport safety, tsunami hazards and fire siting standards.

(b) A county may not approve any division of a lot or parcel that separates a facility for the processing of farm products from the farm operation on which it is located.

(c) As used in this section, the following definitions apply:

(A) "Facility for the processing of farm products" means a facility for:

(i) Processing farm crops, including the production of biofuel as defined in ORS 315.141, if at least one-quarter of the farm crops come from the farm operation containing the facility; or

(ii) Slaughtering, processing or selling poultry or poultry products, rabbits or rabbit products from the farm operation containing the facility and consistent with the licensing exemption for a person under ORS 603.038(2).

G. Farm Dwellings in Conjunction with Cranberry Operations

OAR 660-033-0135

~~(11)(a) Notwithstanding section (4), a dwelling on high value farmland may be considered customarily provided in conjunction with farm use if:~~

~~(A) The tract on which the dwelling will be established is currently employed for farm use involving the raising and harvesting of cranberries;~~

~~(B) The tract on which the dwelling will be established is considered to be high value farmland on the basis that the tract is growing a specified perennial under OAR 660-033-0020(8)(b) but the tract is not considered to be high value farmland on the basis of soil composition under OAR 660-033-0020(8)(a);~~

~~(C) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on lands zoned for exclusive farm use or for farm and forest use owned by the farm operator or on the farm operation;~~

~~(D) The operator of the farm on the tract earned at least $40,000 in gross annual income from the sale of cranberries or cranberry products in each of the last two years, or three of the last five years, or in an average of three of the last five years;~~

~~(E) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in paragraph (D) of this subsection; and~~

~~(F) As a condition of approval for the new dwelling, the property owner agrees to sign and record in the deed records for the county in which the parcel is located, one or more instruments containing irrevocable deed restrictions, enforceable by the county, that prohibit the owner~~

~~and the owner's successors from using the dwelling as a rental dwelling unit as defined in ORS 90.100.~~

~~(b) In determining the gross income required by subsection (a) of this section;~~

~~(A) Only gross income from land owned, not leased or rented, shall be counted; and~~

~~(B) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.~~