



Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

www.oregon.gov/LCD

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To: Land Conservation and Development Commission

From: Brenda Ortigoza Bateman, Ph.D., Director
Gordon Howard, Community Services Division Manager
Hilary Foote, Farm Forest Specialist

Subject: **Agenda Item 7, April 25-26, 2024, LCDC Meeting**



Farm Forest Work Plan and 2024 Rulemaking Additions

I. Agenda Item Summary

The Farm and Forest Land Use Specialist from the Department of Land Conservation and Development (DLCD or department) will present an update on the Farm and Forest Conservation Program Improvement work since January. Department staff will briefly review the scoping phase, which the department conducted in 2023 to identify areas needing attention within the state's zoning-based farm and forest land conservation programs and to develop recommendations for future action. Staff will then brief the commission on items identified for inclusion in a five-year work plan (the 'Work Plan'). Consistent with work group recommendations, the department has identified additional items for the 2024 rulemaking project and seeks the commission's support.

The Work Plan includes the 2024 rulemaking for administrative rules implementing Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) which the commission initiated in January 2024. This work is currently underway. Consistent with those recommendations, DLCD requests the commission approve a revision to the charge for the current rulemaking that would add additional items for the appointed rulemaking advisory committee to consider. If approved at this meeting, the rulemaking would: conform administrative rules to current legislative standards, make corrections and clarifications to existing rules, and codify established case law standards with the intent of improving consistency of implementation across the state. The additional items are described in detail below.

Purpose. The purpose of this agenda item is twofold: 1) to brief the commission on development of a Work Plan addressing needed program improvements identified in the 2023 Technical Working Group Scoping Report (Attachment A), and 2) to request that LCDC approve revisions to the rulemaking charge which was approved in January 2024. This work is currently under consideration by the department -appointed Farm and Forest Conservation Program

Improvements Rules Advisory Committee (RAC). The recommended revised charge is included as Attachment B to this staff report.

Objective. The briefing is intended to inform the commission on work the department is intending to conduct addressing needed program improvements identified in the 2023 Technical Working Group Scoping Report. Staff have included the 2023 Technical Working Group Scoping Report is included as Attachment A.

The changes department staff are recommending are intended to make corrections, clarifications, and revisions to rule and to codify established caselaw standards with the intent of improving clarity and the consistency of implementation across the state.

For further information about this report, please contact Hilary Foote, Farm and Forest Land Use Specialist at 503-881-9249 or hilaryfoote@dlcd.oregon.gov.

II. Five-Year Farm and Forest Improvement Work Plan

During the past 10 years, various parties have identified a number of issues needing attention within the state's zoning-based farm and forest land conservation programs. These issues include:

- Technical updates to farm and forest administrative rules,
- Codification of a variety of standards developed by the Land Use Board of Appeals (LUBA), the Court of Appeals, and the Supreme Court in caselaw,
- Clarification of standards and interpretations for certain controversial uses,
- Clarification of certain subjective aspects of agricultural and forest land definitions,
- Revisions to DLCD's soils program.
- Methodologies for evaluating the effectiveness and impact of the program in different areas of the state.

In 2023, department staff convened a technical working group with primary knowledge of the farm and forest conservation programs. The working group consisted of members with a desire to identify actions to improve performance and achieve the stated legislative policy goals for the programs. Department staff produced a report summarizing the working group process and key discussion items for consideration to inform future action by the department and commission. Staff have included this report as Attachment A. In addition, staff collected a substantial amount of public comment when the Summary Technical Work Group Scoping Report was presented to LCDC at its meeting in January 2024.

Considering the Summary Technical Work Group Scoping Report, public comment, and feedback from department staff, DLCD has prepared a Work Plan to be implemented over a five-year period and intended to address many of the issues identified in the Summary Technical Work Group Scoping Report. The current version of the Work Plan assumes continuation of the current level of staff availability and funding through 2025. Rulemaking items identified for 2026

and 2028 may vary depending on department budget allocations for the 2025-2027 and 2027-2029 biennium. The department may propose adapting the work plan in the future to respond to emerging issues, new resources and the results of early work products produced by staff and technical working groups. The department will provide updates on the status of the Work Plan to the commission as needed.

Simplified Work Plan Timeline

2024	2025	2026	2027	2028	2029
2024 Rulemaking Biennial Report		2026 Rulemaking Biennial Report		2028 Rulemaking Biennial Report	
	White Papers & Data Collection				Model Code Update
	Guidance Documents				
	TWG: Grazing Lands		TWG: Forest Lands		

TWG = Technical Working Group

1. Funding

To support certain components of the proposed work plan, DLCD will need to receive additional legislative appropriations. The department has embedded desired funding requests in DLCD’s 2025-2027 Policy Option Package. The work plan identifies a fully funded scenario for rulemaking and a scenario which contemplates no additional funding. The department may alter identified actions based on the level of funding obtained from the 2025 Legislature.

Of particular importance are funds required to meet notice obligations under Oregon Revised Statute (ORS) 197.047. Any change to administrative rules of the Land Conservation and Development Commission that limit or prohibit otherwise permissible land uses requires the agency to reimburse counties for the cost of mailing notice to potentially impacted landowners. The majority of rulemaking items under consideration for 2026 have the potential to limit development opportunities and therefore would require notice under ORS 197.047. DLCD would not be able to pursue those rulemaking clarifications unless the department obtained adequate funding. For efficiency’s sake, department staff is proposing to address as many items that implicate ORS 197.047 as possible in a single rulemaking. A single notice for the various changes addressed in a single rulemaking would reduce the cost to the state of implementing such changes.

2. Biennial Farm and Forest Land Use Report to the Legislature

Oregon Revised Statutes (ORS) 197.065 requires the LCDC to submit a report every two years to the Legislature “analyzing applications approved and denied” for certain land uses in exclusive

farm use (EFU) and forest zones and “such other matters pertaining to protection of agricultural or forest land as the commission deems appropriate.” DLCD collects data on county land use decisions in EFU, forest and mixed farm-forest zones which are then summarized in the report. The department has been producing this report since 1983. Although it is an ongoing obligation, the department has included the report as an item in the Workplan to ensure appropriate allocation of staff, because collection, review and presentation of the reported data takes a significant amount of staff resources.

3. Whitepapers:

- NonFarm Dwellings: Nonfarm dwellings have engendered much debate due to the subjectivity and complexity of the test set forth in ORS 215.284. The Oregon Court of Appeals observed in *Cherry Lane v. Jackson County*¹ that these types of nonfarm dwelling approvals should “be the exception and that approval for them be difficult to obtain”. However, historically, nonfarm dwelling approvals represent roughly a quarter of all dwellings approved on EFU zoned lands. Local governments have approved more nonfarm dwellings than all types of dwellings in conjunction with farm use combined. The historical trend is a departure from the intended exceptional opportunity for a limited number of single-family residential dwellings in areas protected for the agricultural economy and where agricultural workforce housing should be prioritized.

The Technical Work Group Scoping Report identifies several approaches to addressing nonfarm dwellings. The department characterizes the variety of suggested approaches as follows:

- Implement technical clean-ups that clarify the existing rules and close loopholes,
- Adopt a targeted limitation which would prohibit nonfarm dwellings in certain, mappable priority conservation and hazard areas,
- Limit nonfarm dwellings by removing the opportunity to use a soils report to challenge the Natural Resource Conservation Service (NRCS) capability classification of a portion of the parcel,
- Request the legislature prohibit future nonfarm dwellings, or
- Consider an entirely different approach such as establishing a geographic density standard for nonfarm dwellings.

Some of the above approaches could be combined or implemented separately. Some of the above approaches would require additional funding, some would not. While the commission could implement some of these items via administrative rule, others would require changes to statutes by the Legislature.

The department is proposing to draft a white paper in 2025 detailing the legislative and rule history behind this dwelling type and documenting trends in approvals. The paper is intended

¹ 84 Or. App. 196, 733 P.2d 488 (1987).

to support future action on this item. The department has included a placeholder for consideration of Nonfarm Dwellings on the list of items being contemplated for 2026 rulemaking.

- **Replacement Dwellings:** A replacement dwelling is a new home that replaces an older dwelling on a parcel. In order to be replaced, a dwelling must have or have had certain qualifying features, such as walls and a roof, within the past three years of applying for a replacement application. Replacement dwellings are the most common dwelling approval in farm zones and the second most common dwelling type in forest zones. Replacement dwellings are a use permitted by statute, meaning that counties must offer them as an option and may not apply more restrictive standards than those in statute or rule.

The Technical Work Group Scoping Report identifies several approaches to addressing concerns related to the impact of replacement dwellings. The department is proposing to draft a white paper in 2025 detailing the legislative and rule history behind this dwelling type and documenting trends in approvals. The paper is intended to support identification of future action on this item.

- 4. Education and Outreach:** Education and outreach is an ongoing component of the Farm and Forest Program. Staff regularly provide informational presentations on aspects of the Farm and Forest Conservation Program to college and university classes, special interest and community groups, planning organizations, local jurisdictions and other agencies or their boards.

Occasionally there is a need to develop material targeted to a specific area of the program. For example, department staff has been in conversation with staff at NRCS and the Oregon Department of Agriculture (ODA) about co-presenting a class targeted to planners on use of the Websoil Survey tool as well as the dataset that supports the tool. The WebSoil Survey tool allows one to look up certain characteristics of the mapped soils units. Using that tool, one is able to generate a variety of tables that shows the agricultural capability classification, vegetative productivity classification and farmland class for the mapped soils units. The tool contains a variety of information both useful in, or required in, making planning decisions on resource lands. This is identified as a 2025 item on the work plan.

- 5. Guidance Documents:** For some issues, Work Group members identified publication of agency guidance documents as the preferred action. Agency guidance documents are a way to efficiently articulate the department's understanding and position on a particular topic in order to support counties, landowners and community members. This is an efficient way to address topics for which the agency frequently receives requests for interpretation. Guidance documents are written by agency staff and subject to an internal review process. They do not have the effect of law but can be an effective tool to provide support to local jurisdictions. The Work Plan contemplates preparation of guidance documents during those periods when no rulemaking is underway.

- **Fill on Farmland:** Department staff regularly receive inquiries on whether permits are required for both the permanent placement and the temporary storage of large volumes of fill on

farmland. The placement of large volumes of poor-quality fill has the potential to permanently impact the capability and suitability of land for farm use. However, fill is also often used to improve farm lanes or building sites for in 2025 to assist counties in determining when the placement of fill is a farm practice, when it is accessory, when it is solid waste disposal, and when it is not allowable.

- **Composting:** The difference between commercial composting facilities and accepted farming practices is somewhat ambiguous in statutes and implementing administrative rules. Department staff have also received requests for guidance in reviewing composting activities which may be accessory to primary use. This has arisen as a question where the primary activity is allowable on high-value farmland, a chicken processing facility for example, but a commercial composting facility would not be allowed. Department staff will draft a guidance document in consultation with the Oregon Department of Agriculture and the Department of Environmental Quality in 2025 to assist counties in determining when composting is an accepted farm practice, when it should be considered a commercial composting facility and when it is allowable as accessory to a primary use.
- **ORS 195.300 Identification of High Value Farmland:** In 2007, the Oregon Legislature created the definition of high-value farmland at ORS 195.300(10) for use in review of Measure 49 claims and it was later referenced in new review types and programs. The definition at 195.300(10) takes the older definition of high value farmland in ORS 215.710 as its starting base and then goes beyond the more basic soils capability definition in rule to include things like suitability for viticulture use; evaluation of access to irrigation water or drainage infrastructure, and a few other metrics in determining if the land should be considered particularly important for agriculture. Department staff will draft a guidance document in 2025 to identify data sources and methods to be used in applying the high value farmland definition in ORS 195.300(10) which will be updated over time as progress is made on addressing data gaps.

6. Technical Working Groups: Technical Working Groups (TWG) can be an efficient way to gather or identify needed information to inform future rulemaking proposals. The Work Plan calls for convening two such groups. The Grazing Lands TWG would be convened in 2025 to support rulemaking in 2026 regardless of funding. The Forest Lands TWG would either be convened in 2025 or 2027 depending on the level of funding obtained.

- **Grazing Lands Definition:** The definition of agricultural lands at OAR 660-033-0020(1)(a) is primarily based on NRCS soils capability classifications, which reflect the land's capability for growing crops. This definition does not contain a clear, science-based standard addressing the capability of land for use as grazing land. Livestock grazing is an important part of Oregon's agricultural economy. As a result, land that may be well suited to livestock operations can be considered for designation as non-resource land or other non-resource uses.

The 2023 report prepared by Oregon State University's Institute for Natural Resources for the Oregon Global Warming Commission's Natural and Working Lands subgroup is

entitled, 'Foundational Elements to Advance the Oregon Global Warming Commission's Natural and Working Lands Proposal'. The report identifies the conservation of rangelands as a recommended practice to reduce GHG emissions and sequester carbon. The preservation of grazing lands is important for their contribution to the agricultural economy as well as for their potential contribution to long-term carbon storage.

The protection of grazing lands also has the co-benefit of preserving habitat. Defining grazing lands can also help the state understand the extent to which important habitat is protected under the agricultural and forest land conservation programs and the role Goals 3 and 4 play in preventing or allowing their conversion.

Staff proposes to convene a Technical Working Group in the first quarter of 2025 to discuss available data and develop a rulemaking concept for consideration in 2026. The framework and schedule for a 2026 rulemaking are discussed below.

- Updated Forest Lands Definition: Following original county designations, the commission adopted provisions in administrative rules found in OAR 660-006 for the identification of forest lands which must be contemplated as part of an amendment to a county's comprehensive plan. Like the requirements for identifying agricultural lands, DLCD's administrative rule requires that forest land determinations be based on scientific data for vegetative capability classes published by the NRCS or other specific technical resources if such data is not available or are shown to be inaccurate.

When NRCS data are unavailable to assist in identifying forest land, alternative methods identified in DLCD's rules for establishing vegetative capability. Some of the alternative data methods identified in rule are only available in certain parts of the state or are out-of-date.

Staff proposes to convene a technical working group in 2027 to further review the forestlands definition and data sources on which it relies. An outcome of the forestlands technical working group would be to develop a rulemaking concept for implementation in a future rulemaking. The framework and schedule for a 2028 rulemaking are discussed below.

7. Rulemaking: The Technical Work Group Summary Scoping Report identified a number of potential rulemaking topics for the department to consider. The following scenarios for rulemaking projects in 2026 and 2028 are dependent on a variety of factors: whether or not additional funding is obtained in the 2025-2027 biennium or the 2027-2029 biennium, outcomes of technical working group discussion, staff availability and commission direction. As noted above, funding is required for rule changes that implicate the ORS 197.047 noticing requirements. Additional funding would also be required to support staff capacity needed to run two rulemakings simultaneously during a biennium which would result in a single noticing under ORS 197.047 significantly reducing costs compared to issuing two notices. The department may provide work plan updates as needed to respond to changes in these factors.

A. Additional Funding within 2025-2027 Biennium

2026 Rulemaking

a. 2026 Rulemaking A:

- Home Occupations as Lodging
- Primary Farm Dwelling Income Adjustment
- Targeted Limitation of Non-Farm Dwellings and Technical Corrections

b. 2026 Rulemaking B:

- Grazing Lands Definition
- Mixed Farm-Forest Zones
- Update Date of NRCS Data & Expansion of high value farmland Limitations

2028 Rulemaking

- Update to Forestlands Definition
- Placeholder

B. No Additional Funding within 2025-2027 Biennium, Funding obtained in 2027-2029.
Under this scenario, two rulemakings may be conducted in 2028 on a similar schedule.

2026 Rulemaking:

- Grazing Lands Definition
- Update to Forestlands Definition
- Non-Farm Dwelling Technical Corrections

2028 Rulemaking

a. 2028 Rulemaking A

- Home Occupations as Lodging
- Primary Farm Dwelling Income Adjustment
- Targeted Limitation of Non-Farm Dwellings

b. 2028 Rulemaking B

- Mixed Farm-Forest Zones
- Update Date of NRCS Data & Expansion of HVFL Limitations
- Placeholder

C. No Funding within 2025-2027 Biennium or 2027-2029 Biennium

If no additional funding is obtained for either the 2025-2027 biennium or the 2027-2029 biennium, no additional rulemaking for 2028 is currently being contemplated. There may be a need for conforming rulemaking in 2028 which will be determined at a future date.

2026 Rulemaking:

- Grazing Lands Definition
- Update to Forestlands Definition
- Non-Farm Dwelling Technical Corrections
- Placeholder

2028 No Rulemaking

8. Model Code Updates and Technical Assistance Grants: As amendments have been made to statutes and rules by the legislature or LCDC, counties typically update their land use regulations for consistency with those amendments. When counties do not update their regulations, they are required instead to directly apply statutory and rule requirements. A number of counties have not kept current with these changes, often lacking sufficient staff resources to do so. Yet, because of the complexity of state law involving Goals 3 and 4, the direct application of these changes can also be a challenge for county planning departments. The lack of county staff resources means that the most current state law regarding Goals 3 and 4 may not be appropriately implemented in all counties.

In 2016, using staff experts and consultants, DLCD prepared model language that showed how state criteria for farm and forest zones could be incorporated into a local code. DLCD also provided technical assistance grant funds to assist counties in coordinating with a consultant to tailor the model zone language to meet their local needs. The model zone language is now out of date because of subsequent changes to state law.

Staff propose to initiate a project to revise the model zone language in 2029, following the rulemaking described above, and to recommend to the Grants Allocation Advisory Committee to allocate a portion of the agency's technical assistance grant funds to assist counties in updating their code to incorporate changes made by the legislature and LCDC since 2016. This will further ensure consistent implementation of the improvements contemplated under this program and assist counties in reacting to changes brought about by the improvements program. This item is also dependent on obtaining sufficient funding.

j. 2024 Rulemaking Additions: Oregon's Farm and Forest Conservation Program attempts to balance the need for clear and objective statewide standards with provisions for local discretion and the flexibility to adapt the program to the unique circumstances of individual counties. In some cases, ambiguity in use definitions or rule language has resulted in more frequent appeals of certain types of use applications and repeated requests for department guidance from local jurisdictions.

Current Charge Topics

The charge for the 2024 rulemaking which is currently underway is to analyze, draft, and recommend rules that codify certain case law standards related to:

- ORS 215.296 (the 'Farm Impacts Test'),
- Commercial Activities in Conjunction with Farm Use permitted by ORS 215.213(2)(c) and ORS 215.283(2)(a),
- The 'incidental and subordinate' and 'necessary to support' standards for Agri-Tourism and Other Commercial Events permitted by ORS 215.213(11) and ORS 215.283(4),
- Transportation Facilities on Rural Lands when located in farm or forest zones.

New Topics for Consideration

The following section identifies topics that are proposed as additions to the 2024 Farm and Forest Improvement Program rulemaking charge. Staff have included this proposed charge as Attachment B. The topics identified below are all areas where a need has been expressed for additional clarity in rule and all of the below topics were identified in the Farm and Forest Conservation Improvement Program Technical Work Group Scoping Report which was presented to the Commission at its January 2024 meeting.

- **Define 'processing' and repair the circular definition of 'preparation':**

It can be difficult to ascertain when a proposed activity is appropriately considered 'preparation' which is considered 'farm use' under ORS 215.203, when it becomes 'processing' which is a use permitted under ORS 215.283(1), but subject to standards (ORS 215.255), and when an activity may exceed what is permissible as 'processing'.

ORS 215.203 clarifies that '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 farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land" and defines 'preparation of products or by-products' as including "but not limited to the cleaning, treatment, sorting, or packaging of the products or by-products'. This set of definitions contains a circular reference that essentially says farm use includes preparation provided preparation is occurring on land employed for farm use. Processing is not defined in statute or rule.

As a specific recommendation from the Scoping Summary Report considered by LCDC in 2024, the technical working group recommended that it would be helpful for the state to repair this circular definition and define 'processing'. If the RAC does not reach a consensus on the topic, the department will note the diverging opinions among the members in its report to the commission.

The department would present the RAC with copies of relevant statute and rule language and a copy of the 1996 Report to the Governor from the Agricultural Processing Working Group which

contains relevant history related to these definitions. The department will ask the RAC to evaluate these materials and recommend language defining these terms.

2. Define a methodology to align a template rectangle with a stream or a road. Clarify what constitutes a ‘road’ for purposes of the review and the term ‘to the maximum extent possible’.

This item concerns the alternative forest dwelling review authorized at ORS 215.750 which is commonly referred to as the ‘template test’. There is one version of the test that authorizes the use of a rectangle rather than a square under certain conditions. Several Counties have communicated over the past several years that it is unclear how a rectangle is to be aligned ‘to the maximum extent possible’ with the qualifying road or stream and that it is unclear what is appropriately considered a ‘road’ in order to qualify for this version of the test.

When staff reviewed the draft charge with members of LCDC’s Local Officials Advisory Committee in February, members expressed particular support for this item.

The department would present the RAC with copies of relevant statute and rule language and examples of different methodologies that have been employed to conduct this test. The department will ask the RAC to evaluate these materials and recommend language defining these terms.

3. Private Parks clarification

Staff would work with the RAC to clarify that focal events, such as weddings, are not “recreational uses” for the purpose of approving a private park on resource lands. The department proposes this as a codification of the opinion in *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 61 (2015).

DLCD staff would present the RAC with copies of relevant statute and rule language and the RAC would be asked to review *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 61 (2015). The department would ask the RAC to evaluate these materials and recommend language to clarify this standard.

4. Clarify whether uses otherwise listed in chapter 215 of statute or in OAR 660-006-0025 may or may not alternatively be reviewed as Home Occupations under ORS 215.213(2), 215.283(2) or OAR 660-006-0025(4)(s).

Home Occupations are the most common non-resource use approved in exclusive farm use zones and the second most commonly approved non-resource use in forest zones. At the state level, ORS 215.448 vaguely defines home occupations in resource zones as a use that occurs

in dwellings or other buildings normally allowed in the zoning districts and 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, counties review and approve a very wide variety and intensity of activities in exclusive farm use zones: hair salons, firearms dealers, tasting rooms, medical offices, events venues, daycares, etc. Proposals for uses that cannot meet the standards specifically established for them by the legislature often seek approval under the more broadly defined 'Home Occupation' option.

For other uses listed in Chapter 215, like processing facilities or agritourism and other commercial events, whether or not these may alternatively be reviewed as Home Occupations has been a matter of debate. It can be confusing for planners and applicants alike to understand what is permissible. The technical working group has recommended that it would be helpful for the state to clarify whether local governments can alternatively approve as a home occupation those uses allowed in other parts of ORS Chapter 215.

DLCD staff will present the RAC with data on home occupation approvals over time in the state of Oregon, information on standards for other uses which are commonly approved as home occupations instead of the use identified in ORS Chapter 215 and will ask the RAC members to consider whether uses otherwise allowed in ORS Chapter 215 may or may not alternatively be reviewed as Home Occupations. If the RAC does not reach a consensus on the topic, the department will note and consider the diverging opinions and then present a recommendation for commission's consideration.

5. Establish an evidentiary standard for verification of income to demonstrate compliance with the standards for farm stands, agritourism events and primary farm dwellings.

Verification of income is required as a part of several types of land use approvals: primary farm dwellings, accessory farm dwellings, farm stands and agri-tourism and other commercial events. However, several Counties have communicated that it is difficult to verify income in a reliable manner. The concerns expressed include that IRS tax documents used to report farm income are not specific enough to be definitive and it is difficult to verify if an applicant has filed such documents. Counties take a variety of approaches to verification of qualifying income for primary and accessory farm dwellings as well as income thresholds for farm stands and agri-tourism events. The technical working group has recommended that it would be helpful for the state to clarify an appropriate evidentiary standard for verification of income.

The department will present the RAC with examples of approaches taken by several counties as well as statutory direction for verification of income required for other types of use reviews. The department will ask the RAC to evaluate approaches and make a recommendation.

The Department has appointed a Farm and Forest Conservation Program Improvements Rules Advisory Committee (RAC) as directed by LCDC in January 2024. The RAC consists of individuals and organizations likely to be impacted by changes to the Farm and Forest Conservation Programs and persons who also have a strong understanding and working knowledge of the history and structure of the state’s farm and forest zoning-based land conservation programs. Staff recommends that the RAC that has been appointed to consider the original charge, also review any additions to the charge authorized by the commission.

Farm and Forest Conservation Program Improvements 2024 Rules Advisory Committee (RAC)	
Alyssa Boles	Linn County Planning Department
Austin Barnes	Marion County Planning Department
Blair Batson	1,000 Friends of Oregon
Charles Bennett	Jackson County Planning Department
J. Kenneth Katzaroff	Attorney
James Johnson	Oregon Department of Agriculture
Jan Lee	Oregon Association of Conservation Districts
Joy Lovett	Oregon Department of Fish and Wildlife
Justin Green	Justin B. Green Consulting
Katherine H Daniels	Agricultural Land Use Scholar
Maitreyee Sinha	Washington County Planning Department
Megan Davchevski	Umatilla County Planning Department
Michael S. McCarthy	McCarthy Family Farm
Mickey Killingsworth	M.D. Acres
Nellie McAdams	Oregon Agricultural Trust
Rory Isbell	Central Oregon Land Watch
Tyler Ernst	Oregon Forest Industries Council
Amber Bell	Lane County Planning Department
Jeffrey L. Kleinman	Attorney
Lauren Poor	Oregon Farm Bureau
Rob Hallyburton	Friends of Yamhill County
Samantha Bayer	Oregon Property Owners Association

Draft Rulemaking Charge

The purpose of a rulemaking charge is to allow the commission to offer direction on project management, as well as express its expectations regarding the treatment of subject matter and content. The charge will be the instrument relied on by staff and the RAC for guidance resolving any questions on project direction. Staff have included the draft charge as Attachment B.

III. Recommended Action

The department recommends that the commission officially initiate rulemaking as described in this staff report and approve the revised charge for the 2024 Farm and Forest Conservation Program Improvements Rules Advisory Committee (RAC) included as Attachment B.

Proposed Motion: “I move that the commission initiate rulemaking as described in this staff report and approve the revised charge for the 2024 Farm and Forest Conservation Program Improvements Rules Advisory Committee (RAC) included as Attachment B.”

Alternative Motion: “I move that the commission initiate rulemaking as described in this staff report and approve the revised charge for the 2024 Farm and Forest Conservation Program Improvements Rules Advisory Committee (RAC) included as Attachment B with the following revisions: [specify revisions].”

IV. Next Steps

The department anticipates scheduling a hearing on the 2024 Farm and Forest Improvements Rulemaking at the September 2024 commission meeting, After commission review and input, the department would schedule rules for adoption by the commission at the December 2024 commission meeting.

Department staff will provide the commission with a draft of the 2022-2023 Biennial Farm and Forest Land Use Report for the Legislature for its authorization to submit to the 2025 Legislature at the December 2024 commission meeting and will also provide a brief update on all the five-year work plan items at that time.

V. Attachments

A. Technical Working Group Summary Report

B. Draft Revised Charge

C. Work Plan Schedule Visual

Farm and Forest Conservation Program Improvements

Technical Work Group Scoping Report



January 4, 2024



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I. Introduction

Project Summary

Oregon’s zoning-based farm and forest land conservation programs have been in place for over 50 years. During that time the program has been expanded, modified and re-designed to improve the performance of the program in achieving the objectives of statewide planning Goals 3 (Farmland) and 4 (Forest Land), and to adapt to changes in public priorities. The State Legislature has adopted and amended statutes, the Land Conservation and Development Commission (LCDC or commission) has adopted rules clarifying and interpreting statutory provisions, and state courts have interpreted these statutes and rules in ways that have provided additional standards. These programs are living, dynamic regulatory structures.

Every year the Department of Land Conservation and Development (DLCD or department) reports the acreage removed from the protective farm and forest zoning program as one of its key performance metrics (KPMs). This, however, does not capture the extent of actual conversion as land is developed for non-resource uses allowed even while the land is under protective zoning. Once every two years DLCD also provides a report to the legislature documenting the number of dwellings, non-resource uses, and partitions that local governments have approved on resource lands for the biennium and over time as another insight into how well the program is achieving the objectives of statewide planning Goals 3 and 4. As has been highlighted in public testimony at LCDC meetings in 2022 and 2023, neither the agency’s KPMs nor the Biennial Farm and Forest Report to the Legislature are designed to provide insight into the issues with how the regulatory structure of the programs are functioning.

At the November 2022 commission meeting, LCDC asked staff for a plan to address concerns identified in the 2020-2021 Biennial Farm and Forest Report to the Legislature. An item was included in the agency strategic plan under development at that time to convene a technical work group to prepare recommendations to address inconsistencies, lack of clarity, and technical errors in the existing regulatory framework¹. This project is designed to implement that objective of the strategic plan and to evaluate the performance of the program at a more detailed level.

Over the past 10 years, various parties have identified a number of issues needing attention within the state’s zoning-based farm and forest land conservation programs. These issues include:

- Straight-forward technical updates to rule,
- Codification of a variety of caselaw standards,
- Clarification of parameters and definitional interpretations for certain controversial uses,
- Clarification of certain subjective aspects of agricultural and forest land definitions,
- Revisions to DLCD’s soils program.

¹ Oregon Department of Land Conservation and Development Strategic Plan 2023-2031, Focus Area 5, Objective 5.1.a.

- Methodologies for evaluating the effectiveness and impact of the program in different areas of the state.

This Technical Working Group Scoping Phase summarized in this report is envisioned as the initiation of an ongoing program for the improvement of the farm and forest land conservation program. The department envisions the project proceeding in three phases:

Phase 1, Technical Work Group Scoping: The department convened a technical working group (TWG) to identify and prioritize deficiencies in the program and recommend solutions to the identified issues of concern. This report, which summarizes the identified issues and recommendations for future action, is the culmination of the scoping phase and was intended to capture in a single place the concerns and issues that have been identified. This phase of the project does not seek to implement any changes or solutions.

Phase 2, Simple Rulemaking: Staff will ask LCDC to initiate a simple rulemaking following the Phase 1 scoping effort. This rulemaking is intended to make technical corrections to rule, conform rule to changes in statute, and codify established caselaw standards with the intent of improving consistency of implementation across the state.

Phase 3, Multi-year Farm and Forest Conservation Program Improvement Plan: Phase three involves the preparation and execution of a multi-year work plan based on direction from LCDC. This report contains a number of suggestions for more complex rulemakings, legislative concepts, the creation of guidance documents, convening future working groups, and conducting research.

Summary Report for the Technical Work Group Scoping Phase

The following sections document the variety of issues discussed by the Technical Working Group (TWG) along with background information on each topic intended to provide the reader with additional context for the issue. Each section concludes with a table of recommendations provided by TWG members specific to that topic as well as a priority ranking assigned by TWG members. TWG members were asked to review the final list of recommendations and prioritize the suggestions on a scale of 1 to 10 based on potential impact to the program and complexity of implementation, a score of 1 having a high impact and low complexity and a score of 10 having a low impact and high complexity. A complete list of the issues identified, and the accompanying recommendations are included in Appendix 1 to this report. Please note that the recommendations are those of TWG.

This report is intended to:

1. Capture in one place issues of concern with the framework that implements statewide planning Goals 3 and 4. Certain topics presented here have long been topics of discussion and debate for some time.

2. Collect suggestions for how those issues could be addressed in ways that improve clarity and consistent implementation in ways that support the policy intent of statewide planning Goals 3 and 4. The program has attempted to balance the need for clear and objective standards and definitions while providing opportunities for local discretion and a variety of unique situations. In the early days of the program, far fewer uses were permitted in resource zones and counties had more interpretive discretion over those uses. Over the past fifty years, new uses have been added almost every year accompanied by more complicated tests and standards.

3. Provide needed information to inform the creation of a multi-year work plan for DLCD with the intent of addressing some or all of the identified issues in a thoughtful and organized way. A variety of potential action items have been identified by the TWG. The Land Conservation and Development Commission will be asked to consider the information presented in this report and provide the agency with direction on aspects to pursue in a multi-year work plan.

II. Technical Work Group Scoping Phase:

Farm and Forest Conservation Program Improvement Scoping Report: Technical Work Group (TWG)

Between August and December of 2023 DLCD convened a Technical Work Group (TWG) to identify and prioritize deficiencies in the program and recommend solutions. The TWG consisted of members from across the state, representing other state natural resource agencies, working land conservation advocates, farmers and county planning practitioners, as well as liaisons from the Land Conservation and Development Commission (LCDC) and the Citizen Involvement Advisory Committee (CIAC). Members brought a detailed working knowledge of the regulatory framework that implements statewide planning Goals 3 and 4, its history, and the caselaw standards associated with a variety of the issues discussed.

The TWG met on six occasions. Following the introductory meeting, members were given an initial list of issues and asked to add to that list and rank identified issues based on the complexity and impact of proposed resolutions. Before the second meeting, DLCD staff reviewed the revised lists submitted by each TWG member and grouped the identified issues into general categories for discussion at subsequent meetings. Each meeting focused on an Issues Matrix specific to that meeting.

1. TWG Meeting 1 was a presentation by staff explaining the goals of the scoping phase process, intended outcome and a history of the working lands conservation program.
2. TWG Meeting 2 focused on a discussion of confusion generated by the multiple pathways available to permit certain types of non-resource uses ('multi-path permitting').
3. TWG Meeting 3 focused on criteria for dwelling reviews.
4. TWG Meeting 4 focused on the definitions of 'Agricultural Lands' and 'Forest Lands' and the data sources on which those rely, particularly NRCS soils data.
5. TWG Meeting 5 focused on statewide data and analyses needed, the nexus of the Goal 5 (Natural Resources) program with the Farm and Forest Conservation Program, and a variety of other issues that did not fit neatly in other categories.

The matrix included as Appendix 1 to this report is a consolidation of the meeting matrices as updated following each meeting to capture modifications and information arising from the discussions. Following the November 2, 2023 meeting, TWG members were asked again to rank the issues identified in the final matrices in terms of the complexity and impact of proposed resolutions. Appendix 1 reflects those rankings by the TWG are reflected. The content of those matrices is discussed in detail below.

Integration of Public Comment

Department staff met with the Citizen Involvement Advisory Committee (CIAC) on June 30, 2023 to review the Engagement Plan for the Farm and Forest Conservation Project Improvement Project and composition of the TWG.

Staff briefed the Land Conservation and Development Commission on the initiation of the scoping phase of the project at the July 27, 2023 LCDC meeting in Portland. A significant amount of public comment, both written and oral, was received in support of the project at that time².

The department created and published a website specific to the Farm and Forest Conservation Program Improvements Project³ on August 15, 2023. The department also distributed a public announcement describing the initiative with a link to the project website on the Farm and Forest GovDelivery channel which has over a thousand subscribers.

Although the TWG is advisory to DLCD Staff and the meetings were not subject to public meetings law, the agency chose to publish the meeting agendas and materials on the project website and livestream the meetings on the DLCD YouTube channel for interested members of the public to follow along. Each meeting has received between 26 to 53 views on YouTube to date.

Members of the public were encouraged to submit comments throughout the TWG Scoping Phase and several comments were received from non-TWG individuals and organizations alike. Those comments were integrated into the TWG discussions and Issues Matrices.

² LCDC Meeting Thursday, July 27, 2023, Agenda Item 10, meeting materials and written public comment available at <https://www.oregon.gov/lcd/Commission/Pages/LCDC-Meeting-July.aspx> Meeting recording available at <https://www.youtube.com/watch?v=-z33mIIEnDg>

³ <https://www.oregon.gov/lcd/FF/Pages/CPIP.aspx>

III. Oregon's Agricultural and Forest Land Conservation Program:

For nearly half a century, Oregon has maintained strong policies to protect its agricultural and forested lands. Strong farm and timber economies require a certain critical mass of contiguous working lands be maintained. When residential development or other non-resource uses encroach into these areas, this leads to increased conflicts between farm and forest practices, and rural residents, as well as to increased risk for wildfire and pressures on wildlife. In response to an unprecedented loss of arable lands between 1955 and 1965, the state legislature in the early 1970's called for the preservation of agricultural land to sustain the agricultural economy and forested land to ensure resources remain available for timber harvest, wildlife habitat, natural resource values, and recreation.

The Oregon Legislature first established Oregon's Agricultural Land Use Policy in 1973 with the enactment of SB 101, the partner bill to the Land Conservation and Development Act (SB 100), codified at ORS 215.243. There are four basic elements to the policy. The first two parts of the policy recognize the benefit of farmland preservation to the agricultural economy and its physical, social and aesthetic contributions to all people of the state in both urban and rural communities. The policy acknowledges that agricultural land is a limited natural resource that private farmland has significant public value beyond the economic contribution of the agricultural sector and the security of food supply. The main tool for carrying out these policies is the statewide land use planning program.

Lands protected under exclusive farm use zoning and forest zoning are in zoning-based conservation programs associated with a tax benefit. Restrictive zoning applied to farm and forest lands limits the use of these lands to farm use and forest practices as well as certain other uses that are established by the legislature or LCDC. LCDC is empowered to interpret and clarify statute, including the adoption of rules that restrict or limit statutorily authorized uses such as prohibiting certain uses on high-value farmland. Counties then apply state requirements through local comprehensive plans and land-use ordinances.

Counties then apply state requirements through local comprehensive plans and land-use ordinances.

The Legislature has recognized that some non-resource uses are appropriate in Exclusive Farm Use (EFU) and mixed farm-forest zones, the two types of zoning districts authorized for use on agricultural lands. In 1963, the first statutory EFU zone included just six nonfarm uses. The legislature has added additional uses almost every session since the inception of the program. Today more than 60 uses other than farm use are allowed in an EFU zone. A similar list of uses was established by LCDC for forest zones.

"Sub-1" and "Sub-2" Uses:

All non-farm and non-forest uses are subject to local land use approval. Those uses are further divided into two categories commonly referred to as 'sub-1 uses' which are uses that the legislature has determined are compatible with resource uses subject to standards, and 'sub-2

uses’ which must demonstrate through a local proceeding that they will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest uses. Caselaw establishes that counties must offer sub-1 uses in the code and may not be more restrictive than the state, whereas counties may choose to allow sub-2 uses, or not, and may subject sub-2 uses to additional approval criteria.

‘Sub-1 Uses’: Uses that the legislature has determined are compatible with resource uses subject to standards. Counties must apply these uses as established by the legislature.

‘Sub-2 Uses’: Must demonstrate through a local review that they are compatible with farm and forest uses. Counties may adopt more restrictive versions of these uses or choose not to permit them.

It is important to keep in mind that those uses listed by the legislature in ORS 215.213 and 215.283 are *exceptions* to the farm use that is the purpose of EFU

zones, and nonfarm uses should not be interpreted to encompass uses that would subvert the goal of preserving land for agriculture use.

Cumulative Impacts:

Allowing some non-resource uses and dwellings on lands under the conservation program assumes that farm and forest zones can accommodate a certain number of non-farm residential, commercial and industrial uses and dwellings without affecting the overall stability of the resource industries in the area. ‘Cumulative impacts’ may result when the effects associated with a proposed non-resource development are overlaid on effects associated with past, present, and reasonably foreseeable future non-resource developments.

Potential impacts to the agricultural economy can occur in a variety of ways: from lost time resolving conflicts with residential neighbors due to issues like noise, odors, spraying and trespass and traffic, to more landscape-level impacts that occur when the number of farms decline beyond a certain point. A critical mass of farm operations is required in a given area to maintain social networks that provide mentorship, provide opportunities for knowledge sharing, and maintain an informal economy (borrowing equipment or veterinary supplies). That critical mass of farmers is also required to financially support critical local service providers like diesel mechanics, feed stores, university extension and research stations, and nearby facilities such as food processors, co-packing plants and meat processors.

Significant cumulative impacts can result from individually minor but collectively significant development taking place over a period of time. Put another way, there is a ‘tipping point’ at which the combined conflicts associated with non-resource commercial, industrial and residential development

‘Cumulative Impacts’ can result from individually minor but collectively significant development taking place over a period of time.

make it too difficult to farm or conduct woodlot or timber operations in an area that would otherwise have been suitable for those locationally-dependent resource uses. ‘Cumulative

impacts' are a theme that underlie most of the concerns and issues brought up during this process.

NRCS Soils Data:

Both the farm and forest definitions rely to various extents on soils data published by the United States Department of Agriculture Natural Resource Conservation Service (USDA NRCS). When LCDC adopted the definition of 'agricultural lands' to be protected under Goal 3, it very intentionally relied on objective, scientific information collected and provided by NRCS to inform the base definition. The definitions of 'agricultural lands' and 'forest lands' are discussed further below.

Many uses and dwelling reviews in the resource zones include references to the NRCS soils agricultural capability or forest vegetative productivity classifications. There is also a process to challenge the NRCS maps which is discussed at length below. It is important to take a moment to provide some background on the soils data that is used in the Goal 3 and 4 regulatory structures.

NRCS has completed soil surveys for most of the State of Oregon. These soil maps are available online through NRCS's Web Soil Survey tool and contain a wealth of information about the characteristics of the soils in the counties and their suitability for many kinds of agricultural and forestry uses.

The land capability classification assigned to a particular mapped soil unit shows, in a general way, the suitability of soils for most kinds of field crops. Capability classes are designated by the numbers 1 through 8. The numbers indicate progressively greater limitations and narrower choices for practical use with 8 being the least suitable soil for agricultural uses. In addition to capability class, a soil unit also has an 'farmland' description assigned by USDA: prime farmland, unique farmland, farmland of statewide importance or not prime farmland. Prime and unique soils, along with some other regionally specific soils, are considered 'high-value farm soils' as discussed further below. Similarly, NRCS assigns a vegetative productivity classification for forestry to some mapped soils units.

Figure 1 below shows portions of four mapped soil units on a portion of an example property where the valley bottom is zoned EFU and the wooded hillside is zoned Forest. NRCS's WebSoil Survey tool allows one to look up certain characteristics of the mapped soils units. Using that tool, one is able to generate a variety of tables similar to the one in Figure 1 that shows the agricultural capability classification for the mapped soils units. In this case, the valley bottom has

a very high agricultural capability class rating, and the steep slopes have a low capability class rating. The vegetative productivity for the forested slopes have very high cubic foot per acre year ratings.

Figure 1, Example WebSoil Survey map showing capability class



Map Unit Symbol	Map Unit Name	Capability Class Rating	Acres in Area of Interest	Percent of Area of Interest
20E	Kloutchie-Necanicum complex, 30 to 60 percent slopes	6	13.3	23%
21F	Necanicum-Ascar-Kloutchie complex, 60 to 90 percent slopes	7	11.8	20%
170A	Logsdon silt loam, 0 to 3 percent slopes	2	10	17%
174C	Typic Fulvudands complex, 3 to 15 percent slopes	4	2.3	4%
192A	Yachats very fine sandy loam, 0 to 3 percent slopes, occasional flooding	2	19.7	34%
W	Water		0.6	1%

IV. TWG Identified Issues and Recommendations:

Issues and recommended actions identified by members of the TWG are described below and summarized in the matrix found in Appendix 1. Staff has grouped the TWG identified issues into general topic areas. Each area below begins with background information and data to help the reader better understand the concerns identified by the TWG. Please note that the recommendations described here are those of TWG members.

Final rankings assigned are based on the number of TWG member respondents identifying the particular issue as one of their top-10 priorities to address.

A ranking of 1: More than 75% of responding TWG members identified the issue as a top priority.

A ranking of 2: 60% to 75% of responding TWG members identified the issue as a top priority.

A ranking of 3: 50% to 60% of responding TWG members identified the issue as a top priority.

A ranking of 4: 35% to 50% of responding TWG members identified the issue as a top priority.

A ranking of 5: 25% to 35% of responding TWG members identified the issue as a top priority.

Unranked items are those with less than 25% of TWG members identifying the proposed action as one of their top-10 priorities. Many of these items were still identified as priorities for several of the TWG members.

Needed Data and Future Analyses

At what point do farm and forest zones become so developed with non-resource uses that they can no longer be called a conservation program? How many nonfarm uses and nonfarm partitions can be developed in an area before they affect the viability of a wholistic agricultural economy in that area? To begin to answer these questions we first need to understand where development has occurred within protected areas over the years since farm and forest zoning was established. DLCDC has a large amount of data on dwelling and use approvals in farm and forest zones that it has been collecting and reporting since 1983. However, this data is not spatialized and therefore cannot be mapped.

Many action items identified by the TWG involve some degree of spatial analysis or mapping of: high-value farmland, natural resources relevant to land use planning, conversion, partitions and dwelling approvals, cumulative impacts, and areas where conservation of working lands has stacked benefits with other resource values. While various staff at DLCDC use GIS (Geographic Information Systems) for a variety of purposes, the agency does not currently have a dedicated GIS program, compiling and curating data sets and GIS layers that staff and partners can rely on for decision-making. Funding and position authority from the legislature is a pre-requisite to several other recommended actions made under this topic.

There are a variety of regulatory and 'best information' GIS datasets as well as important data layers produced by other natural resource agencies that DLCDC would like to compile for local

partnership, including: Oregon Dept. of Fish and Wildlife habitat areas, Oregon Water Resources Dept. limited and critical groundwater areas, DLCD hazard areas, NRCS soils data, Department of State Lands wetlands inventories, etc. Some of these datasets are available on Oregon Explorer or from other agency websites but are difficult to find. TWG members were concerned that it is unclear to many jurisdictions what the most current and best available data for a variety of land use planning efforts are or where to obtain them. As the statewide planning agency, DLCD should play more of a role in coordinating GIS resources for local jurisdictions. This would also help ensure the most current and best available data are being used consistently across the state in support of planning efforts.

The recommended actions below progressively build on one another. Many of these items are also referenced as parts of solutions related to topics areas discussed later in the report.

TWG Priority	TWG Recommendations
1	Technical working group to review the material stability standard for nonfarm dwellings and define a use case for supporting counties with these reviews.
1	Technical working group to define a methodology and needed data for county-wide cumulative impacts analyses.
2	Focus on spatializing existing data for non-resource use and dwelling approvals from the farm and forest reporting database.
3	Support development of DLCD internal GIS capabilities to create and maintain a publicly accessible database of the latest planning-related datasets and web-mapping tools for analysis and map-making Includes internal capacity to create and continuously update core datasets: urban growth boundaries, urban and rural reserves, zoning districts, comprehensive plan districts, unincorporated communities, land use, land cover, Measure 49 and 37 development, and ownership tracts.
4	Inter-agency coordination to identify areas of stacked resource benefits to overlay with cumulative impacts and conversion trends.
4	Funding to engage a fellow or intern to draft a Guidance Document on Goal 3 and 4 Comprehensive Plan Updates with support from the above technical working group. Develop a guidance document to: 1) outline the methodology for data collection and analysis to identify and evaluate agricultural and forest areas, patterns of non-resource development and resource development and use; 2) describe regulatory authority of counties; and 3) provide suggestions for implementation of strategies to adjust local programs to current situations.
	Provide a publicly accessible state-wide map of high-value farmland as defined in ORS 195.300(10).
	Technical working group to identify needed data and capacity to meet ORS 215.209 obligation which requires DLCD to maintain a computerized database that is capable of producing county-wide maps that show the diversity of Oregon’s rural lands including information on soil classifications, forest capabilities, irrigated lands, croplands, actual farm use, and plan and zone designations.

In addition to discussion involving the collection, provision and analysis of spatial data, the TWG identified the need for guidance documents on a variety of topics that are discussed below and

also requested that DLCD provide updated farm and forest model codes. The current, posted versions have not been updated in almost a decade.

TWG Priority	TWG Recommendations
3	Update and maintain the model codes for farm and forest zones on DLCD's website.

Caselaw Standards

The farm and forest conservation programs are living regulatory structures that have evolved over time. When development of particular nonfarm or non-forest uses have been controversial or where the language of statute, rule, or ordinance is subjective or ambiguous resulting in disagreement over a land use decision, those decisions are frequently appealed to the Land Use Board of Appeals (LUBA) and then to the state courts. Over the past 40 years, certain uses have tended to be more controversial resulting in a large body of caselaw standards. There are also certain subjective aspects of the regulatory structure, like the farm impacts test that is applied to all sub-2 uses, that have been frequent topics at the courts.

Many of these established caselaw standards have not been codified in rule. Local jurisdictions have varying degrees of resources to be able to keep up on court decisions or interpret the legal standards. The result is uneven application of these standards and appeals of decisions that may not have been informed by more recent legal decisions. Codification of caselaw standards would improve consistency of application and reduce unnecessary appeals. There was strong agreement from the TWG on this matter though most members of the TWG agreed that several of the uses noted below, like commercial activities in conjunction with farm use, need still more clarity. As noted above, DLCD will be requesting that LCDC initiate a simple rulemaking to codify the caselaw standards related to the first four topics described below.

The Farm Impacts Test:

As noted above, all type-2 uses (uses that the legislature has determined may or may not be compatible with farm uses depending on site-specific factors) require a county to find that the proposed use will not force a significant change in farm and forest practices in the surrounding area and will not significantly increase the cost of farm and forest practices on the surrounding lands. This is a subjective standard that requires interpretation by a county to determine what a significant impact is. A body of caselaw exists that offers guidance on how an impacts test analysis should be conducted and what constitutes a significant impact. However, these established caselaw standards have not been codified in statute or rule and are therefore applied inconsistently throughout the state.

Recommendation
Codify guidance from the courts on providing findings under ORS 215.296 (the ‘farm impacts test’) as established in Schellenberg v. Polk County, 21 Or LUBA (1991); Von Lubken v. Hood River County, Or App (1993); Stop the Dump Coalition v. Yamhill County, Or (2019); and Friends of Marion County v. Marion County (Jones/Agritainment), 88/89 Or LUBA (2022).

Commercial Activities in Conjunction with Farm Use (CACFU):

Multiple court rulings have found under different circumstances that a 'commercial activity in conjunction with farm use' must: 1) be either exclusively or primarily a customer or supplier of farm products, 2) provide products or services essential to the practice of agriculture; and/or 3) significantly enhance the farming enterprises of the local agricultural community. Case law establishes that must be a direct connection between the proposed nonfarm commercial activity and area agriculture that is neither speculative nor untargeted. Case Law also clarifies that any associated events or activities must be incidental to the commercial activity. These established caselaw standards have not been codified in statute or rule and are therefore applied inconsistently throughout the state.

Recommendation
Codify guidance from the courts on what constitutes a commercial activity in conjunction with farm use as established in Balin v. Klamath County, 3 LCDC (1979); Craven v. Jackson County, 308 Or (1989); Chauncey v. Multnomah County, 23 Or LUBA (1992); City of Sandy v. Clackamas County, 28 Or LUBA (1994); and Friends of Marion County v. Marion County (Jones/Agritainment), 88/89 Or LUBA (2022).

Incidental and Subordinate and Necessary to Support:

Agri-tourism or other commercial events or activities permitted on land zoned within EFU zones must be ‘incidental and subordinate’ to existing farm use of the property. Counties have interpreted this standard in a variety of ways leading to unequal application across the state and approvals that range significantly in scope and intensity. Likewise, approvals for up to 18 agri-tourism or other commercial events per year permitted on land zoned must be found to be ‘necessary to support’ the commercial farm uses or the commercial agricultural enterprises in the area. Counties have interpreted this standard in a variety of ways leading to unequal application across the state.

Recommendation
Codify guidance from the courts on agritourism events and other commercial activities as established in Friends of Yamhill County v. Yamhill County (DeBenedetti),Or LUBA (2019); and Friends of Yamhill County v. Yamhill County (DeBenedetti),Or LUBA (2020).

Transportation Facilities:

DLCD’s rules related to transportation improvements on rural lands at OAR 660-012-0065 contains a list of transportation facilities permissible on rural lands, including farm and forest lands. There have been questions whether ORS 215.296, the farm impacts test, must be applied to certain uses listed in OAR 660-012-0065(3). OAR 660-012-0065(5) indicates certain criteria *in addition* to 215.296 findings must be made to approve some uses listed in OAR 660-012-0065(3). The Department has published guidance that the only reason why there is no specific reference

in section (3) to an ORS 215.296 review is because the list applies to all rural zones, resource and non-resource zones. Only EFU and Forest zones require review for compliance with the farm impacts standard. This section of rule should be modified to clarify that it is LCDs intent most uses listed in OAR 660-012-0065(3) are subject to 215.296 findings which is consistent with our guidance on the topic and recent caselaw.

Recommendation
Codify agency position and guidance from the courts regarding 215.296 findings from Van Dyke v. Yamhill County, 81 Or LUBA 427 (2020).

Home Occupations:

Home Occupations are discussed at length in the narrative below. This is a particularly ambiguous use category that has generated significant controversy over the years. The TWG has recommended codifying a caselaw standard from a recent decision by the Oregon Court of Appeals which focuses on what constitutes a ‘dwelling’ authorized under ORS chapter 215 to which the home occupation business is associated. The court concluded that the entire structure must be a farm dwelling primarily dedicated for the use of a farm family on a long-term or permanent basis in order to be a ‘dwelling’ to which a home occupation business is associated. In the particular case the court found that the structure was primarily a multi-unit motel dedicated to the transitory lodging of guests or tourists and only a portion of the structure was reserved for residential occupancy by a farm family. The decision is currently under appeal at the Oregon Supreme Court.

TWG Recommendations
Codify Friends of Yamhill County v. Yamhill County (Grange Hill), Or App (2023)

'Multi-Path Permitting'

One of the topics eliciting strong concern from the TWG is that there exist multiple ways to permit a variety of scales and intensities of the same basic use. It is often unclear what distinguishes one pathway from another. County planners may struggle to identify the most appropriate path for a potential applicant. The variety of conditions and standards associated with the different options may be confusing for a potential applicant.

For example, a use proposal involving the sale and tasting of cider may be permitted as a temporary event, as part of a farm stand, as an agri-tourism and other commercial event, as a cider business, as a home occupation, or as a commercial activity in conjunction with farm use ('CACFU'). The production of cider may be permitted as farm product processing, a cider business, a home occupation or a CACFU. It is not uncommon for proposals that cannot meet the standards defined for a specific use in statute or rule, such as a 'cider business' or 'agritourism events', to seek approval under the broader, catch-all home occupation or CACFU provisions.

<p>Example, "Proposal to host cider tastings" There are a variety of options available under current statute depending on the frequency, scale and intensity of the proposal. It can be difficult to determine where the boundaries between the potential permitting paths are.</p>				
<p>Farm Stand ORS 215.213(1)(r)/ 215.283(1)(o)</p>	<p>Agri-Tourism Event ORS 215.213(11)/ 215.283(4)</p>	<p>Cider Business ORS 215.451</p>	<p>Home Occupation ORS 215.448</p>	<p>Commercial Activity in Conjunction with Farm Use ORS 215.213(2)(c)/ 215.283(2)(a)</p>

In addition to the lack of clarity between potential permitting pathways at the state level, there is a great deal of inconsistency between how these provisions are implemented from county to county. Counties interpret the distinctions between these use pathways differently. They have the flexibility to choose to not offer sub-2 uses as options or may apply their own more restrictive standards. This makes it difficult to provide statewide development guidance for certain industries, like agri-tourism.

It is also fairly common to see a variety of event and retail uses 'stacked' on a single property. For example, a large farm stand with an agri-tourism event permit and a CACFU permit for processing farm products which also offers restaurant service. Over time, these types of commercial endeavors can grow to a size and intensity that is no longer rural in nature and enforcement of permit conditions can become quite confusing.

Because home occupations and CACFUs often act as 'catch-all' options for uses that cannot meet the standards explicitly set for them in statute, clarifying the scale, intensities and types of uses permitted under these categories was identified as a priority by the TWG. Both of those use categories are discussed in more detail below.

TWG Priority	TWG Recommendations
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2	In order to reduce the enforcement burden on counties, add a rule requirement for ongoing documentation of compliance with permit requirements to farm stands, agri-tourism event permits and home occupations. This includes clarifying documentation and calculation of income sources to meet threshold standards.
2	*Rulemaking to adopt standards for CACFUs and Home Occupations which limit the scope and intensity of permissible activities.
4	Rulemaking to clarify when, or if, fee-based event activities at farm stands must instead obtain an agri-tourism event permit under ORS 215.213(11) or 215.283(4).
5	Rulemaking to consider excluding uses which are specifically listed uses in ORS 215.213 and ORS 215.283 from consideration as Home Occupations or CACFUs.
5	Rulemaking to define uses allowable as 'private parks' including scale and intensity. A wide variety and intensity of uses are proposed as 'private parks' and it is often unclear when the proposals become inappropriate for a rural environment. Caselaw exists clarifying that events venues for focal events are not 'private parks'.
	Rulemaking to require farmstands to demonstrate that they will not significantly impact farm and forest operations in the surrounding area.

*These recommendations are discussed further below

Home Occupations:

Originally, Home Occupations in EFU zones were only permitted within dwellings and buildings supporting accepted farm practices and were required to be reviewed annually by the issuing jurisdiction for continued compliance with the permit conditions. In 1985, the authorizing language for Home Occupations in ORS 215.213 was changed to reference the home occupation standard applicable to all rural zones allowing residential uses. Intentional or not, this effectively broadened the types of structures associated with these uses to “buildings normally associated with uses permitted in the zone”. Over sixty uses are now permitted in farm and forest zones making it unclear what types of buildings could be explicitly built for or used for a home occupation.

In state statute and rule, Home Occupations are vaguely defined as a use that occurs in dwellings or other buildings normally associated with exclusive farm use zones and 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, and many have.

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: firearms dealers, tasting rooms, medical offices, events venues, mechanic repair shops, daycares, etc. These uses are permitted both in the out-of-doors and inside dwellings - often in large, structures built specifically for the home occupation use. This can result in a use that is no longer truly a small-scale 'home occupation', but a commercial business located on the same property as a residence. The only limitation on scale and intensity of a Home Occupation is the standard limiting the number of employees to five persons.

The most common use of a Home Occupation approval is for bed & breakfasts and short-term rentals. These lodging uses account for 30 percent of home occupations permits in farm zones since 2008. Home Occupations for lodging uses are discussed further below.

TWG Priority	TWG Recommendations
2	<p>Rulemaking to adopt standards for Home Occupations that limit the scope and intensity of permissible activities. Standards to be considered could include:</p> <ul style="list-style-type: none"> • Require a Home Occupation business to be run by a full-time resident-owner and define 'resident', • Require a Home Occupation to be located in a pre-existing building that existed as of a certain date, • Require a Home Occupation to be located in an existing dwelling or accessory residential structure and prohibit the use of new, purpose-built structures, • Require a Home Occupation to be conducted indoors, • Adopt dimensional standards that limit the scale of a home occupations (eg, 1,000 square feet or 25 percent existing floor area, limit the number of parking spaces), • Exclude certain types of activities from consideration, (for example, events venues, food service establishments, industrial uses).

Lodging Home Occupations

As noted above, the most common Home Occupation approval in both farm and forest zones are for Bed & Breakfasts and Short-Term Rentals. Neither term is defined in rule, so it is unclear what parameters individual counties are using to define the difference between these uses when the approvals are reported to DLCD. There has also been debate as to whether these uses are commercial or residential in nature.

A primary concern related to lodging use of dwellings in resource zones is that the conversion of dwellings to a commercial hospitality use reduces the supply of workforce housing for agricultural workers in agricultural areas, particularly in western Oregon. Introducing vacation accommodations in working farm and forest areas may also introduce the potential for conflicts between farm and timber operations and vacationers who may not be aware of dangers in the surrounding area like electric fencing, spray zones, the presence of livestock or heavy equipment.

There has been debate as to whether Short Term Rentals are a residential use allowed outright in any dwelling in a resource zone, if they can only be permitted as a sub-2 use subject to the farm impacts test, or if they are not allowed in resource zones at all. The Court of Appeals issued a notable decision in 2022 ruling that short term rentals, as that term was contemplated in an ordinance proposed by Clackamas County, are not a use allowed outright in dwellings on

resource lands⁴. Additional clarity from LCDC on this question was identified as a high priority for the TWG.

TWG Priority	TWG Recommendations
1	Rulemaking to define and clarify the distinction between 'Short Term Rentals' and 'room and board arrangements' authorized at ORS 215.213(2)(r)/215.283(2)(u).
1	Rulemaking to clarify if 'Short Term Rentals' are permissible as a Home Occupation.

Commercial Activities in Conjunction with Farm Use (CACFU):

Table 1, Top ten CACFU approval types, 2008-20021

CACFU Type	Percent of historic CACFU approvals, 2008-2021
Alcohol production and tasting rooms	38%
Hemp Processing	8%
Agricultural processing	6%
Agricultural transport business	6%
Agricultural equipment manufacturing and sales	5%
Fertilizer production	5%
Events venues	4%
Agricultural equipment repair	4%
Seed cleaning and processing	3%
Dry storage/cold storage	2%
Other	19%

Like Home Occupations, CACFUs are very broadly defined in statute at ORS 215.213 (2)(c) and 215.283 (2)(a). Thirty-eight percent of CACFU approvals historically are related to the production of alcohol and associated tasting rooms. It is worth noting that alcohol-related businesses are also one of the top-five Home Occupation uses in addition to the wineries, cideries and breweries permitted pursuant to the specific statutory authorizations at ORS 215.452 to 453, 215.451 and 215.449 respectively. For example, if one were only to review the number of approvals issued for wineries under ORS 215.452 and 215.453, one would underestimate the number of wineries permitted in the state. It is not uncommon for proposals that cannot meet the standards defined for a specific use in ORS Chapter 215 to seek approval under the broader Home Occupation or CACFU provisions.

In addition to alcohol production and tasting, various types of processing facilities and events are other uses which are commonly approved under the broader provisions of a Home Occupations

⁴ “Having reviewed the statutory scheme as it relates to the use of resource land, we conclude that regardless of whether the question is whether the short-term rental use of dwellings is implicitly included in the allowance of “dwellings” or “residences” on that land or, instead, whether state law expressly allows the short-term rental use of dwellings on land zoned for resource uses, the answer is the same: It does not.” 1,000 Friends of Oregon v. Clackamas County. 320 Or App 444

or CACFU use in the alternative to being approved under the standards specific to those uses in ORS Chapter 215. Like Home Occupations, it has been suggested that clarifying and limiting the definition of CACFUs in EFU zones would alleviate confusion and uncertainty related to the scope of uses allowed.

In addition to codifying caselaw as discussed above, additional standards could be applied to further improve the objectivity of these reviews by placing clear limits on the scope and scale of what may be permissible on rural, protected farmland.

TWG Priority	TWG Recommendations
1	Rulemaking to codify caselaw standards for CACFUs as noted above.
2	Rulemaking to adopt standards for CACFUs which limit the scope and intensity of permissible activities. Standards to be considered could include: <ul style="list-style-type: none"> • Adopt dimensional standards that limit the square footage of a CACFU. • Exclude certain types of activities from consideration, (for example, events venues, lodging and food service establishments). • Define a distance for the 'local agricultural area'. • Adopt standards that limit the scale and intensity of the use based on available public services.

Preparation, Processing and Industrial use:

It can be difficult to ascertain when a proposed activity is appropriately considered 'preparation' which is considered 'farm use' under ORS 215.203, when it becomes 'processing' which is a sub-1 use subject to standards (ORS 215.255), and when an activity, in essence, may exceed what is permissible as 'processing' and become 'manufacturing' which may be permissible as a commercial activity in conjunction with farm use (ORS 215.213(2)(c)/215.283(2)(a)). This topic became a subject of debate particularly related to marijuana processing since commercial activities in conjunction with farm use are not permitted in conjunction with a marijuana crop. Facilities for the preparation of farm products are considered a farm use, do not require a land use review and are not subject to dimensional standards, whereas processing facilities are a sub-1 use subject to square footage limitations and land use review making a preparation facility a more attractive permitting route for many applicants.

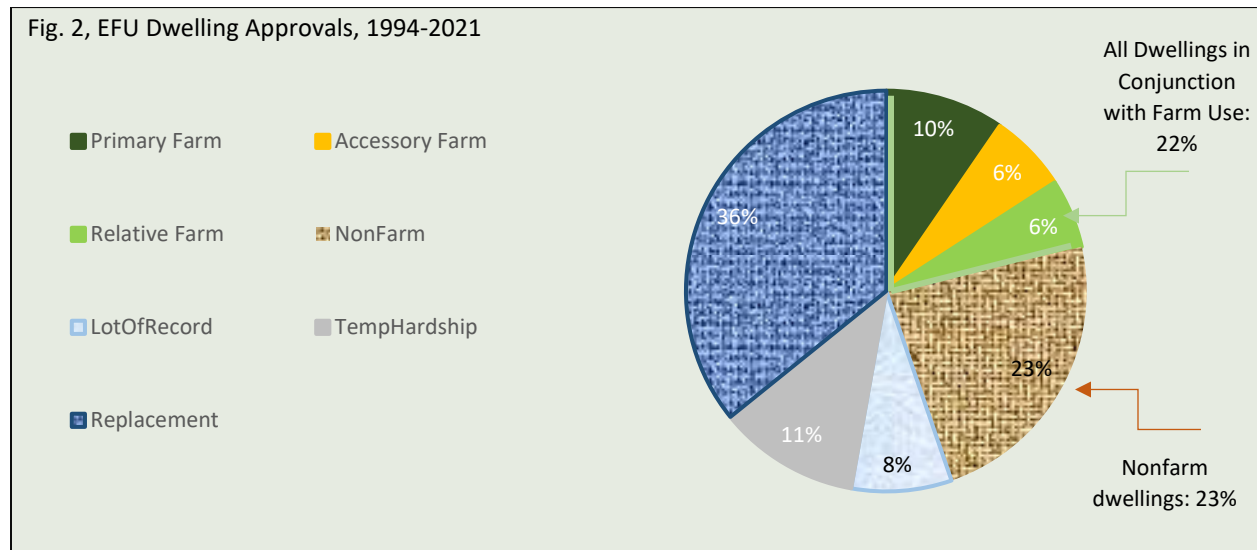
ORS 215.203 clarifies that 'farm use' includes the preparation of products or by-products raised on land employed for farm use. 'Preparation' is defined in DLCD's rules to include the "cleaning, treatment, sorting or packaging of the products or by-products" raised on "the farm operation where the preparation occurs or on other farmland provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land." This definition was intended to assist the agricultural community by allowing some farmers to prepare not only their own farm products but also those of nearby farmers before further processing or sale.

The existing definition of “preparation” is circular in that it is part of the definition of farm use. In other words, ‘preparation’ can effectively occur on any land that is being used to prepare farm products. There is no requirement that farm products actually be produced on the property where the preparation is occurring. Because no land use review is required to engage in farm use in a farm zone, no land use review is required to site a facility for the ‘preparation’ of farm products, no matter how large or intense the use.

TWG Priority	TWG Recommendations
2	Rulemaking to repair the circular definition in OAR 660-033-0020(7)(b) and add a definition for 'processing' to OAR 660-033-0020 with the intent of clarifying what is appropriately considered a preparation farm use, what is processing allowable under ORS 215.255, and what is manufacturing.
2	As noted above, consider adopting standards that limit the scale and intensity of an allowable manufacturing commercial activity in conjunction with farm use on protected farmland.

Dwelling Criteria

The EFU zone allows for the development of a variety of dwelling types on agricultural land. These dwelling types generally fall into two broad categories – those permitted for farm owners and farm workers, or ‘dwellings in conjunction with farm use’, and those that are not associated with an active farm use on the property, or ‘dwellings not in conjunction with farm use’. TWG discussions focused on Primary Farm Dwellings, Nonfarm Dwellings, and Replacement Dwellings as well as Template Test Dwellings in Forest Zones. A full discussion of all of the various dwelling types that may be permitted in farm and forest zones is available in [DLCD’s 2020-21 Biennial Farm and Forest Report](#) to the Legislature.



Primary Farm Dwellings:

Primary farm dwellings are dwellings that are permitted in conjunction with a working farm operation. There are several ways, or ‘tests’, in which a farm operator may place a primary farm dwelling on agricultural land. All of these tests require that the dwelling only be occupied by the farm operator and the operator’s immediate family, and all of these tests require documentation that commercial farm use is being conducted on the property. Farming of marijuana or a psilocybin-producing fungi crop cannot be considered as a qualifying farm use for the purpose of establishing primary or accessory farm dwellings.

The tests identified for discussion by the TWG included the income tests and the farm capability test which are highlighted and summarized below. The test standards in grey boxes were not discussed but are included here for additional context.

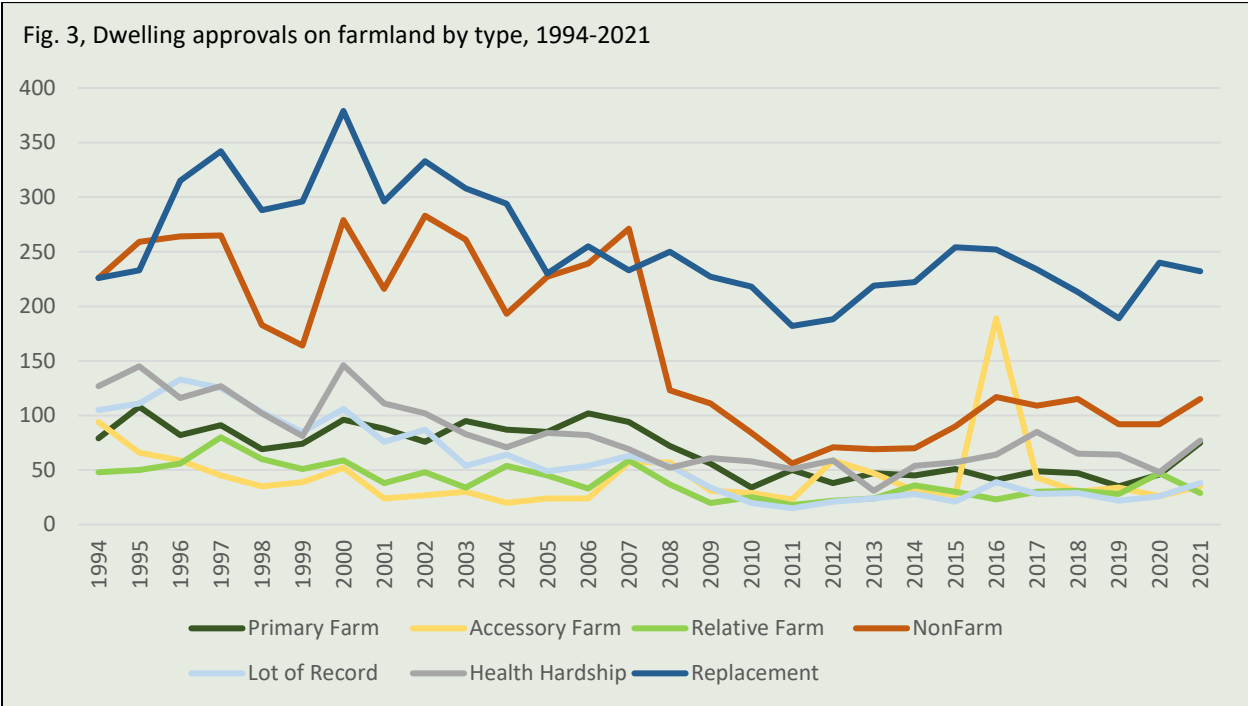
Table 1, Dwellings in Conjunction with Farm Use	
Primary Farm Dwelling Tests	Gist of Test*
Farm Income (High Value Farmland)	At least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years.
Farm Income (Non-High Value Farmland)	At least \$40,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years or the median amount of gross income earned by commercial farm operations in the 1992 census.
Large Tract Dwelling	On a parcel at least 160 or 320 acres in size depending upon where in the state the parcel is located.
Farm Capability	At least as large as the median size of commercial farm tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area. Must be reviewed by DLCD.
Commercial Dairy	Owns a sufficient number of producing dairy animals capable of earning the gross annual income required from the high value or non-high value income test - whichever is applicable, from the sale of fluid milk.
Relocated Farm Operations	An experienced farm operator who ran a qualifying operation at a different location may relocate to a parcel or tract that previously met the applicable requirements for the farm income test.
<i>*The basic essence of the test is described here. All referenced tests have additional, nuanced criteria.</i>	

The income standards applicable to most of the farm dwelling tests were established in 1992 as clear and objective standards that would be easy for citizens to understand and for local jurisdictions to apply. These gross income requirements are not tied to any inflationary index and have not been revised since the 90s.

The TWG identified concerns related to two of the primary farm dwelling tests, the income standard and the capability test.

TWG Priority	TWG Recommendations
1	Rulemaking to remove the primary farm dwelling capability test from rule (OAR 660-033-0135(2)). Only four counties have adopted this opportunity into their code. The data source that was used to support this test is no longer being published.
1	<p>Rulemaking to address concerns with the primary farm dwelling standards. Standards to be considered could include:</p> <ul style="list-style-type: none"> Clarify that the qualifying gross income earned must be from the sale of farm products that <i>were</i> produced on the land and not from the sale of products that have not yet been produced. Adjust the income standard for inflation (one-time) or tie it to an inflationary index. The income standard establishing the threshold for what is considered a commercial farm operation has not been updated.

- Include a definition of ‘farm operator’ indicating that the farm operator must be principally engaged in the management of the farm operation and that their day-to-day activities are principally devoted to farm use.
- Clarify the evidentiary standard for verification of income. All the county planners on the TWG identified understanding what documentation to rely on as a significant challenge.



NonFarm Dwellings:

Nonfarm dwellings have engendered much debate due to the subjectivity and complexity of the test. Senator Hector MacPherson, the principal sponsor of 1973 SB 101, stated that the purpose of NonFarm Dwellings was not “to open the exclusive farm use zone up to subdivisions” but rather to provide “a little escape valve here whereby we can allow a small amount of single-family residential dwelling within an exclusive farm use zone.”⁵ The Oregon Court of Appeals observed in *Cherry Lane v. Jackson County*⁶ that these types of nonfarm dwelling approvals should “be the exception and that approval for them be difficult to obtain”. However, historically nonfarm dwelling approvals represent roughly a quarter of all dwellings approved on EFU zoned lands and more nonfarm dwellings have been approved than all types of dwellings in conjunction with farm use combined. The historical trend is a departure from the intended exceptional opportunity for a limited number of single-family residential dwellings in areas protected for the agricultural economy and where agricultural workforce housing should be prioritized.

⁵ Audio Tape 10, side 1: Testimony of Hector MacPherson, Senator to Oregon Senate Revenue Committee 57th Session (February 7, 1973) (on file with Oregon State Archives).

⁶ 84 Or. App. 196, 733 P.2d 488 (1987).

Except in the two “marginal lands” counties (Washington and Lane)⁷, nonfarm dwelling reviews are quite complicated. There are three basic components to the review: an impacts test, a suitability test, and a material stability test.

The Impacts Test

This component of the review requires a county to find that 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. No changes were proposed to address this component of the review.

The Suitability Test

Slightly different standards for this assessment exist for areas outside the Willamette Valley. Outside of the Willamette Valley, a County must essentially find that the portion of the property the NonFarm Dwelling will be sited on is not suitable 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. The TWG identified a number of issues related to this standard and summarized in the table below.

In the Willamette Valley, the suitability requirement is more objective. The current rules require that the parcel be predominantly composed of Class 4 through 8 soils that would not, when irrigated, be classified as prime, unique, Class I or II soils. However, there are a number of Class 4 soil series in the Willamette Valley that are defined as high value soils resulting in a situation where NonFarm Dwellings are permitted on high value farmland. The TWG raised the question of whether the legislature intended to allow nonfarm dwellings to be located on high value farmland in the Willamette Valley.

Several of the recommendations offered by the TWG are responses to applications reviewed in various parts of the state involving these specific issues of concern.

TWG Priority	TWG Recommendations
2	Rulemaking to clarify in OAR 660-033-0130(4)(c)(B)(i) that the analysis of whether a lot or parcel can be reasonably put to farm use in conjunction with other land is not limited to instances where the parcel's size and location are factors under consideration.
3	Rulemaking to clarify if a lot or parcel outside of the Willamette Valley is <i>deemed</i> suitable if, in Western Oregon it is composed predominantly of Class I-IV soils as classified by the NRCS or, in Eastern Oregon, it is composed predominantly of Class I-VI soils as classified by the NRCS. DLCDC’s rules state that land is <i>presumed</i> to be suitable for such uses if it is composed predominantly of certain soil capability classes.

⁷ The 1983 Marginal Lands Act allowed reduced regulation of certain “marginal” farmlands in return for greater protection to more productive lands. Lane and Washington Counties were the only two counties to adopt the marginal lands program before the statute was repealed in 1991 and those are the only two counties allowed to continue to operate under that program.

	Rulemaking to clarify that land is not unsuitable for the production of crops or livestock because its soils are class V-VIII in Western Oregon and class VII-VIII in Eastern Oregon. These lands may still be suitable for the production of crops or livestock, notwithstanding soils classifications.
	Rulemaking to clarify that the soils classes used to identify land that is presumed suitable are the NRCS classifications.

The Material Stability Test

The material stability test requires a county to consider the cumulative impact of all existing and potential dwellings not in conjunction with farm use and nonfarm parcels in a 1,000 to 2,000-acre study area to determine if the proposed nonfarm dwelling may alter the stability of the prevailing land use pattern. A county must deny an application if the county determines that the potential dwelling will make it more difficult for the types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights, or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area. As noted above, individually minor but collectively significant development can create a cumulative impact on the surrounding area.

A particular challenge with this review is determining when the jurisdiction has encountered the proverbial “tipping point” for a given area – particularly when evaluating something as dynamic as the agricultural landscape. These complex reviews can often require more time and resources from a county than are covered by a standard application fee. This is especially true since these reviews are performed as ‘one-off’ studies for a specific property rather than as comprehensive planning analyses supported by public process. A county essentially is required to determine if the particular dwelling in question will be the proverbial ‘straw that breaks the camel’s back’. Despite the complexity of these reviews, they are more narrowly focused.

It has also been suggested that the complexity of this review, particularly when a site-specific soils challenge is submitted as part of the application, limits the opportunity for a NonFarm Dwelling to those wealthier applicants who can afford to hire a land use professional or attorney to prepare such a complex application and a soils professional to challenge the NRCS soils mapping. It was suggested by some TWG members that a landscape level analysis seeking to define an appropriate density of nonfarm development rather than site-by-site authorizations may be a more efficient and equitable approach.

TWG Priority	TWG Recommendations
2	Convene Technical Working Group to discuss material stability and non-resource dwellings: identify needed data and available data, review scope and methodology for material stability analysis (dwelling focused) and/or cumulative impacts analysis (non-resource development focused).

	Rulemaking to consider prohibiting new non-resource dwellings in A) designated critical groundwater areas; B) high risk wildfire areas; C) ODFW essential, limited, important and irreplaceable wildlife habitat; or D) in acknowledged major big game habitat.
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Legislative Proposals: NonFarm Dwellings.

TWG Priority	TWG Recommendations
2	Legislative concept to remove statutory references to 'a portion of' the lot or parcel in ORS 215.284.
	Legislative concept to remove nonfarm dwellings as an allowed use.

NonFarm Dwelling Parcels:

Nonfarm dwellings may be approved on parcels or portions of parcels that are determined to be unsuitable for farm use. Under certain conditions, that portion of the parcel found unsuitable for farm use may be partitioned from the remainder of the farm parcel creating an island of nonfarm use within a farm operation.

ORS 215.262 Legislative findings related to nonfarm dwellings.

The Legislative Assembly declares that the creation of small parcels for nonfarm dwellings in exclusive farm use zones introduces potential conflicts into commercial agricultural areas and allows a limited number of nonfarm dwellings in exclusive farm use zones. To protect the state's land base for commercial agriculture from being divided into multiple parcels for nonfarm dwellings while continuing to allow a limited number of nonfarm dwellings on less productive agricultural land not suitable for farm use, it is necessary to:

(1) Limit the incremental division of lots or parcels larger than the minimum size established under ORS 215.780 into smaller lots or parcels for the purpose of creating new nonfarm dwellings; and

(2) Allow a limited number of lots or parcels equal to or less than the minimum size established under ORS 215.780 to be partitioned into not more than two parcels unsuitable for farm use and eligible for siting nonfarm dwellings under ORS 215.284.

When a nonfarm dwelling is approved on a parcel, the entire parcel must be removed from the special farm assessment program. Nonfarm partitions allow the owner of the nonfarm parcel and nonfarm dwelling to minimize payments associated with removing the parcel from the special farm assessment program.

In order to approve a nonfarm partition, a certain percentage of the parcel must be composed of lower farm and forest capability soil classes or be generally unsuitable for the production of farm crops and livestock or merchantable tree species. There have been cases where the property lines of these parcels have later been expanded through property line adjustments to include higher quality farmland within the farm parcel.

TWG Priority	TWG Recommendations
2	Rulemaking to clarify that a NonFarm Parcel created pursuant to ORS 215.263(4) or (5) may not be later adjusted through a property line adjustment unless the newly configured parcel continues to meet the requirements of ORS 215.263(3), (4) or (5) as applicable.

3	Legislative concept or rulemaking to clarify if a nonfarm dwelling may be placed on a lot or parcel in the Willamette Valley if that lot or parcel is high-value farmland as defined by LCDC.
3	Legislative concept to remove ORS 215.263(4) and (5) and the opportunity to create NonFarm Parcels.

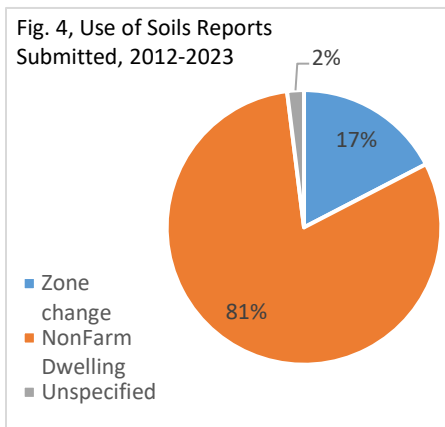
NRCS Soils Challenges and DLCD Review of Soils Reports:

As noted above, many aspects of the Goal 3 and 4 programs rely on scientific soils data provided by the NRCS. In 2010, the Legislature passed House Bill 3647, which requires DLCD to review of soil assessments, or soils challenges, prepared by a private soil consultant. Site-specific soil assessments prepared by private consultants are more detailed and labor intensive than NRCS and they may be used to provide more detailed information than is shown on the USDA Natural Resources Conservation Service’s soil mapping. These reports often adjust the boundaries of mapped soils units or identify the presence of different soils units from those mapped by NRCS.

Soils Challenges and Nonfarm Dwelling Reviews

Site-specific soils assessments were primarily intended for use in challenging a property’s designation as ‘agricultural land’ to be protected under exclusive farm use zoning. Mapping of high-value farmland may not be challenged. There are differing opinions on whether the soils report review process authorized under ORS 215.211 applies to nonfarm dwellings or nonfarm partition applications because those decisions are based on suitability of land for farm use and not necessarily on whether land is 'agricultural land' as defined in rule. In these cases, the reports are used to support a nonfarm dwelling approval by re-classifying a portion of a property to a lower soils capability class. DLCD has provided guidance that agency review is required for reports to be used as basis of fact for a nonfarm dwelling review. Since the review program was implemented in 2012, eighty-one percent of the soils challenges reviewed have been for nonfarm dwellings or nonfarm dwelling partitions. Twelve percent of nonfarm dwelling permits issued in the 2020-2021 biennium involved soils challenges reviewed by DLCD.

Similar questions have recently been raised about soils reports used to classify lands for solar siting and whether they must be reviewed by DLCD prior to use in a land use proceeding. There is a need to clarify when a site-specific soils report must be reviewed by DLCD prior to use in a land use proceeding and more generally whether or not the NRCS capability classifications may be challenged in these cases.



Human Altered or Human-Transported Materials

Site specific soils surveys often identify areas where the landscape has been altered by removal of topsoil, cuts, compacted areas or altered by the addition of fill material transported onto the site. These areas are identified as Human Altered or Human-Transported (HAHT) materials and

are assigned capability classes ranging from 6 to 8, often contributing to an assessment of unsuitability for resource uses. They can be areas where barns and houses exist or once stood, roads, lanes and driveways, filled low areas, etc. Such areas have been identified in the soils reports as very recent modifications to the property as well as historic modifications to the property.

Areas which have historically been used to support farm operations (lanes, driveways and buildings supporting accepted farm practices) are considered part of farm use. It is unclear in rule how these areas should be considered in determining the suitability of an area under the nonfarm dwelling test. For areas supporting nonfarm uses (fill, former residential dwelling sites and accessory driveways, roads, etc.) it is unclear how more recent modifications impacting the suitability of agricultural land should be considered, for example in a case where an area has been graded or filled just prior to an application for a nonfarm dwelling.

Technical Soundness

When DLCD reviews soils reports, agency staff review the reports for completeness only. The agency does not have the funding or technical expertise to determine if such reports are sound and scientific. The soils program uses a process of occasional peer review and review of soil scientist qualifications to address quality of reports. The Oregon Department of Agriculture (ODA) is charged with reviewing reports for Lot of Record dwellings only. ODA does contract with an independent soil professional to review each submitted soils report for technical soundness.

TWG Priority	TWG Recommendations
1	Fund DLCD to contract independent technical review for each report submitted.
2	Rulemaking to clarify OAR 660-033-0030(5)(c)(B) and clarify which uses may make use of a site-specific soils report other than a nonresource designation. or Rulemaking to amend OAR 660-033-0030(5)-(8) to limit the use of independent soils reports authorized by ORS 215.211 to periodic review and non-quasi-judicial zoning decisions, such as the planning process authorized by the 2007 legislature in HB 2229. This would remove use of site-specific soils reports for nonfarm dwelling reviews and site-specific amendments.
3	Rulemaking to provide guidance on how HAHT are to be addressed in soils reports, particularly where areas of cut or fill may have historically been used in conjunction with farm use. Distinguish between cases where the constraints or impact to suitability are self-imposed, historical or natural.
	Offer class in collaboration with ODF, NRCS, and ODA on use of the NRCS Websoil survey in planning applications.

Use of site-specific soils assessments in challenging a property’s designation as ‘agricultural land’ are discussed in the section on Non-Resource Lands below.

Replacement Dwellings:

A replacement dwelling is a new home that replaces an older dwelling on a parcel. In order to be replaced, a dwelling must have or have had certain qualifying features, such as walls and a roof, within the past three years of applying for a replacement application. Replacement dwellings are the most common dwelling approval in farm zones and the second most common dwelling type in forest zones.

Replacement dwellings are a sub-1 use meaning that counties must offer them as an option and may not apply more restrictive standards than those in statute or rule. When dwellings are allowed to be replaced in EFU zones pursuant to ORS 215.291, counties have expressed that it is unclear if original siting standards associated with the original permit approval continue to apply. Advocates have voiced concerns that without application of siting standards, a replacement dwelling may have a more substantial impact on surrounding farm and forest operations particularly when the original dwelling remains and is converted to a nonresidential use or when the replacement dwelling is substantially larger than the original dwelling.

Originally, dwellings being replaced were those established prior to the adoption of the land use planning system. As noted above, a wide variety of dwelling uses are now permitted in farm and forest zones. Most of these dwelling types come with conditions that require the dwelling to be associated with a farm operation or are subject to conditions like being located on a specific area of a property. A key date in the history of the program is the passage of HB 3661 in 1993, which established many of the dwelling tests and conditions that we have now such as the provisions for Lot of Record Dwellings, NonFarm Dwellings and Template Tests. Dwellings are now being replaced that were permitted in the 1990s for specific purposes and under very specific review standards.

The department has maintained the position that 'replace' means replacement of the originally permitted use of the dwelling. In other words, a dwelling permitted as farmworker housing must be replaced with a new structure used for farmworker housing. A nonfarm dwelling must be replaced with a new nonfarm dwelling on the same portion of the property that was deemed unsuitable for farm use. The replacement dwelling provisions should not be interpreted as an avenue to allow the conversion of agricultural workforce housing to nonfarm dwellings with only an administrative review, or as an opportunity to waive the conditions of an original nonfarm dwelling approval. It appears that this principle is not implemented consistently across the state.

TWG Priority	TWG Recommendations
1	Legislative concept or rulemaking to consider limiting replacement dwellings to no more than 125 percent of original dwelling footprint and square footage and requiring replacement of the dwelling at the same site subject to hazard and fire-life-safety considerations. Replacement of the existing dwelling with a dwelling of a similar size and in a similar location is more likely to have a limited impact to farm operations on the property or in the surrounding area.
2	Consider rulemaking to adopt different standards for dwellings established prior to HB 3661 (which might be considered non-conforming dwellings) and dwellings permitted after passage of 1993 HB 3661. For dwellings permitted after the passage of 1993 HB 3661 require reauthorization of the permitted use at replacement.
3	Consider rulemaking to require replacement of dwellings not destroyed or by fire or natural disaster be re-approved as a dwelling under either the dwelling in conjunction with farm use standards or the nonfarm dwelling standards.
3	Rulemaking to clarify that a "lawfully established" dwelling includes evidence of continued compliance with the original conditions of permit approval.

Conversion of Replaced Dwellings

Another issue identified by the TWG concerns what happens to the dwelling that is being replaced. When a dwelling is replaced, the old dwelling must be demolished, removed or 'converted to an allowable nonresidential use'. Concerns were raised by the TWG that it is unclear what sort of nonresidential uses might be permissible in the case of conversion. This relates to the vagaries of permissible Home Occupations discussed above. For example, can that structure be converted to a short-term rental or restaurant home occupation? The TWG also expressed concerns that when a dwelling is converted to an allowable nonresidential use, say by removing the kitchen, the space is sometimes later converted back to residential use resulting effectively in an additional nonfarm dwelling on the property which can become an enforcement issue.

TWG Priority	TWG Recommendations
3	Rulemaking to clearly define what types of uses are acceptable for conversion.
3	Legislative concept or rulemaking to require replacement dwellings be located within the footprint of the original dwelling (effectively removing conversion of a replaced dwelling).
	Legislative concept to remove provisions allowing for the conversion of an existing dwelling once replaced.

Template Dwellings:

“Template dwellings” are allowed on forestland in areas that were subject to certain more intensive patterns of development and parcelization as of 1993. Counties may approve template dwellings where a certain number of pre-1993 dwellings and parcels were established within a 160 acre “template” centered on the parcel. Locating multiple dwellings in the same area allows for more efficient provision of fire protection and services than scattered, isolated dwellings.

Rectangular Template: In forest zones, template test dwelling reviews may be performed using a rectangular template rather than a square template if the subject tract abuts a road that existed on January 1, 1993. The rectangle is centered on the tract and aligned ‘to the maximum extent possible’ with the road. It is not clear what is meant by a ‘road’ in this case – a public road, a private road, a driveway. It is also unclear what method should be employed to determine the ‘maximum alignment with the road’.



Fig. 5, Example Template Test Analysis

For tracts exceeding 60 acres, the rectangular template may be aligned with a road or a perennial stream. Like the above scenario, it is unclear what method should be used to ensure maximum alignment with a stream.

TWG Priority	TWG Recommendations
1	Rulemaking to define a replicable methodology to align template rectangle with stream or road. Clarify the term "maximum extent possible". This could be based on a number of different methodologies: <ul style="list-style-type: none"> - require that at least 50 percent of the rectangular alignment be parallel to and no further from the road or stream than the required code established setback from each of those features. - use GIS methodology developed by Clatsop County. - require two points of the rectangle to be equidistant from the centerline of the road or stream (as formerly used in Yamhill County).
1	Rulemaking to add a reference in these standards to the definition of 'public road' in ORS 368.001 which is the definition used for the forest lot of record dwellings.

Mixed Farm-Forest Zones

DLCD's rules at OAR 660-006-0050 to -0057 describe provisions for lands that contain such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone. For dwellings proposed in mixed farm/forest zones, OAR 660-006-0050 directs a county to apply either the standards for agricultural lands or the standards for forest lands based on the predominant use of the tract on January 1, 1993.

For uses however, no clear guidance is provided in rule directing which standards to apply – farm or forest. OAR 660-006-0050(2) states that "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". This is problematic for a handful of uses which are authorized in both zones but are subject to very different standards. Most of these uses with conflicting standards, like solar generating facilities and youth camps, were added after OAR 660-006-0050 was adopted. Some counties specify in their mixed farm forest zones which uses are allowed and some reference our rule language directly or otherwise references the variety of uses permitted in both their farm and forest zones.

As discussed further below, LCDC has prohibited or limited certain uses sited on high value farmland. Mixed farm-forest zones may contain high-value farmland under both definitions (ORS 195.300 and OAR 660-033-0020). Where a mixed farm-forest tract meets the definition of high value farmland, it has not been clear that the limitations on development on high-value farmland in 660-033 should be applied.

TWG Priority	TWG Recommendations
	Survey of county mixed farm forest zones and treatment of OAR 660-006-0050.
	Rulemaking to clarify the implications of the definition of high value farmland as applied to mixed farm-forest zones.
	Rulemaking to clarify the treatment of uses in mixed farm-forest zones.

Local Public Parks

When LCDC OAR initiated the Division 34 rulemaking for public parks, the scope was originally limited to state parks planning. Provisions for local public parks were added to the scope of the rulemaking into the process and the rules for local public parks reference sections of the rules for state parks, which has resulted in some confusion. OAR 660-034-0035 provides a list of park and recreation uses that are allowed in state parks. OAR 660-034-0040 specifies which of those uses are allowed in local parks. That section of rule goes on to state that some of the listed uses require either a local park master plan or an exception to Goal 3 or 4. However, the wording does not clearly specify which uses require an exception or adoption of a local park master plan and which of the listed uses might be implemented through a conditional use review.

A more recent issue of concern is that uses listed at OAR 660-034-0040 mainly consist of allowable infrastructure. The rule is silent on the type of programming that may be offered at a rural park. For example what types of classes or events may a parks district host at the park without additional approvals?

TWG Priority	TWG Recommendations
	Rulemaking to clarify OAR 660-034: Specify which public park uses that are listed require either a park master plan or an exception, and clarify what types of event uses (classes, experiences, fairs, etc) may be permitted at a rural public park.
	Rulemaking to clarify if the limitations applied to private parks restricting them on high value farmland and within three miles of a UGB also apply to public parks.
	Rulemaking to require that local park uses in EFU or forest zones be “appropriate in an agricultural/forest environment” and “primarily for residents of the rural area in which the park is located.”

Landfills

Landfills were added as an allowed use in EFU zones under ORS 215.283(2)(k) in response to a landfill siting crisis in the northern Willamette Valley. This use allowance is written to include all the uses allowed in DEQ “waste disposal sites”. These include facilities such as waste transfer stations, recycling facilities, and material recovery facilities among other activities. These uses tend to be more industrial and intensive in nature than a landfill.

TWG Priority	TWG Recommendations
1	Rulemaking to clarify that a “site for disposal of solid waste” under ORS 215.283(2)(k) means landfills or other facilities that operate for the purpose of disposing of solid waste on site.” Clarify that a “site for disposal of solid waste” does <u>not</u> include the full scope of activities, such as junkyards, energy recovery facilities, or waste transfer stations that may be permitted as “disposal sites” by DEQ pursuant to ORS 459.245.

Fill on Farmland

Department staff regularly receive inquiries on whether permits are required for both the permanent placement and the temporary storage of large volume of fill on farmland (outside of wetlands or floodplain areas). The placement of large volumes of poor-quality fill has the potential to permanently impact the capability and suitability of land for farm use as discussed above related to the treatment of Human Altered Human Transported materials in soils challenges. However, fill is also often used to improve farm lanes or building sites for accessory farm structures. The TWG requested guidance on when the placement of fill is a farm practice, when it is accessory, when it is solid waste disposal, and when it is not allowable.

TWG Priority	TWG Recommendations
3	Guidance document prepared in collaboration with ODA and DSL to distinguish when fill is a farm practice, when it is accessory, when it is solid waste disposal, and when it is not allowable.

Composting on Farmland

The difference between commercial composting facilities and accepted farming practices is somewhat ambiguous in rule.

TWG Priority	TWG Recommendations
3	Guidance document prepared in collaboration with ODA and DEQ to distinguish between commercial composting facilities and accepted farming practices.

Key Definitions

There are three key definitions associated with the farm and forest conservation program. The first two include descriptions of the lands to be protected under Goals 3 and 4. The third is the definition of high value farmland - land meriting additional protection under the program.

Definition of ‘Agricultural Lands’:

OAR 660-033-0020 Agricultural Lands Definition

- 1) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;
- 2) 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
- 3) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

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.

For land use purposes, the definition of “Agricultural Lands” subject to statewide planning Goal 3 is first based on Natural Resource Conservation Service (NRCS) soil capability ratings. Oregon’s program relies on objective, scientific field data in determining what is inventoried as agricultural lands rather than subjective and changeable trends in the agricultural economy or metrics of profitability which are dependent on the particular skills of individual operators and market conditions. Basing our definition of agricultural lands on soils classifications acknowledges that long term resource decisions should not be based on short-term conditions, or to put it other words, individual circumstances such as profitability should not be the basis for long-term resource preservation decisions.

In recognition of the difference in our regional landscapes and unique needs of the variety of farm industries, the definition also encompasses other soil classes as needed based on fertility, climatic conditions, availability of water, land use patterns and farming practices. This allows for a broader definition of agricultural lands subject to Goal 3 in keeping with the individual characteristics, vision and needs of local communities.

Lastly, in keeping with the Agricultural Land Use Policy’s focus on preserving fully functioning agricultural landscapes, the definition of Agricultural Lands is also meant to include lower capability lands that are interspersed within a cohesive working landscape.

Grazing lands:

The definition of agricultural lands at OAR 660-033-0020(1)(a) is primarily based on NRCS soils capability classifications which are a reflection of the land’s suitability for growing crops. This definition does not contain a clear standard addressing the suitability of land for use as grazing land. Livestock grazing is an important part of Oregon's agricultural economy. As a result, land that may be well suited to livestock operations can be considered for designation as non-resource land or other non-resource uses.

The 2023 report prepared by OSU’s Institute for Natural Resources for the Oregon Global Warming Commissions Natural and Working Lands subgroup is entitled, 'Foundational Elements to Advance the Oregon Global Warming Commission’s Natural and Working Lands Proposal' and identifies the conservation of rangelands as a recommended practice to reduce GHG emissions and sequester carbon. The preservation of grazing lands is important for their contribution to the agricultural economy as well as for their potential contribution to long-term carbon storage. As noted in the section on Goal 5 Nexus below, the protection of grazing lands also has the co-benefit of preserving habitat.

Developing a definition for grazing lands was identified as a topic important to the TWG. Defining grazing lands under the program can also help the department understand the extent to which such lands are protected under the Goal 3 program and the role the program plays in preventing or allowing their conversion.

TWG Priority	TWG Recommendations
3	Convene a technical working group to discuss methodologies for defining clear and objective standards for the identification of grazing lands that might be applied to post acknowledgement plan amendments.

Non-soils aspects:

Goal 3 Definition of Agricultural Land

Agricultural Land -- in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and **other lands which are suitable for farm use** 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, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soils data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Agricultural land does not include land within acknowledged urban growth boundaries or land within acknowledged exceptions to Goals 3 or 4.

Some TWG members also expressed an interest in strengthening rule language for identifying agricultural land that is not predominately Class I-VI soils but is otherwise “suitable for farm use” and/or “necessary to permit farm practices to be undertaken on adjacent or nearby lands” per Goal 3 definition.

In particular, there was interest in addressing an issue arising from a 2007 court case, *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007), which concerned a non-resource zone change. In this case, the Oregon Supreme Court found that LCDC’s previous rule prohibiting counties from considering profitability or gross farm income when determining whether land was “suitable for farm use” within the meaning of Goal 3’s definition of agricultural land, was inconsistent with Goal 3. LCDC filed an amicus brief in that proceeding defending its rule arguing that characteristics of "profitability" and "gross farm income," are not only easily manipulated, but they are not inherent characteristics of land. An amendment to Goal 3 would be required to re-instate the previous rule provision.

TWG Priority	TWG Recommendations
4	Amend Goal 3 rule definition of agricultural lands to replace “farm use” with the term “agricultural use.”
	Re-evaluate rule language for identifying agricultural land that is not predominately Class I-VI soils but is otherwise “suitable for farm use” and/or “necessary to permit farm practices to be undertaken on adjacent or nearby lands” per Goal 3 definition.

Definition of 'Forest Lands':

OAR 660-006-0010

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

- (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and
- (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.

Where a plan amendment is proposed:

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

- (A) Oregon Department of Revenue western Oregon site class maps;
- (B) USDA Forest Service plant association guides; or
- (C) Other information determined by the State Forester to be of comparable quality.

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

Following original county designations, provisions were adopted in administrative rules for the identification of forest lands which must be contemplated as part of an amendment to a county's comprehensive plan. Like the requirements for identifying agricultural lands, DLCD's rule requires forest land determinations be based on scientific data for vegetative capability classes published by the Natural Resource Conservation Service (NRCS) or other specific technical resources if such data is not available or are shown to be inaccurate.

Alternative Data Sources

Like the soil challenges discussed above, forest productivity challenges are typically used in zone change requests for non-resource determinations or in template test dwelling applications where a vegetative capability classification has not been assigned by NRCS. A memo has been circulating over the past few years entitled "Forest Productivity Issues in Oregon Land Use Laws" setting out a case why the alternative methods identified in DLCD's rules for establishing vegetative capability are inaccurate or do not establish qualitative productivity calculations. Some of the alternative data methods identified in rule are only available in certain parts of the state.

TWG Priority	TWG Recommendations
2	Convene technical working group to further review the forestlands definition and data sources on which it relies.

Technical Review of Forester’s Reports

While there is a review program in place for review of soils in order for them to be used as basis of fact in a land use proceeding to address the definition of agricultural lands, no similar review mechanism exists for soils reports used in addressing the definition of forest lands. Similarly, when an independent forester's report as described in the Oregon Department of Forestry’s Technical Bulletin entitled “Land Use Planning Notes, Number 3 April 1998, Updated for Clarity April 2010” is used in identifying forest lands, there is no state review by the Oregon Department of Forestry or DLCD to verify such a report is produced in the manner described in the bulletin. The Oregon Department of Forestry does not have the staff capacity to review individual reports and County planning departments lack the expertise to review such reports. During consideration of 2010 HB 3467, the Oregon Department of Forestry provided comments to the House Agriculture, Natural Resources and Rural Communities Committee in support of development of a program for standardization and review of independent site productivity determinations on forestlands.

TWG Priority	TWG Recommendations
2	Convene technical working group to discuss standardized agency review process for independent forester's reports used to address the definition of 'forest lands'

Soil Air, Water and Fish and Wildlife Resources

Goal 4 identifies land suitable for commercial forest use and land necessary to permit forest operations and practices as lands to be protected. It also identifies ‘other forested lands that maintain soil, air, water and fish and wildlife resources’ as lands subject to the Goal. This aspect of the Goal 4 program overlaps with the aspect of statewide planning Goal 5 which calls for the protection of a variety of natural resources and open spaces. This nexus with Goal 5 is addressed below in the section on ‘Other Recommended Initiatives Indirectly Related to Goals 3 and 4’.

High Value Farmland:

LCDC has the authority to limit development on High Value Farmland. Appendix 2 contains a list of uses which the commission has prohibited or limited on High Value Farmland. There are two separate regulatory definitions for high value farmland. The original, soils-based definition (ORS 215.710) as expanded and clarified by DLCD's rules at OAR 660-033-0020, and the definition at ORS 195.300.

The primarily soils-based definition of high value farmland in rule at OAR 660-033-0020 includes regionally distinct definitions for high value farmland in the Willamette Valley and for two agricultural sectors on the Oregon Coast accounting for unique characteristics specific to

agricultural practices in those areas. There are no high value farmland definitions specific to unique agricultural areas in eastern Oregon. It has been suggested that there are certain important soil types in eastern Oregon that merit further protection.

The Oregon Legislature originally created the definition of high-value farmland at ORS 195.300(10) for use in review of Measure 49 claims and it was later referenced in a few other review types. The definition at 195.300(10) takes the 215.710 definition as its starting base and then goes beyond the more basic soils capability definition in rule to include things like suitability for viticulture use; evaluation of access to irrigation water or drainage infrastructure, and a few other metrics in determining if the land should be considered particularly important for agriculture. The newer definition at ORS 195.300 has been applied to new uses and program enacted since 2009. An evaluation of whether a property is to be considered high value farmland is different under ORS 215.710 and ORS 195.300. It is possible a property could be identified as not high-value farmland under ORS 215.710 and be identified as high-value farmland under ORS 195.300. Appendix 3 includes both of these definitions.

DLCD's rules require counties to provide maps of their high value farmland at the time of periodic review⁸ but this provision has not been enforced since periodic review has not been enforced. This requires a county to assess whether a property is high value farmland on a case-by-case basis. Because high value farmland is determined based on the predominance of soils for a tract (contiguous parcels under a single ownership), it isn't possible to map at a statewide level without parcel ownership data which is not available from all counties.

TWG Priority	TWG Recommendations
3	Amend 660-033 rule to clarify a single definition of high value farmland incorporating elements of ORS 195.300 into OAR 660-033-0020.
	Convene technical working group to consider expanding the definition of high value farmland to include soils suitable for certain uses in eastern Oregon.
	Fund counties to map their high value farmlands for LCDC review or obtain funding and data to map at the statewide level.
	Provide agency guidance on data sources and analysis required for ORS 195.300.

⁸ OAR 660-033-0080(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".

Other Recommended Initiatives Indirectly Related to Goals 3 and 4

Non-Resource Land Designations:

Rural resource lands (commonly referred to as non-resource lands) are rural lands that do not meet the state's definition of agricultural or forest lands. Because they are not agricultural lands or forest lands, rural resource lands are not subject to Statewide Planning Goals 3 and 4 and do not require an exception to statewide planning goals 3 or 4 in order to be zoned by counties for rural residential, commercial, industrial, recreational, or other uses. However, the land is still subject to compliance with the other Statewide Planning Goals unless an exception is taken. For example, Goal 11 (Public Facilities and Services) prohibits extension of sewer service to rural areas, including rural resource lands, without an exception. Resource values such as protecting open space to maintain soil, air, water quality, conservation of fish and wildlife habitat and opportunities for recreational opportunities need to be appropriately considered in planning for the use of rural resource lands.

The rural resource land issue has been approached in several iterations over the years through extensive public review, work sessions, and pilot studies by the Oregon State Legislature and the Land Conservation and Development Commission (LCDC). In 2009, the Legislature adopted provisions that allow counties to correct mapping errors and designate rural land for non-resource use (see ORS 215.788 – 794). This process requires coordination with state agencies to ensure such lands are truly not agricultural or forest lands and that future development of them for their designated uses would not conflict with wildlife, water quality, rural character or increase the costs of public facilities and services.

Counties and landowners have not used this coordinated process but rather continue to designate rural resource lands on a case-by-case basis through a non-resource zone change and post-acknowledgement plan amendment. Lands designated non-resource through a post-acknowledgement plan amendment and zone change are most commonly rezoned for rural residential development with minimum parcel as low as 5 acres. There are currently no standards to guide counties in identifying and zoning individual parcels or tracts that do not meet the definition of agricultural or forest resource lands. DLCD staff has found that counties vary in the degree to which consideration of carrying capacity, environmental factors, habitat protection, hazards, infrastructure requirements and availability of water and other services are considered in the non-resource designation process.

In 2012 Executive Order 12-07 established a pilot program known as the Southern Oregon Regional Pilot Project (SORPP), which allowed Douglas, Josephine and Jackson counties to establish a regional planning framework to define non-resource land for their region. Ultimately the participating counties were unable to reach consensus on the scope of topics included in the executive order.

DLCD's 2014-2022 Strategic Plan identified development of a non-resource/rural resource lands policy as a work item. DLCD approached the project by researching the issue with the intent of

documenting past efforts and current interests as well as what and how data can best inform rural resource designations. The department collected that research in the 2019 Rural Resource Lands Research Report. The report contains a set of prioritized recommendations for further research and suggests DLCD draft a guidance document for counties that addresses methodologies and criteria for rezoning resource lands and includes recommendations on appropriately identifying and establishing development parameters for newly designated rural resource lands. The report also recommends rulemaking to either require the process in ORS 215.788-794 to be used for all rural resource land designations or to develop additional rule requirements for rural resource land designations that do not utilize the process in ORS 215.788-794. The department has not taken action yet on the items recommended in the report.

Most non-resource land reviews also involve soils challenges relying on independent soils reports reviewed by DLCD and challenges to forest capability classifications which are not reviewed by DLCD as discussed above.

The TWG expressed significant concern over the continued designation of non-resource lands on a case-by-case basis through site-specific resource capability challenges and zone changes rather than through a comprehensive planning exercise. Site-by-site re-designations do not account for area-wide impacts or the cumulative impacts of serial non-resource designations on other rural resources like water, cultural resources and wildlife habitat in the same way they would be considered in a larger-scale mapping correction effort.

Some TWG members also voiced concern that the case-by-case correction of mapping errors is inequitable in that it is only available to landowners with the means to hire an independent soil professional and/or forester in order to pursue a zone change which is an expensive and detailed application process in itself. Eliminating case-by-case review, expanding on ORS 215.780 in rule, and providing technical assistance for a county to pursue re-mapping is a more equitable approach to providing for the correction of mapping errors.

TWG Priority	TWG Recommendations
3	Rulemaking to expand on the correction of mapping error process authorized under ORS 215.780. Clarify whether the process may be applied on a case-by-case basis or must be conducted as a comprehensive planning review.
	Provide technical assistance and resources to counties to pursue mapping error corrections through the process described at ORS 215.780.

Members of the TWG have expressed concern that when zoning non-resource lands for rural uses, there is no clear definition of what types of uses are “rural”. In 1000 Friends of Oregon vs. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1986), the Oregon Supreme Court held that when zoning rural residential exception areas, counties must either determine that the uses proposed for the zone are not urban or take an exception to Goal 14 to allow the urban use by applying the

Goal 14 factors. When counties re-designate resource land for residential and commercial development, the issue of what types of uses are permissible under Curry County is unclear.

TWG Priority	TWG Recommendations
3	OAR 660-004-0040 addresses the application of Goal 14 to Rural Residential exception areas. OAR 660-004-0040 explicitly does not apply to non-resource lands (OAR 660-004-0040(c)(F)) leaving it unclear how Goal 14 should be applied to non-resource lands.
3	Codify the Curry factors in a Goal 14 rural planning rule and clarify what types of residential and other uses are appropriate for rural zones created through non-resource designation.

The Nexus with Goal 5 Habitat Areas:

Although the Oregon Department of Fish and Wildlife (ODFW) is charged with the protection and enhancement of fish and wildlife species, the agency has very limited authority over the habitat on which animals depend. ODFW is reliant upon local and state compliance with land use planning goals to ensure protection and enhancement of Oregon’s fish and wildlife and their habitats. This is particularly true for the working lands goals which protect forest and rangelands which often also provide habitat and other natural resource values. ODFW staff often coordinate with DLCD staff in review of significant land use reviews and ODFW staff participated on the TWG.

Statewide planning Goal 5 requires cities and counties to provide programs that conserve or protect a variety of natural resources including fish and wildlife areas and habitats. Under Goal 5, one option for a local government to determine significance of fish and wildlife habitat within the county is if that habitat is documented in the Oregon Wildlife Commission’s fish and wildlife management plans as essential to achieving policies or population objectives. Implementation of the Goal at the local level required inventory of fish and wildlife habitat areas, identification of conflicting uses, analysis of the ESEE consequences to allow, limit or prohibit conflicting uses and development of a local program to achieve Goal 5. Where no conflicting uses were identified wildlife resources were to be managed “so as to preserve their original character”. In both the Forest Lands definition and Goal 5 there is a lack of guidance regarding what resources should be considered, how they should be evaluated, how to determine resource significance, and how to secure protections, leaving many critical conservation decisions up to local governments.

Several techniques were adopted by counties to protect Goal 5 habitat resources: overlay zones, natural resource base zoning, setback standards, plan review standards, etc. Many local comprehensive plans rely in part on the protections from development and parcelization under the farmland (particularly rangeland) and forestland programs to also protect a variety of habitat values. This has been recently highlighted in a number of court cases centered around the use of forest zone minimum parcel sizes to implement Goal 5 habitat protections in Lane County.

At the time of Goal 5 implementation, far fewer uses were permitted in farm and forest zones than are now. It is not clear how counties may or may not have assessed the impact on habitat

of pre-acknowledgement substandard parcels or the potential for land divisions allowed under the Goal 3 and 4 rules. Changes to the Goal 3 and 4 programs implemented by the legislature and by LCDC over the past 50 years, such as adding new uses, have not necessarily considered erosion of the co-benefits the programs have for the conservation of Goal 5 values.

TWG Priority	TWG Recommendations
2	DLCD staff can collaborate with ODFW on drafting a white paper better articulating this concern, and the historical context that led to the situation and provide recommendations for addressing these issues.
3	Rulemaking to clarify that limitations on uses imposed by other Goals in acknowledged comprehensive plans apply to uses otherwise authorized by Goal 3 ⁹ .

Cumulative impacts of dwellings and other non-resource uses on the ability of protected working land to support resource industries also results in potential impacts to wildlife habitat. Historically, low-density residential development has both directly and indirectly contributed to net negative environmental impacts including decreased ecosystem services, increased wildfire risk, proliferation of invasive species, habitat fragmentation, loss of open space, animal-human conflict, high water usage reducing water quantity, substantial impervious surface and runoff reducing water quality, high energy usage, increased greenhouse gas emissions and other pollution due to vehicular traffic¹⁰.

ODFW has defined and mapped several areas of priority habitats to emphasize conservation needs: Conservation Opportunity areas, Strategy Habitats, Priority Wildlife Connectivity Areas, COMPASS, Oregon Fish Habitat Distribution and Big Game Habitat. The current, best available fish and wildlife habitat data is not reflected in most of the county comprehensive plans. It may be useful to overlay these areas with statewide zoning to identify the extent of overlap with more protective zoning designations such as EFU and Forest zoning. This could help identify the potential co-benefit of working lands protections and to better articulate the associated habitat consequence of resource land conversion to residential or urbanized uses.

TWG Priority	TWG Recommendations
4	As noted in the GIS needs section above, engage in inter-agency coordination to identify areas of stacked resource benefits to overlay with cumulative impacts, parcelization and conversion trends.

⁹ In *Hendrickson v. Lane County* (LUBA No. 2021-117, Opinion, Apr 11, 2022), LUBA held that Lane County could not apply its acknowledged Goal 5 provision limiting dwelling density in deer winter range to an application for a temporary hardship dwelling in the county’s exclusive farm use zone. LUBA reasoned that the acknowledged Goal 5 provision was a county restriction that Brentmar prohibited the county from imposing on sub-1 uses such as temporary hardship dwellings listed in ORS 215.213(1)(i).

¹⁰ Portland State University. (2018) Analysis of Expanding Rural Residential Housing in Douglas County, Oregon.

Climate:

The Oregon Global Warming Commission’s (OGWC) recently published Natural and Working Lands Proposal¹¹ identifies the land use planning program as playing an important role in conserving natural and working lands. None of the practices identified for increasing carbon sequestration and reducing GHG emissions listed in the Natural and Working Lands report would be possible without a land base on which to implement them. The OGWC Natural and Working Lands has identified the enhancement and maintenance of the conservation aspects of Oregon’s statewide land use planning program and limiting the provisions that allow for the conversion of natural and working lands to non-resource related uses where they increase emissions, decrease sequestration potential, or create conflicts for resource use of neighboring lands.

Members of the TWG suggested that DLCD consider ways our rules could reflect the state’s climate priorities for example by requiring an evaluation of impacts related to emissions, sequestration potential, and resource conflicts when land is proposed to be removed from protective farm or forest zoning or regulatory standards are waived through an exception process.

TWG Priority	TWG Recommendations
2	Prohibit the conversion of natural and working lands to non-resource related uses where they increase emissions or a result in a decreased sequestration potential. Will require collaboration with technical group to better identify methodology and clear thresholds for such impacts.
	Consider additional ways climate adaptation can be considered within the framework of the Goal 3 and 4 programs.

Other issues raised but not discussed:

Some TWG members raised three issues related to the conversion of farmland which were not discussed because the department has or will soon be addressing aspects of those issues through other initiatives. These members expressed concerns about the significant impact of renewable energy development on farmland, current rules for urban growth boundary expansions and a need to improve the identification, development and protection of currently designated industrial lands as an alternative to conversion of farmland.

The 2020-2021 Oregon Farm & Forest Land Use Report ([www.oregon.gov/lcd/Publications/2020-2021 Farm Forest Report.pdf](http://www.oregon.gov/lcd/Publications/2020-2021_Farm_Forest_Report.pdf)) contains a lengthy analysis and discussion of the extent of solar

¹¹ Institute for Natural Resources. 2023. A Roadmap to Increase Net Carbon Sequestration and/or Carbon Storage on Oregon’s Natural and Working Lands. Institute for Natural Resources, Oregon State University, Corvallis, Oregon. 171pp.

development on agricultural lands in the state of Oregon over the last 10 years. The department will be convening a legislatively directed rulemaking in 2024 to facilitate the development of solar projects on farmland in eastern Oregon. Because there are ongoing discussions related to that rulemaking, concerns related to our solar siting rules and exceptions for solar projects were not discussed by the TWG.

Information on that rulemaking is currently available at <https://www.oregon.gov/lcd/LAR/Pages/eosolar.aspx>.

The Farm & Forest Land Use Report also contains statistics on the amount of farmland converted since the inception of the program through the expansion of urban growth boundaries. The department is currently engaged in a rulemaking process which includes improvement of the clarity and certainty for analyses, urban growth amendments, land exchanges, and urban reserves under the housing capacity and urbanization topic.

Information on that rulemaking is currently available at <https://www.oregon.gov/lcd/Housing/Pages/Rulemaking.aspx>

Lastly, some TWG members identified a need to improve the identification, development and protection of currently designated industrial lands as an alternative to rezoning farmland for new industrial development. The department has not yet specifically analyzed the extent of farmland converted to industrial development through a zone-change, an exception or an urban growth boundary amendment.

Next Steps

This report will be presented to the Land Conservation and Development Commission in January 2024. Based on feedback from the commission, and considering additional public comment received, the agency will prepare a draft work plan for future actions to be considered at the April 2024 LCDC meeting.

Concurrently with that work, the agency has identified a first set of more straight-forward rule changes intended to codify certain established caselaw standards, conform rule to statute and correct misnumbered references. The request to initiate that rulemaking will also be discussed at the January 26, 2024 LCDC Meeting.

Appendix 1: Consolidated Issues Matrix

- **Appendix 1a, Consolidated Issues Matrix sorted by Priority**
- **Appendix 1b, Consolidated Issues Matrix sorted by Topic**

Appendix 1a, Consolidated Issues Matrix Sorted by Ranking

All issues raised by any TWG member are included in the Issues Matrix. TWG members were asked to rank the final list of recommended issue solutions. Final rankings assigned are based on the number of TWG member respondents identifying the particular issue as one of their top 10 priorities to address.

A ranking of 1: More than 75% of responding TWG members identified the issue as a top priority.

A ranking of 2: 60% to 75% of responding TWG members identified the issue as a top priority.

A ranking of 3: 50% to 60% of responding TWG members identified the issue as a top priority.

A ranking of 4: 35% to 50% of responding TWG members identified the issue as a top priority.

A ranking of 5: 25% to 35% of responding TWG members identified the issue as a top priority

Unranked items are those with less than 25% of TWG members identifying the proposed action as one of their top-10 priorities.

TWG Priority	TWG Recommendations
1	Technical working group to review the material stability standard for nonfarm dwellings and define a use case for supporting counties with these reviews.
1	Technical working group to define a methodology and needed data for county-wide cumulative impacts analyses.
1	Rulemaking to define and clarify the distinction between that 'Short Term Rentals' and 'room and board arrangements' authorized at ORS 215.213(2)(r)/215.283(2)(u).
1	Rulemaking to clarify if 'Short Term Rentals' are permissible as a Home Occupation.
1	<p>Rulemaking to address concerns with the primary farm dwelling standards. Standards to be considered could include:</p> <ul style="list-style-type: none"> • Adjust the income standard for inflation (one-time) or tie it to an inflationary index. The income standard establishing the threshold for what is considered a commercial farm operation has not been updated; • Include a definition of 'farm operator' indicating that the farm operator must be principally engaged in the management of the farm operation and that their day-to-day activities are principally devoted to farm use; • Clarify the evidentiary standard for verification of income. All the county planners on the TWG identified understanding what documentation to rely on as a significant challenge; • Clarify that the qualifying gross income earned must be from the sale of farm products that were produced on the land and not from the sale of products which have not yet been produced.
1	Rulemaking to remove the primary farm dwelling capability test from rule (OAR 660-033-0135(2)). Only four counties have adopted this opportunity into their code. The data source that was used to support this test is no longer being published.
1	Fund DLCD to contract independent technical review for each independent soils report submitted.
1	Legislative concept or rulemaking to consider limiting replacement dwellings to no more than 125% of original dwelling footprint and square footage and requiring replacement of the dwelling at the same site subject to hazard and fire-life-safety considerations. Replacement

	of the existing dwelling with a dwelling of a similar size and in a similar location is more likely to have a limited impact to farm operations on the property or in the surrounding area.
1	Rulemaking to define a replicable methodology to align template rectangle with stream or road. Clarify the term "maximum extent possible". This could be based on a number of different methodologies: Require that at least 50% of the rectangular alignment be parallel to and no further from the road or stream than the required code established setback from each of those features; Use GIS methodology developed by Clatsop County; Require 2 points of the rectangle to be equidistant from the centerline of the road or stream (as formerly used in Yamhill County), etc.
1	Rulemaking to add a reference in the template test standards to the definition of 'public road' in ORS 368.001 which is the definition used for the forest lot of record dwellings.
1	Rulemaking to clarify that a "site for disposal of solid waste" under ORS 215.283(2)(k) means landfills or other facilities that operate for the purpose of disposing of solid waste on site." LCDC can clarify that a "site for disposal of solid waste" does not include the full scope of activities, such as junkyards, energy recovery facilities, or waste transfer stations that may be permitted as "disposal sites" by DEQ pursuant to ORS 459.245.
1	Convene Technical Working Group to discuss material stability and non-resource dwellings: identify needed data and available data, review scope and methodology for material stability (dwelling focused) and/or cumulative impacts analysis. Will require DLCDC to develop, contract or otherwise obtain additional GIS resources.
2	Focus on spatializing existing data for non-resource use and dwelling approvals from the farm and forest reporting database.
2	In order to reduce the enforcement burden on counties, add a rule requirement for ongoing documentation of compliance with permit requirements to farm stands, agri-tourism event permits and home occupations. This includes clarifying documentation and calculation of income sources to meet threshold standards.
2	Rulemaking to adopt standards for Home Occupations which limit the scope and intensity of permissible activities. Standards to be considered could include: <ul style="list-style-type: none"> • Require a Home Occupation business to be run by a full-time resident-owner and define 'resident'; • Require a Home Occupation to be located in a pre-existing building that existed as of a certain date; • Require a Home Occupation to be located in an existing dwelling or accessory residential structure; • Require a Home Occupation to be conducted indoors; Adopt dimensional standards that limit the scale of a home occupations (eg, 1,000 square feet or 25% existing floor area, limit the number of parking spaces); • Exclude certain types of activities from consideration, (for example, events venues, food service establishments, industrial uses).
2	Rulemaking to adopt standards for CACFUs which limit the scope and intensity of permissible activities. Standards to be considered could include: <ul style="list-style-type: none"> • Adopt dimensional standards that limit the square footage of a CACFU; • Exclude certain types of activities from consideration, (for example, events venues, lodging and food service establishments); Define a distance for the 'local agricultural area';

	<ul style="list-style-type: none"> Adopt standards that limit the scale and intensity of the use based on available public services.
2	Rulemaking to repair the circular definition in OAR 660-033-0020(7)(b) and add a definition for 'processing' to OAR 660-033-0020 with the intent of clarifying what is appropriately considered a preparation farm use, what is processing allowable under ORS 215.255 and what is manufacturing.
2	Rulemaking to clarify in OAR 660-033-0130(4)(c)(B)(i) that the analysis of whether a lot or parcel can be reasonably put to farm use in conjunction with other land is not limited to instances where the parcel's size and location are factors under consideration.
2	Legislative concept to remove statutory references to 'a portion of' the lot or parcel in ORS 215.284.
2	Rulemaking to clarify that a NonFarm Parcel created pursuant to ORS 215.263(4) or (5) may not be later adjusted through a property line adjustment unless the newly configured parcel continues to meet the requirements of ORS 215.263(3), (4) or (5) as applicable.
2	Rulemaking to clarify OAR 660-033-0030(5)(c)(B) and clarify which uses may make use of a site-specific soils report other than a nonresource designation. or Rulemaking to amend OAR 660-033-0030(5)-(8) to limit the use of independent soils reports authorized by ORS 215.211 to periodic review and non-quasi-judicial zoning decisions, such as the planning process authorized by the 2007 legislature in HB 2229. This would remove use of site-specific soils reports for nonfarm dwelling reviews and site-specific amendments.
2	Consider rulemaking to adopt different standards for replacement of dwellings established prior to HB 3661 (which might be considered non-conforming dwellings) and dwellings permitted after passage of 1993 HB 3661. For dwellings permitted after the passage of 1993 HB 3661 require reauthorization of the permitted use at replacement.
2	Convene technical working group to further review the forestlands definition and data sources on which it relies.
2	Convene technical working group to discuss standardized agency review process for independent forester's reports used to address the definition of 'forest lands'
2	DLCD staff can collaborate with ODFW on drafting a white paper better articulating this concern, and the historical context that led to the situation and provide recommendations for addressing these issues.
2	Prohibit the conversion of natural and working lands to non-resource related uses where they increase emissions or a result in a decreased sequestration potential. Will require collaboration with technical group to better identify methodology and clear thresholds for such impacts.
3	Support development of DLCD internal GIS capabilities and maintain an accessible database of the latest planning-related datasets and webmapping tools for analysis and map-making Includes internal capacity to create and continuously update core datasets: urban growth boundaries, urban and rural reserves, zoning districts, comprehensive plan districts, unincorporated communities, land use, land cover, Measure 49 and 37 development, and ownership tracts..
3	Update and maintain the model codes for farm and forest zones on DLCD's website.

3	Rulemaking to clarify if a lot or parcel outside of the Willamette Valley is <i>deemed</i> suitable if, in Western Oregon it is composed predominantly of Class I-IV soils as classified by the NRCS or, in Eastern Oregon, it is composed predominantly of Class I-VI soils as classified by the NRCS. DLCD's rules state that land is <i>presumed</i> to be suitable for such uses if it is composed predominantly of certain soil capability classes.
3	Legislative concept or rulemaking to clarify if a nonfarm dwelling may be placed on a lot or parcel in the Willamette Valley if that lot or parcel is high-value farmland as defined by LCDC.
3	Legislative concept to remove ORS 215.263(4) and (5) and the opportunity to create NonFarm Parcels.
3	Rulemaking to provide guidance on how HAHT are to be addressed in soils reports, particularly where areas of cut or fill may have historically been used in conjunction with farm use. Distinguish between cases where the constraints or impact to suitability are self-imposed, historical or natural.
3	Consider rulemaking to require replacement of dwellings not destroyed or by fire or natural disaster be re-approved as a dwelling under either the dwelling in conjunction with farm use standards or the nonfarm dwelling standards.
3	Rulemaking to clarify that a "lawfully established" dwelling includes evidence of continued compliance with the original conditions of permit approval.
3	Rulemaking to clearly define what types of uses are acceptable for conversion.
3	Legislative concept to require replacement dwellings be located within the footprint of the original dwelling (effectively removing conversion of a replaced dwelling).
3	Guidance document prepared in collaboration with ODA and DSL to distinguish when fill is a farm practice, when it is accessory, when it is solid waste disposal and when it is not allowable.
3	Guidance document prepared in collaboration with ODA and DEQ to distinguish between commercial composting facilities and accepted farming practices.
3	Convene a technical working group to discuss methodologies for defining clear and objective standards for the identification of grazing lands that might be applied to post acknowledgement plan amendments.
3	Amend 660-033 rule to clarify a single definition of high value farmland incorporating elements of ORS 195.300 into OAR 660-033-0020.
3	Rulemaking to expand on the process authorized under ORS 215.780.
3	OAR 660-004-0040 addresses the application of Goal 14 to Rural Residential exception areas. OAR 660-004-0040 explicitly does not apply to non-resource lands (OAR 660-004-0040(c)(F)) leaving it unclear how Goal 14 should be applied to non-resource lands.
3	In 1000 Friends of Oregon vs. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1986), the Oregon Supreme Court held that when zoning rural residential exception areas, counties must either determine that the uses proposed for the zone are not urban or take an exception to Goal 14 to allow the urban use by applying the Goal 14 factors. Codify the Curry factors in a Goal 14 rural planning rule. Clarify what types of residential and other uses are appropriate for rural zones created through non-resource designation.
3	Rulemaking to clarify that limitations on uses imposed by other Goals in acknowledged comprehensive plans apply to uses otherwise authorized by Goal 3.
4	Inter-agency coordination to identify areas of stacked resource benefits to overlay with cumulative impacts and conversion trends.

4	Budget to engage a fellow or Intern in drafting a Guidance Document on Goal 3 and 4 Comprehensive Plan Updates with support from the above technical working group. Develop a guidance document outlining methodologies for data collection and analysis to identify and evaluate agricultural and forest areas, patterns of non-resource development and resource development and use, describing regulatory authority of counties and providing suggestions for implementation of strategies to adjust local programs to current situations.
4	Rulemaking to clarify when, or if, fee-based event activities at farm stands must instead obtain an agri-tourism event permit.
4	Amend Goal 3 rule definition of agricultural lands to replace “farm use” with the term “agricultural use.”
5	Rulemaking to consider excluding uses which are specifically listed uses in ORS 215.213 and ORS 215.283 from consideration as Home Occupations or CACFUs.
5	Rulemaking to define uses allowable as ‘private parks’ including scale and intensity. A wide variety and intensity of uses are proposed as ‘private parks’ and it is often unclear when the proposals become inappropriate for a rural environment. Caselaw exists clarifying that events venues for focal events are not ‘private parks’.
	Provide a publicly accessible state-wide map of high-value farmland as defined in ORS 195.300(10).
	Technical working group to identify needed data and capacity to meet ORS 215.209 obligation which requires DLCD to maintain a computerized database that is capable of producing county-wide maps that show the diversity of Oregon’s rural lands including information on soil classifications, forest capabilities, irrigated lands, croplands, actual farm use, and plan and zone designations.
	Rulemaking to require farmstands to demonstrate that they will not significantly impact farm and forest operations in the surrounding area.
	Rulemaking to clarify that land is not unsuitable for the production of crops or livestock because its soils are class V-VIII in Western Oregon and class VII-VIII in Eastern Oregon. These lands may still be suitable for the production of crops or livestock, notwithstanding soils classifications.
	Rulemaking to clarify that the soils classes used to identify land that is presumed suitable are the NRCS classifications.
	Rulemaking to consider prohibiting new non-resource dwellings in A) designated critical groundwater areas; B) high risk wildfire areas; C) ODFW essential, limited, important and irreplaceable wildlife habitat; or D) in acknowledged major big game habitat.
	Legislative concept to remove nonfarm dwellings as an allowed use.
	Legislative concept to remove provisions allowing for the conversion of an existing dwelling.
	Survey of county mixed farm forest zones and treatment of OAR 660-006-0050.
	Rulemaking to clarify the implications of the definition of high value farmland as applied to mixed farm-forest zones.
	Rulemaking to clarify the treatment of uses in mixed farm-forest zones.
	Rulemaking to clarify OAR 660-034: Specify which local public park uses that are listed require either a park master plan or an exception, and clarify what types of event uses (classes, experiences, fairs, etc) may be permitted at a rural public park.
	Rulemaking to clarify if the limitations applied to private parks restricting them on high value farmland and within 3 miles of a UGB also apply to local public parks.

	Rulemaking to require that local park uses in EFU or forest zones be “appropriate in an agricultural/forest environment” and “primarily for residents of the rural area in which the park is located.”
	Re-evaluate rule language for identifying agricultural land that is not predominately Class I-VI soils but is otherwise “suitable for farm use” and/or “necessary to permit farm practices to be undertaken on adjacent or nearby lands” per Goal 3 definition.
	Convene technical working group to consider expanding the definition of high value farmland to include soils suitable for certain uses in eastern Oregon.
	Fund counties to map their high value farmlands for LCDC review or obtain funding and data to map at the statewide level.
	Provide a state-wide mapping tool on Oregon Explorer that identifies high value farmland under the ORS 195.300 definition.
	Provide agency guidance on data sources and analysis required for ORS 195.300.
	Provide technical assistance and resources to counties to pursue mapping error corrections through the process described at ORS 215.780..
	Consider additional ways climate adaptation can be considered within the framework of the Goal 3 and 4 programs.

Appendix 1b, Consolidated Issues Matrix sorted by Topic

All issues raised by any TWG member are included in the Issues Matrix. TWG members were asked to rank the final list of recommended issue solutions. Final rankings assigned are based on the number of TWG member respondents identifying the particular issue as one of their top 10 priorities to address.

A ranking of 1: More than 75% of responding TWG members identified the issue as a top priority.

A ranking of 2: 60% to 75% of responding TWG members identified the issue as a top priority.

A ranking of 3: 50% to 60% of responding TWG members identified the issue as a top priority.

A ranking of 4: 35% to 50% of responding TWG members identified the issue as a top priority.

A ranking of 5: 25% to 35% of responding TWG members identified the issue as a top priority

Unranked items are those with less than 25% of TWG members identifying the proposed action as one of their top-10 priorities.

TWG Priority	TWG Recommendations
	Needed Data and Future Analyses
3	Support development of DLCD internal GIS capabilities and maintain an accessible database of the latest planning-related datasets.
2	Focus on spatializing existing data for non-resource use and dwelling approvals from the farm and forest reporting database.
	Provide a publicly accessible state-wide map of high-value farmland as defined in ORS 195.300(10).
1	Technical working group to review the material stability standard for nonfarm dwellings and define a use case for supporting counties with these reviews.
1	Technical working group to define a methodology and needed data for county-wide cumulative impacts analyses.
	Technical working group to identify needed data and capacity to meet ORS 215.209 obligation which requires DLCD to maintain a computerized database that is capable of producing county-wide maps that show the diversity of Oregon's rural lands including information on soil classifications, forest capabilities, irrigated lands, croplands, actual farm use, and plan and zone designations.
4	Inter-agency coordination to identify areas of stacked resource benefits to overlay with cumulative impacts and conversion trends.
4	Budget to engage a fellow or Intern in drafting a Guidance Document on Goal 3 and 4 Comprehensive Plan Updates with support from the above technical working group. Develop a guidance document outlining methodologies for data collection and analysis to identify and evaluate agricultural and forest areas, patterns of non-resource development and resource development and use, describing regulatory authority of counties and providing suggestions for implementation of strategies to adjust local programs to current situations.
3	Update and maintain the model codes for farm and forest zones on DLCD's website.
	Multi-Path Permitting
5	Rulemaking to consider excluding uses which are specifically listed uses in ORS 215.213 and ORS 215.283 from consideration as Home Occupations or CACFUs.

4	Rulemaking to clarify when, or if, fee-based event activities at farm stands must instead obtain an agri-tourism event permit.
	Rulemaking to require farmstands to demonstrate that they will not significantly impact farm and forest operations in the surrounding area.
5	Rulemaking to define uses allowable as 'private parks' including scale and intensity. A wide variety and intensity of uses are proposed as 'private parks' and it is often unclear when the proposals become inappropriate for a rural environment. Caselaw exists clarifying that events venues for focal events are not 'private parks'.
2	In order to reduce the enforcement burden on counties, add a rule requirement for ongoing documentation of compliance with permit requirements to farm stands, agri-tourism event permits and home occupations. This includes clarifying documentation and calculation of income sources to meet threshold standards.
2	<p>Rulemaking to adopt standards for Home Occupations which limit the scope and intensity of permissible activities. Standards to be considered could include:</p> <ul style="list-style-type: none"> • Require a Home Occupation business to be run by a full-time resident-owner and define 'resident', • Require a Home Occupation to be located in a pre-existing building that existed as of a certain date, • Require a Home Occupation to be located in an existing dwelling or accessory residential structure, • Require a Home Occupation to be conducted indoors, • Adopt dimensional standards that limit the scale of a home occupations (eg, 1,000 square feet or 25% existing floor area, limit the number of parking spaces), <p>Exclude certain types of activities from consideration, (for example, events venues, food service establishments, industrial uses).</p>
1	Rulemaking to define and clarify the distinction between that 'Short Term Rentals' and 'room and board arrangements' authorized at ORS 215.213(2)(r)/215.283(2)(u).
1	Rulemaking to clarify if 'Short Term Rentals' are permissible as a Home Occupation.
1	Rulemaking to codify caselaw standards for CACFUs as noted above.
2	<p>Rulemaking to adopt standards for CACFUs which limit the scope and intensity of permissible activities. Standards to be considered could include:</p> <ul style="list-style-type: none"> • Adopt dimensional standards that limit the square footage of a CACFU to 40,000 square feet of floor space consistent with the standards for industrial uses in unincorporated communities established in OAR 660-022-0030. The courts have supported a DLCD position that Goal 14 implicitly requires that the intensity of uses allowed on rural lands outside of unincorporated communities be less than the intensity allowed inside unincorporated communities. • Exclude certain types of activities from consideration, (for example, events venues, lodging and food service establishments). • Define a distance for the 'local agricultural area'. • Adopt standards that limit the scale and intensity of the use based on available public services.
2	Rulemaking to repair the circular definition in OAR 660-033-0020(7)(b) and add a definition for 'processing' to OAR 660-033-0020 with the intent of clarifying what is appropriately

	considered a preparation farm use, what is processing allowable under ORS 215.255 and what is manufacturing.
	Farm Dwellings
2 5 1 2	<p>Rulemaking to address concerns with the primary farm dwelling standards. Standards to be considered could include:</p> <ul style="list-style-type: none"> • Adjust the income standard for inflation (one-time) or tie it to an inflationary index. The income standard establishing the threshold for what is considered a commercial farm operation has not been updated. • Include a definition of ‘farm operator’ indicating that the farm operator must be principally engaged in the management of the farm operation and that their day-to-day activities are principally devoted to farm use. • Clarify the evidentiary standard for verification of income. All the county planners on the TWG identified understanding what documentation to rely on as a significant challenge. • Clarify that the qualifying gross income earned must be from the sale of farm products that <i>were</i> produced on the land and not from the sale of products which have not yet been produced.
1	Rulemaking to remove the primary farm dwelling capability test from rule (OAR 660-033-0135(2)). Only four counties have adopted this opportunity into their code. The data source that was used to support this test is no longer being published.
	NonFarm Dwellings
2	Rulemaking to clarify in OAR 660-033-0130(4)(c)(B)(i) that the analysis of whether a lot or parcel can be reasonably put to farm use in conjunction with other land is not limited to instances where the parcel's size and location are factors under consideration.
3	Rulemaking to clarify if a lot or parcel outside of the Willamette Valley is <i>deemed</i> suitable if, in Western Oregon it is composed predominantly of Class I-IV soils as classified by the NRCS or, in Eastern Oregon, it is composed predominantly of Class I-VI soils as classified by the NRCS. DLCD’s rules state that land is <i>presumed</i> to be suitable for such uses if it is composed predominantly of certain soil capability classes. There have been instances where NonFarm Dwellings have been approved on lands LCDC has presumed to be suitable.
	Rulemaking to clarify that land is not unsuitable for the production of crops or livestock because its soils are class V-VIII in Western Oregon and class VII-VIII in Eastern Oregon. These lands may still be suitable for the production of crops or livestock, notwithstanding soils classifications.
	Rulemaking to clarify that the soils classes used to identify land that is presumed suitable are the NRCS classifications.
	Rulemaking to consider prohibiting new non-resource dwellings in A) designated critical groundwater areas; B) high risk wildfire areas; C) ODFW essential, limited, important and irreplaceable wildlife habitat; or D) in acknowledged major big game habitat.
2	Convene Technical Working Group to discuss material stability and non-resource dwellings: identify needed data and available data, review scope and methodology for material stability (dwelling focused) and/or cumulative impacts analysis. Will require DLCD to develop, contract or otherwise obtain additional GIS resources.

	Legislative concept to remove nonfarm dwellings as an allowed use.
2	Legislative concept to remove statutory references to 'a portion of' the lot or parcel in ORS 215.284.
3	Legislative concept or rulemaking to clarify if a nonfarm dwelling may be placed on a lot or parcel in the Willamette Valley if that lot or parcel is high-value farmland as defined by LCDC.
2	Rulemaking to clarify that a NonFarm Parcel created pursuant to ORS 215.263(4) or (5) may not be later adjusted through a property line adjustment unless the newly configured parcel continues to meet the requirements of ORS 215.263(3), (4) or (5) as applicable.
3	Legislative concept to remove ORS 215.263(4) and (5) and the opportunity to create NonFarm Parcels.
	Site-Specific Soils Reviews
2	Rulemaking to clarify OAR 660-033-0030(5)(c)(B) and clarify which uses may make use of a site-specific soils report other than a nonresource designation. or Rulemaking to amend OAR 660-033-0030(5)-(8) to limit the use of independent soils reports authorized by ORS 215.211 to periodic review and non-quasi-judicial zoning decisions, such as the planning process authorized by the 2007 legislature in HB 2229. This would remove use of site-specific soils reports for nonfarm dwelling reviews and site-specific amendments.
3	Rulemaking to provide guidance on how HAHT are to be addressed in soils reports, particularly where areas of cut or fill may have historically been used in conjunction with farm use. Distinguish between cases where the constraints or impact to suitability are self-imposed, historical or natural.
1	Fund DLCD to contract independent technical review for each report submitted.
	Replacement Dwellings
2	Consider rulemaking to adopt different standards for dwellings established prior to HB 3661 (which might be considered non-conforming dwellings) and dwellings permitted after passage of 1993 HB 3661. For dwellings permitted after the passage of 1993 HB 3661 require reauthorization of the permitted use at replacement.
3	Consider rulemaking to require replacement of dwellings not destroyed or by fire or natural disaster be re-approved as a dwelling under either the dwelling in conjunction with farm use standards or the nonfarm dwelling standards.
3	Rulemaking to clarify that a "lawfully established" dwelling includes evidence of continued compliance with the original conditions of permit approval.
1	Legislative concept or rulemaking to consider limiting replacement dwellings to no more than 125% of original dwelling footprint and square footage and requiring replacement of the dwelling at the same site subject to hazard and fire-life-safety considerations. Replacement of the existing dwelling with a dwelling of a similar size and in a similar location is more likely to have a limited impact to farm operations on the property or in the surrounding area.
3	Rulemaking to clearly define what types of uses are acceptable for conversion.
3	Legislative concept to require replacement dwellings be located within the footprint of the original dwelling (effectively removing conversion of a replaced dwelling).

	Legislative concept to remove provisions allowing for the conversion of an existing dwelling.
1	<p>Rulemaking to define a replicable methodology to align template rectangle with stream or road. Clarify the term "maximum extent possible". This could be based on a number of different methodologies:</p> <ul style="list-style-type: none"> - require that at least 50% of the rectangular alignment be parallel to and no further from the road or stream than the required code established setback from each of those features. - use GIS methodology developed by Clatsop County. - require 2 points of the rectangle to be equidistant from the centerline of the road or stream (as formerly used in Yamhill County).
1	Rulemaking to add a reference in these standards to the definition of 'public road' in ORS 368.001 which is the definition used for the forest lot of record dwellings.
	Mixed Farm Forest Zones
	Survey of county mixed farm forest zones and treatment of OAR 660-006-0050.
	Rulemaking to clarify the implications of the definition of high value farmland as applied to mixed farm-forest zones.
	Rulemaking to clarify the treatment of uses in mixed farm-forest zones.
	Local Public Parks
	Rulemaking to clarify OAR 660-034: Specify which local public park uses that are listed require either a park master plan or an exception, and clarify what types of event uses (classes, experiences, fairs, etc) may be permitted at a rural public park.
	Rulemaking to clarify if the limitations applied to private parks restricting them on high value farmland and within 3 miles of a UGB also apply to local public parks.
	Rulemaking to require that local park uses in EFU or forest zones be "appropriate in an agricultural/forest environment" and "primarily for residents of the rural area in which the park is located."
	Landfills
1	Rulemaking to clarify that a "site for disposal of solid waste" under ORS 215.283(2)(k) means landfills or other facilities that operate for the purpose of disposing of solid waste on site." LCDC can clarify that a "site for disposal of solid waste" does not include the full scope of activities, such as junkyards, energy recovery facilities, or waste transfer stations that may be permitted as "disposal sites" by DEQ pursuant to ORS 459.245.
	Fill on Farmland
3	Guidance document prepared in collaboration with ODA and DSL to distinguish when fill is a farm practice, when it is accessory, when it is solid waste disposal and when it is not allowable.
	Composting on Farmland
3	Guidance document prepared in collaboration with ODA and DEQ to distinguish between commercial composting facilities and accepted farming practices.
	Agricultural Lands
3	Convene a technical working group to discuss methodologies for defining clear and objective standards for the identification of grazing lands that might be applied to post acknowledgement plan amendments.

	Re-evaluate rule language for identifying agricultural land that is not predominately Class I-VI soils but is otherwise “suitable for farm use” and/or “necessary to permit farm practices to be undertaken on adjacent or nearby lands” per Goal 3 definition.
4	Amend Goal 3 rule definition of agricultural lands to replace “farm use” with the term “agricultural use.”
	Forest Lands Definition
2	Convene technical working group to further review the forestlands definition and data sources on which it relies.
2	Convene technical working group to discuss standardized agency review process for independent forester's reports used to address the definition of 'forest lands'
	High Value Farmland
	Convene technical working group to consider expanding the definition of high value farmland to include soils suitable for certain uses in eastern Oregon.
3	Amend 660-033 rule to clarify a single definition of high value farmland incorporating elements of ORS 195.300 into OAR 660-033-0020.
	Fund counties to map their high value farmlands for LCDC review or obtain funding and data to map at the statewide level.
	Provide a state-wide mapping tool on Oregon Explorer that identifies high value farmland under the ORS 195.300 definition.
	Provide agency guidance on data sources and analysis required for ORS 195.300.
	Non-Resource Land
3	Rulemaking to expand on the process authorized under ORS 215.780.
	Provide technical assistance and resources to counties to pursue mapping error corrections through the process described at ORS 215.780..
3	OAR 660-004-0040 addresses the application of Goal 14 to Rural Residential exception areas. OAR 660-004-0040 explicitly does not apply to non-resource lands (OAR 660-004-0040(c)(F)) leaving it unclear how Goal 14 should be applied to non-resource lands.
3	In 1000 Friends of Oregon vs. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1986), the Oregon Supreme Court held that when zoning rural residential exception areas, counties must either determine that the uses proposed for the zone are not urban or take an exception to Goal 14 to allow the urban use by applying the Goal 14 factors. Codify the Curry factors in a Goal 14 rural planning rule. Clarify what types of residential and other uses are appropriate for rural zones created through non-resource designation.
	Goal 5 Nexus
2	DLCD staff can collaborate with ODFW on drafting a white paper better articulating this concern, and the historical context that led to the situation and provide recommendations for addressing these issues.
3	Rulemaking to clarify that limitations on uses imposed by other Goals in acknowledged comprehensive plans apply to uses otherwise authorized by Goal 3.
	Climate
	Consider additional ways climate adaptation can be considered within the framework of the Goal 3 and 4 programs.
2	Prohibit the conversion of natural and working lands to non-resource related uses where they increase emissions or a result in a decreased sequestration potential. Will require

collaboration with technical group to better identify methodology and clear thresholds for such impacts.

Appendix 2: Uses Prohibited on High Value Farmland

	Destination resort which is approved consistent with the requirements of Goal 8.
	A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
	Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-093-0050 and 340-096-0060.
	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.
	Churches and cemeteries in conjunction with churches consistent with ORS 215.441.
	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.
	Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

Appendix 3: Definitions of High Value Farmland

ORS 215.710 (Enacted in 1993)

215.710 High-value farmland description for ORS 215.705.

(1) For purposes of ORS 215.705, high-value farmland is land in a tract composed predominantly of soils that, at the time the siting of a dwelling is approved for the tract, are:

- (a) Irrigated and classified prime, unique, Class I or Class II; or
- (b) Not irrigated and classified prime, unique, Class I or Class II.

(2) In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, 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 United States Department of Agriculture taken prior to November 4, 1993. For purposes of this subsection, "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.

(3) In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, 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 soils described in subsection (1) of this section and the following soils:

- (a) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius, 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.

(4) In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, 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 soils described in subsection (1) of this section and the following soils:

- (a) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;
- (b) Subclassification IIIw, specifically, Brenner and Chitwood;
- (c) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalan, Neskowin and Winema; and
- (d) Subclassification IVw, specifically, Coquille.

(5) For purposes of approving a land use application under ORS 215.705, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner:

- (a) Submits a statement of agreement from the Natural Resources Conservation Service of the United States Department of Agriculture that the soil class, soil rating or other soil designation should be adjusted based on new information; or

(b)(A) Submits a report from a soils scientist whose credentials are acceptable to the State Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and

(B) Submits a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subparagraph (A) of this paragraph and finds the analysis in the report to be soundly and scientifically based.

(6) Soil classes, soil ratings or other soil designations used in or made pursuant to this section are those of the Soil Conservation Service in its most recent publication for that class, rating or designation before November 4, 1993.

ORS 195.300(10) (Enacted in 2009)

Note: subsections (a) and (b) of the below definition are reflected in rule at OAR 660-033-0020(8).

(10) "High-value farmland" means:

(a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are December 6, 2007.

(b) Land west of U.S. Highway 101 that is composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in ORS 215.710 (1) 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.

(c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is:

(A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;

(B) Within the boundaries of a district, as defined in ORS 540.505; or

(C) Within the boundaries of a diking district formed under ORS chapter 551.

(d) Land that contains not less than five acres planted in wine grapes.

(e) Land that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;

(B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89; or

(C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90.

(f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178 that is within the State of Oregon;

(B) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;

(C) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74 that is within the State of Oregon;

(D) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91 that is within the State of Oregon; or

(E) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.

Appendix 4: Glossary of Terms Used

Commonly Used Acronyms:

CACFU: Commercial Activity in Conjunction with Farm Use. A use allowed in exclusive farm use zones pursuant to ORS 215.213(2)(c) or 215.283(2)(a).

DLCD: The Department of Land Conservation and Development. The state agency that provides administrative oversight and technical assistance related to Oregon's Statewide Land Use Planning System.

EFU: Exclusive Farm Use. Protective zoning designation applied to lands inventoried by counties as agricultural lands.

GIS: Geographic Information Systems. Geographic Information Systems are computer-based tools used to store, visualize, analyze, and interpret geographic data.

LCDC: Land Conservation and Development Commission. LCDC adopts state land-use goals, implements rules, assures local plan compliance with the goals, coordinates state and local planning, and oversees the coastal zone management program.

LUBA: The Land Use Board of Appeals. LUBA was established by the Oregon State Legislature in 1979 to hear and rule on appeals of land use decisions made by local governments and special districts.

NRCS: Natural Resources Conservation Service. NRCS is an agency of the United States Department of Agriculture (USDA) that provides technical assistance to farmers and other private landowners and managers. NRCS has soil maps and data available online for more than 95 percent of the nation's counties.

OAR: Oregon Administrative Rule. Oregon law defines "rule" as "any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or policy, or describes the procedure or practice requirements of any agency." ORS 183.310(9).

ODA: Oregon Department of Agriculture. The Oregon Department of Agriculture (ODA) works to ensure healthy natural resources, environment and economy for Oregonians now and in the future through inspection and certification, regulation and promotion of agriculture and food.

ODFW: Oregon Department of Fish and Wildlife. The Oregon Department of Fish and Wildlife (ODFW) is responsible for sustainably managing fish and wildlife in Oregon. Through its commission, it sets regulations for recreational and commercial fishing, crabbing, clamming and hunting. It also manages species that are not hunted or fished, including state-listed endangered, threatened and sensitive species.

OGWC: Oregon Global Warming Commission. The OGWC was created by the legislature in 2007 to track trends in greenhouse gas emissions, recommends ways to coordinate state and local efforts to reduce emissions, and works to prepare communities for the effects of climate change.

ORS: Oregon Revised Statute. The codified laws of the State of Oregon enacted by the Legislative Assembly and Governor, or passed by a vote of the people through the initiative process.

TWG: Technical Working Group. In this context, the group appointed by the Director of DLCD to provide technical input in creating a program to improve the Farm and Forest Conservation Program.

Commonly Used Terms:

Capability Class: Land capability classification indicates the suitability of soils for most kinds of field crops. Capability classes are designated by the numbers 1 through 8. The numbers indicate progressively greater limitations and narrower choices for practical use with 1 being most suitable for the production of crops.

Cumulative impacts: Cumulative impacts result when the effects of an action are added to or interact with other effects in a particular place and within a particular time. Cumulative impacts can result from individually minor but collectively significant actions.

Farm Impacts Test: This term refers to the criteria in ORS 215.296 that are applied to sub-2 uses in exclusive farm use zones. The test requires a demonstration that a proposed use will not have a significant impact on farm or forest operations or increase the cost of farm or forest operations in the area surrounding the proposed development¹².

Goal 3: Goal 3 calls for the preservation of large blocks of the limited supply of agricultural land needed to maintain the state's agricultural economy. See the discussion of the definition of agricultural lands above.

Goal 4: Goal 4 calls for the conservation of forest land necessary to permit forest operations, practices and other forested lands that maintain soil, air, water and fish and wildlife resources. See the discussion of the definition of forest lands above.

Goal 5: Goal 5 is a broad statewide planning goal that covers more than a dozen resources. The resources range from wildlife habitat to historic places, and gravel mines.

Goal 14: This goal requires cities to project future growth and identify areas that may accommodate this growth in an orderly and efficient manner.

Marginal Lands: The 1983 Marginal Lands Act allowed reduced regulation of certain "marginal" farmlands in return for greater protection to more productive lands. Lane and Washington Counties were the only two counties to adopt the marginal lands program before the statute was repealed in 1991 and those are the only two counties allowed to continue to operate under that program.

Non-resource lands: Rural lands that do not meet the state's definition of 'agricultural lands' or 'forest lands'. These are also sometimes referred to as 'rural resource lands' in an effort to recognize the other resource benefits conveyed by rural lands such as habitat or open space benefits.

Resource lands: This term is typically used in Oregon planning to collectively refer to farm and forest lands protected under Goals 3 and 4.

¹² ORS 215.296(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not: (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Rural Lands: All land located outside of an Urban growth Boundary or City Limit.

Sub-1 uses: Uses listed in ORS 215.213(1) and 215.283(1) that are allowable in exclusive farm use zones.

Sub-2 uses: Uses listed in ORS 215.213(2) and 215.283(2) that are permissible in exclusive farm use zones subject to findings of compliance with the farm impacts test at ORS 215.296.

Urban Growth Boundary (UGB): A geographic area defined in plans or regulations as desirable and appropriate for a city to grow into during a 20-year time period. UGBs separate urbanizable land from rural land.

Willamette Valley: In Oregon land use planning, the Willamette Valley includes Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and portions of Benton and Lane Counties lying east of the summit of the Coast Range.

Working lands: This term is typically used in Oregon land use planning to collectively refer to farm and forest lands used to support agricultural and timber economies.

Appendix 5: Appointed Technical Working Group Members

<i>Contact</i>
James W Johnson
Jon Tokarczyk
Dan Hubner
Joy Vaughn
Bryan Harper
Jacque Duyck Jones
Mike McCarthy
Christian Richmond
Nellie McAdams
Blair Batson
Lauri Segel
Tamra Mabbott
Jennifer Hughes
Gail Henrikson
Maitreyee Singh
Ian Sisson
Barbara Boyer
Artemio Paz

<i>Perspective</i>
Oregon Department of Agriculture
Oregon Department of Forestry
Oregon Department of Forestry
Oregon Department of Fish and Wildlife
Board of Agriculture
Farmer Advocate
Farmer Advocate
Farmer Advocate
Agricultural Land Trust
Land Use Advocate
Land Use Advocate
County Planning Director
County Planning Director
County Planning Director
County Planner
County Planner
LCDC Liaison
CIAC Liaison

Department of Land Conservation and Development

Farm and Forest Conservation Program: Draft Rulemaking Charge Additions

March 28, 2024

Farm and Forest Conservation Program Improvements Project Rulemaking.

Department of Land Conservation and Development (DLCD) Staff intend that the charge will support the Rulemaking Advisory Committee's (RAC) efforts by implementing commission expectations. Should there be confusion or disagreement among the RAC, the charge will prevail. The following draft language has been or will be reviewed by DLCD's Rural Team, Policy Team and the Local Officials Advisory Committee (LOAC). This work focuses on codification of case law and clarifications to rules implementing statewide land use planning Goals 3: Agricultural Lands and 4: Forest Lands.

Current charge:

Members of the Rules Advisory Committee (RAC) will provide assistance to agency staff to analyze, draft, and recommend Oregon Administrative Rules (OARs) that codify certain case law standards related to the implementation of Goal 3: Agricultural Lands and 4: Forest Lands. OARs staff recommend for consideration by the Land Conservation and Development Commission will:

- *Codify the identified established case law standards.*
- *Result in more consistent implementation of those identified case law standards across Oregon counties.*
- *Provide additional clarity to counties, rural residents and potential land use permit applicants with the intent of reducing unnecessary appeals.*

Topics of consideration: ORS 215.296 (the 'Farm Impacts Test'), Commercial Activities in Conjunction with Farm Use, the Agri-Tourism and Other Commercial Events 'incidental and subordinate' and 'necessary to support' standards, Transportation Facilities on Rural Lands.

Additions to charge:

Members of the Rules Advisory Committee (RAC) will also provide assistance to agency staff to analyze, draft, and recommend Oregon Administrative Rules (OARs) related to the implementation of Goal 3: Agricultural Lands and Goal 4: Forest Lands and recommend OARs to reduce regulatory confusion, improve clarity and facilitate implementation of standards by counties. OARs staff recommend for consideration by the Land Conservation and Development Commission will:

- *Repair the circular definition in OAR 660-033-0020(7)(b). Add a definition for 'processing' to OAR 660-033-0020 with the intent of clarifying what is appropriately considered a preparation farm use and what is processing.*

- *Establish an evidentiary standard for verification of income to demonstrate compliance with the standards for farm stands, agri-tourism events, and primary and accessory farm dwellings. [LOAC expressed strong support for this and articulated need]*
- *Rulemaking to define in OAR 660-006-0027 a replicable methodology to align a template rectangle with stream or road. Clarify what constitutes a 'road' for purposes of the review and the term 'maximum extent possible'. [LOAC expressed support and underscored need for this]*
- *Rulemaking to clarify that focal events are not "recreational uses". This is proposed as a codification of the opinion in Central Oregon Landwatch v. Deschutes County, 72 Or LUBA 61 (2015).*
- *Clarify whether uses otherwise listed in chapter 215 of statute or in OAR 660-006-0025 may or may not alternatively be reviewed as Home Occupations under ORS 215.213(2), 215.283(2) or OAR 660-006-0025(4)(s).*
- *Clarify whether uses otherwise allowed in chapter 215 of statute may or may not alternatively be reviewed as Commercial Activities in Conjunction with Farm Use (CACFU) under ORS 215.213(2)(n) or 215.283(2)(i) unless otherwise allowed in statute.*

If approved, this charge would lead the document of operating principles for the Rules Advisory Committee as they begin their work.

What interested parties would be involved: *There are no changes to the list of interested parties that is included in the current charge. The potential audience for this effort identified in the current charge is very broad including owners and lessees of land zoned for farm and forest use, owners and renters of neighboring properties, farm, woodlot and forest business owners and suppliers of farm, woodlot and forest industries, county commissioners and planning staff, county public works departments, farmland and forestland protection advocates, natural resource and climate advocates, farm and forest and land use scholars, land trust organizations, land use lawyers, property rights advocates, developers, tourism support entities, natural resource agency staff with interest in land use, a member of LCDC's Community Involvement Action Committee and a LCDC liaison. The RAC which was appointed to consider the original charge will also review the additions to the charge.*

Simple Farm and Forest Improvements Work Plan

2024	2025	2026	2027	2028	2029
2024 Rulemaking		2026 Rulemaking		2028 Rulemaking	
Biennial Report		Biennial Report		Biennial Report	
	Whitepapers & Data Collection				Model Code Update
	Guidance Documents				
	TWG: Grazing Lands		TWG: Forest Lands		