



**DLCD**



# Statewide Planning Goals 3 & 4

September 9, 2019

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# Good Morning



## Agricultural Lands

- What is agricultural land?
- How is agricultural land protected?
- What can be built on agricultural land?
- Can property be divided?

# Buenas Tardes



## Forest Lands

- What is forest land?
- How is forest land protected?
- What can be built on forest land?
- Can property be divided?
- Fire
- Mixed farm-forest zones

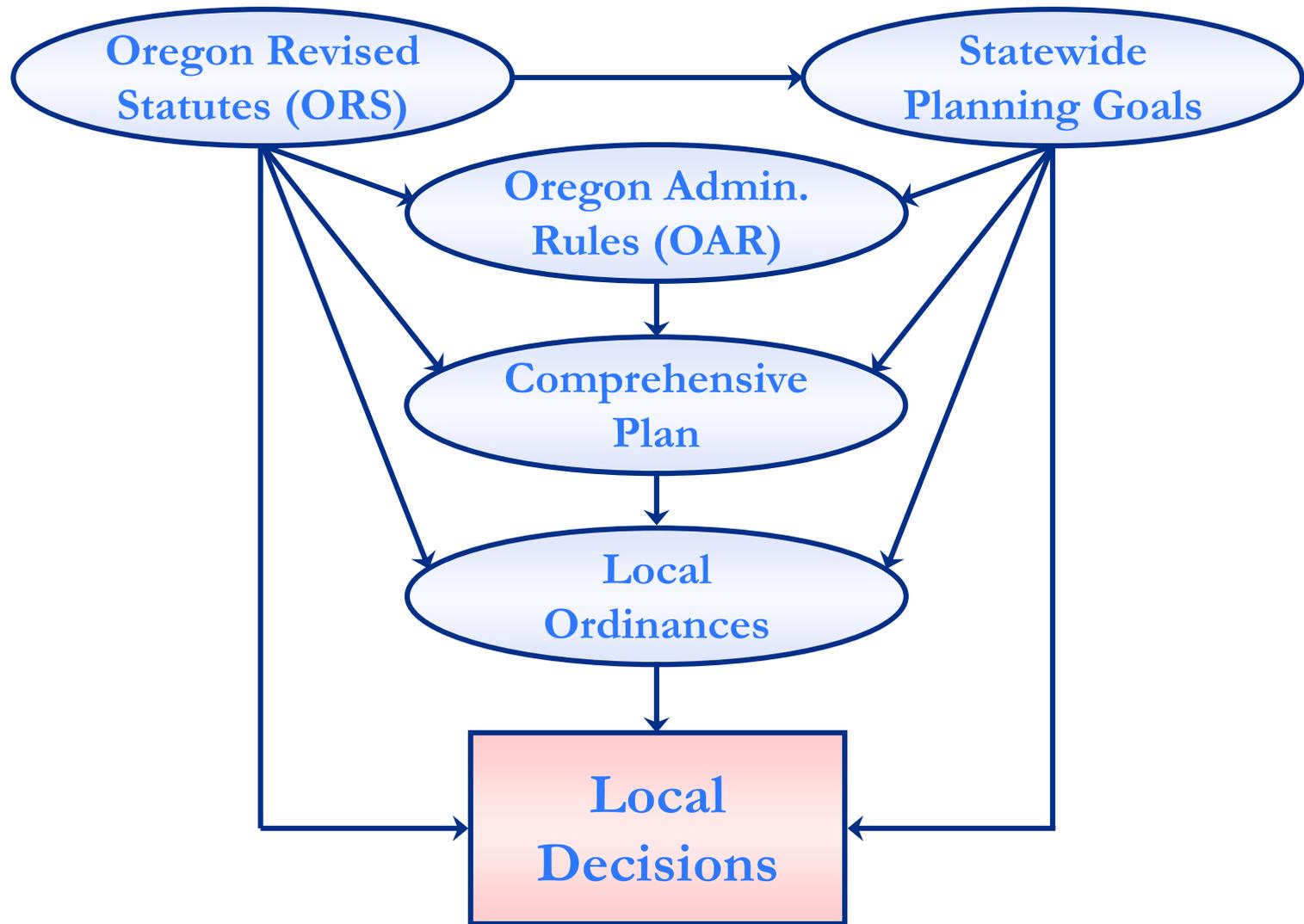
## Zone changes

## 2019 legislation

- Goal 1 – Citizen Involvement
- Goal 2 – Land Use Planning
- **Goal 3 – Agricultural Lands**
- **Goal 4 – Forest Lands**
- Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces
- Goal 6 – Air, Water, and Land Resources Quality
- Goal 7 - Areas Subject to Natural Hazards
- Goal 8 - Recreation Needs
- Goal 9 – Economic Development
- Goal 10 - Housing
- Goal 11 - Public Facilities and Services
- Goal 12 - Transportation
- Goal 13 – Energy Conservation
- Goal 14 - Urbanization
- Goal 16 – Estuarine Resources
- Goal 17 – Coastal Shorelands
- Goal 18 – Beaches and Dunes
- Goal 19 – Ocean Resources



# Statewide Planning Goals





# Agricultural Land



# Agricultural Land Use Policy

ORS 215.243

- **Asset to all Oregonians**
- Preserve maximum amount in large blocks
- Urban development on rural lands
  - Increases cost of services
  - Conflicts with farm use
- Exclusive Farm Use (EFU) zoning limits development and justifies incentives (e.g. tax benefits)



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## Goal 3

Defines agricultural land

Large minimum lot sizes

Minimize nonfarm uses on EFU

Limit public service extensions on ag land (Goal 11)



# What are Agricultural Lands?

Outside the UGB

Not forest land (Goal 4)

Not Goal 3 or 4 exception lands

Zoned EFU or Mixed Farm-Forest



# What are Agricultural Lands?

Capability and Suitability

Capability

Predominantly Class 1-4 soils per NRCS



# What are Agricultural Lands?

Suitability

Grazing

Water for irrigation

Accepted farming practices

Adjacent to or intermingled with ag land

Necessary for ag practices on adjacent land



# Protecting Agricultural Land

## Exclusive Farm Use zoning

- Land must be available for “farm use”
  - Large parcel sizes
  - Limiting nonfarm uses
- Farmers must be able to engage in accepted farming practices
- Tax benefits
- High-value farmland



## What is Farm Use?

“the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying...” - ORS 215.203



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# Current Employment of Land

Farm related program

Fallow for 1 year

Orchards & perennials prior to maturity

Land under ag buildings

Wasteland

Water impoundments

Woodlots not over 20 acres



## What is Farm Use?

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## More Farm Uses

Preparation and storage of products raised on the farm operation

Stabling or training equines for profit

Species allowed by Fish & Wildlife Commission rules

Christmas trees



# Can a county regulate Farm Use?

## ORS 215.253

Cannot regulate farming practices in an EFU zone

ODA regulates farm practices

County retains some health, safety, and welfare powers



# Can a county regulate Farm Use?

“Right to Farm” ORS 30.935

Cannot make an accepted farm practice a nuisance or trespass



# What about marijuana?

Marijuana is a crop for “farm use” - ORS 475B.370



May adopt reasonable  
time, place, and manner restrictions.



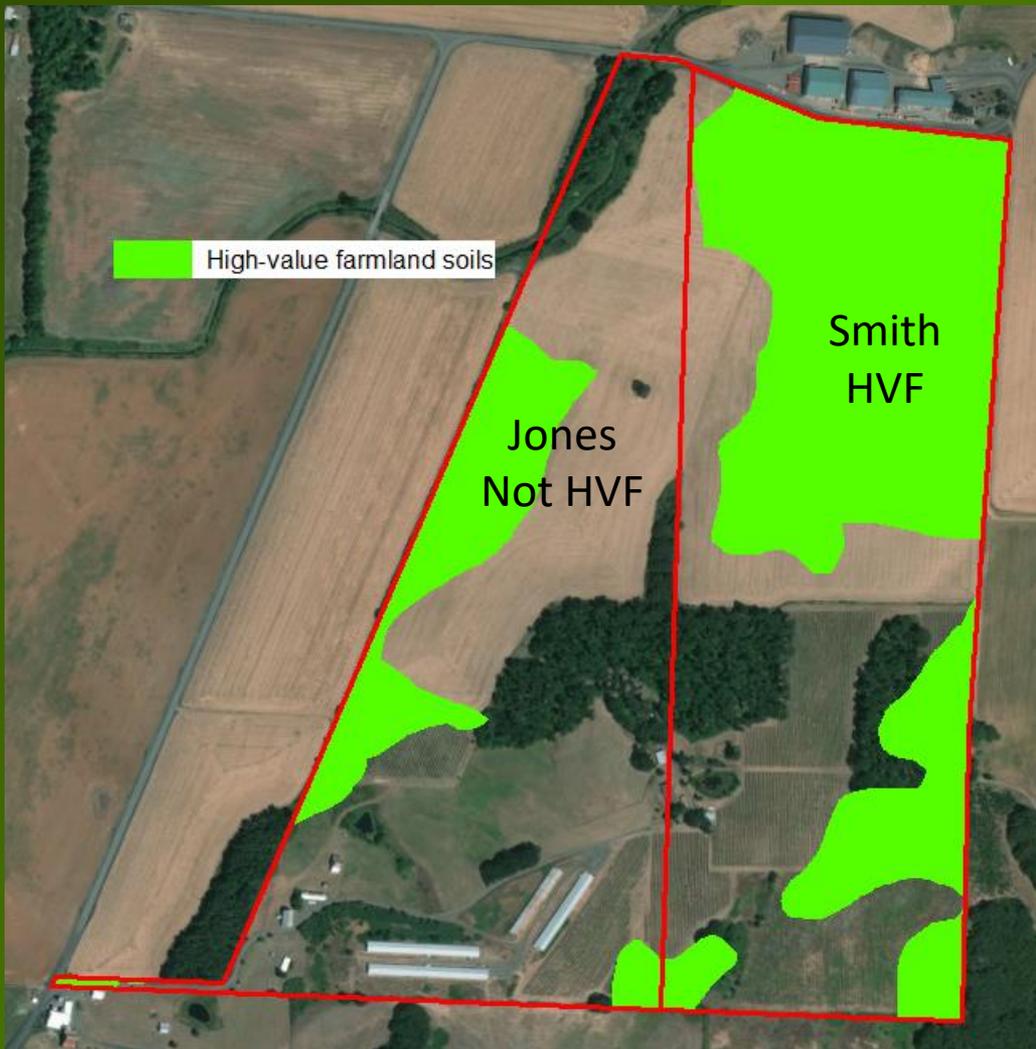
# High Value Farmland

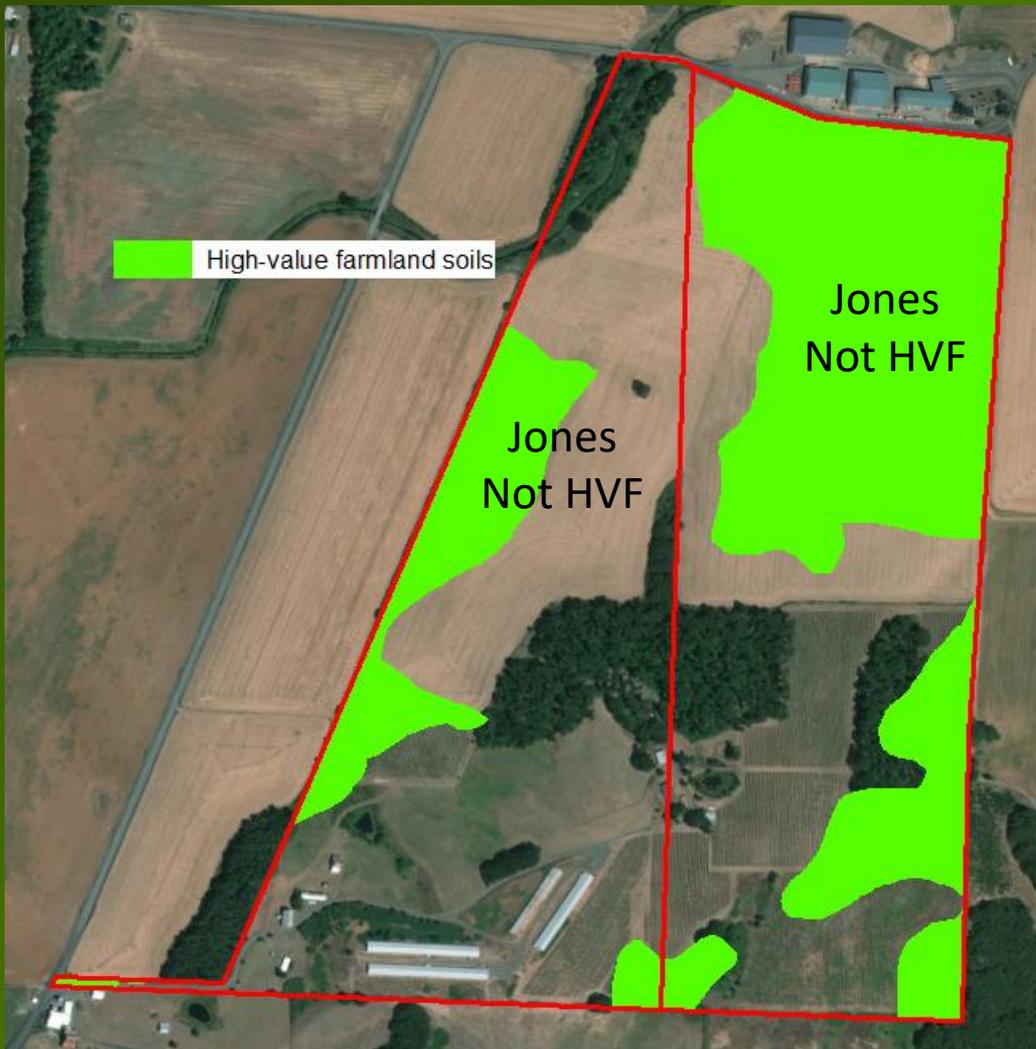
HVF = “Tract” is predominantly “high-value soils”

Tract = contiguous land under same ownership

High-value soils per NRCS:

- Prime or unique farmland
- Class 1 – 2 soils
- Some Class 3 – 4 soils associated with dairy in 1993
- Growing perennials pre-1993







# High Value Farmland

Higher standards for HVF:

- Farm and nonrelative farm help dwellings
- Lot of record dwellings
- Commercial power generation



# High Value Farmland

New uses not allowed on HVF:

- Destination resorts
- Solid waste disposal and composting facilities
- Schools
- Churches
- Private parks
- Golf courses



Credit: Thomas R. Machnitzki



Rick Obst <https://flickr.com/photos/46052415@N08/28066608710>

# Land uses & partitions on EFU



# ORS 215.283

## Uses allowed by “Right”

- ORS 215.283(1)
- Must allow and cannot be more restrictive than statute or rule  
*Brentmar v. Jackson County (1995)*
- Examples:
  - Farm processing
  - Farm dwellings
  - Farm stands
  - Wineries
  - Replacement dwellings

## “Conditional uses”

- ORS 215.283(2)
- Do not have to allow and can be more restrictive than statute/rule
- Examples:
  - Parks
  - Aggregate mining
  - Home occupations
  - Commercial power generation
  - Golf courses



## ORS 215.296

“A use allowed under...**215.283 (2)**...may be approved only where the local governing body...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.”



# DWELLINGS

Primary Farm

Accessory Farm Help

Relative Farm Help

Nonfarm

Lot of Record

Temporary Hardship

Replacement

Measure 49



# Primary Farm Dwellings

## High-value farmland:

- \$80,000 from farm sales in last 2 years or 3 of last 5 years
- Commercial dairy farm

## Not high-value farmland:

- \$40,000 from farm sales in last 2 years or 3 of last 5 years
- 160 acres and farm use
- Commercial dairy farm
- Capability

**No marijuana!**



# Farm Help Dwellings

## Accessory Farm Help

- Must be associated with primary farm dwelling
- Income requirement

## Relative Farm Help

- Relative need to assist with farm use
- No income requirement

No marijuana!



## Non-Farm Dwelling

Land is “generally unsuitable” for production of farm crops, livestock, and trees

- Class 1 – 4 soils are presumed suitable

3 options:

- Evaluate entire parcel
- Portion of parcel
- Create new parcel

Cumulative impact analysis

Ineligible for farm tax deferral



## Other Dwellings

- Lot of Record - 1985
- Temporary Hardship
- Replacement – exists or formerly existed
- Measure 49



# Nonresidential Uses

## 50+ uses allowed on EFU

- Natural resource – e.g. wetland restoration
- Commercial – e.g. agritourism
- Mineral and aggregate
- Transportation
- Utilities
- Institutional uses – e.g. schools, churches
- Recreation



# Agritourism

- Farm use
- Farm stand
- Winery, Cidery, Brewery - need 15 acres
- Room and board – 5 guests
- Private park – camping, passive recreation
- Agritourism events
- Outdoor gathering



# Agritourism Events

- Optional use
- Related to and supportive of agriculture
- Incidental and subordinate to farm use
- 4 permitting options:
  - 1 event, 100 people (expedited license)
  - 1 event, 500 people (ORS 215.296)
  - 6 events per year (ORS 215.296)
  - 18 events per year (ORS 215.296)



# Land Divisions

80 acre minimum parcel size

Smaller parcels allowed for:

- Non-farm dwellings
- Public parks or non-profit conservation
- Churches and cemeteries
- Fire stations
- Some utility facilities (starting 2020)
- Land split by urban growth boundaries



# Forest Land

Forest Lands

Zone changes

2019 legislation

# Buenas Tardes



# Goal 4: Forest Land

- Maintain forest land base
- Protect forest economy and practices
- Management of soil, air, water, fish, and wildlife
- Recreational opportunities
- Agriculture



# What are Forest Lands?

Goal 4: Land acknowledged as forest land

For plan amendment:

- Wood production capability
- Adjacent land needed for forest operations
- Other land that maintains soil, air, water, fish, & wildlife





# Land uses & partitions on Forest Land

# Uses Allowed

Generally:

- Support forest operations
- Conserve soil, air, water, fish, wildlife
- Agriculture
- Recreation appropriate in a forest
- Locationally dependent uses (e.g. aggregate, communication tower)
- Dwellings allowed by statute



# Forest Practices

County must allow uses under Forest Practices Act:

- Harvesting, reforestation, slash disposal, chemical application, etc.
- Temporary structure associated with a forest operation
- Physical alteration of land associated with forest operation

E.g. road construction



# Forest Practices

## ORS 527.722

Cannot prohibit, limit, or require approval for forest practices

## ORS 30.934

Cannot make forest practice a nuisance or trespass





# Uses Allowed by “Right”

- Farm use
- Ag buildings
- Replacement dwelling
- Hunting/fishing operations without lodging
- Fire stations for forest protection
- Exploration for minerals

# “Conditional” Uses

- Forest product processing (permanent)
- Parks and campgrounds
- Mining
- Hunting/fishing accommodations
- Home occupations
- Fire stations for rural fire protection
- Solid waste disposal
- Temporary hardship dwelling



# “Conditional” Uses

## OAR 660-006-0025(5)

- (a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- (b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;



# Dwellings in Forest Zones

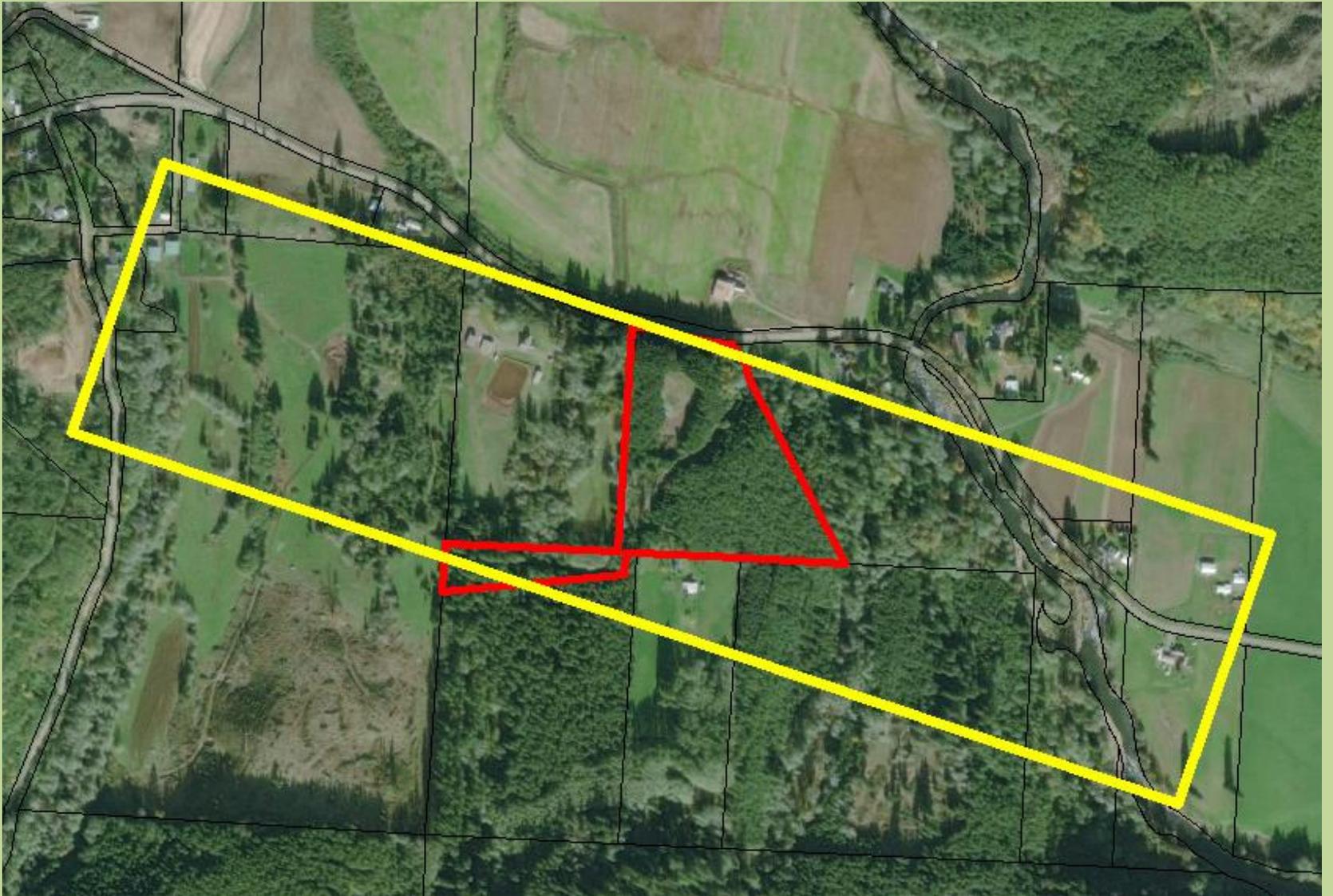
- **Large tract** – 160 (or 200) acres
- **Lot of record** – owned since 1985
- **Temporary hardship**
- **Replacement** – only if existing
- **Template**
- **Relative forest help** – new in 2020
- **Measure 49**

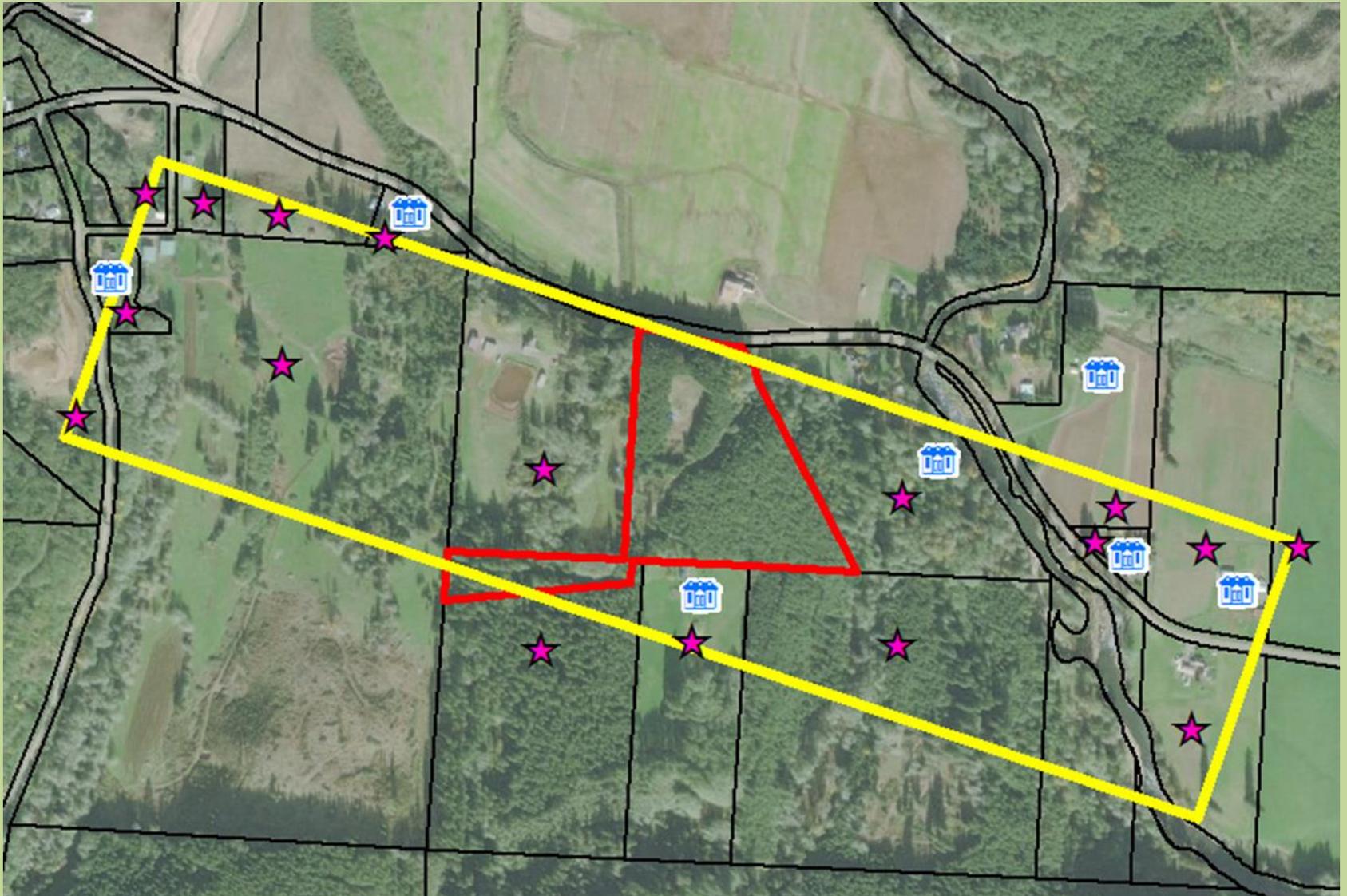


# Template Dwelling

- Allowed in areas with existing dwellings and parcels on 1/1/1993
  - 3 existing dwellings
  - Up to 11 parcels
- Dwellings and parcels must be within 160 acre square or rectangle







= Parcel that existed on January 1, 1993



# Relative Forest Help

HB 2469 (2019)

Allowed if:

- Relative assists with forest practices and management
- Parcel is 80 acres
- Within rural fire protection district
- Cannot be used for vacation rental
- Within 200 feet of existing dwelling

Deed restrictions:

- Cannot partition dwellings
- Forest management plan required



Source: Wonderlane



# Fire Siting Standards

## Dwelling fire standards

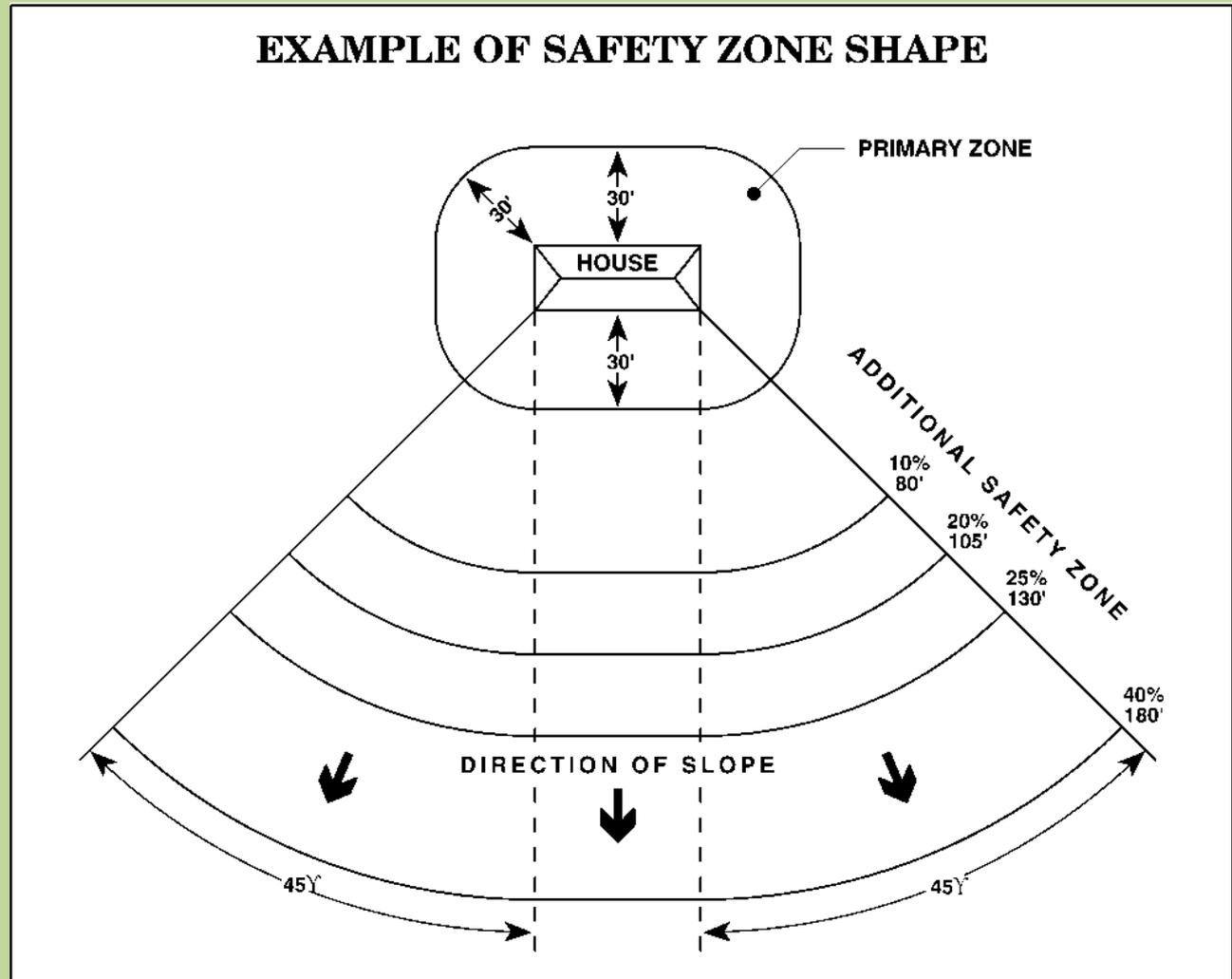
- RFPD or other fire suppression
- Primary and secondary fuel-free breaks
- Not on slope greater than 40%
- Fire retardant roof
- Chimney spark arrester

## Other structures:

- Primary fuel-free break

## Road standards for fire safety

# Dwelling Siting Standards



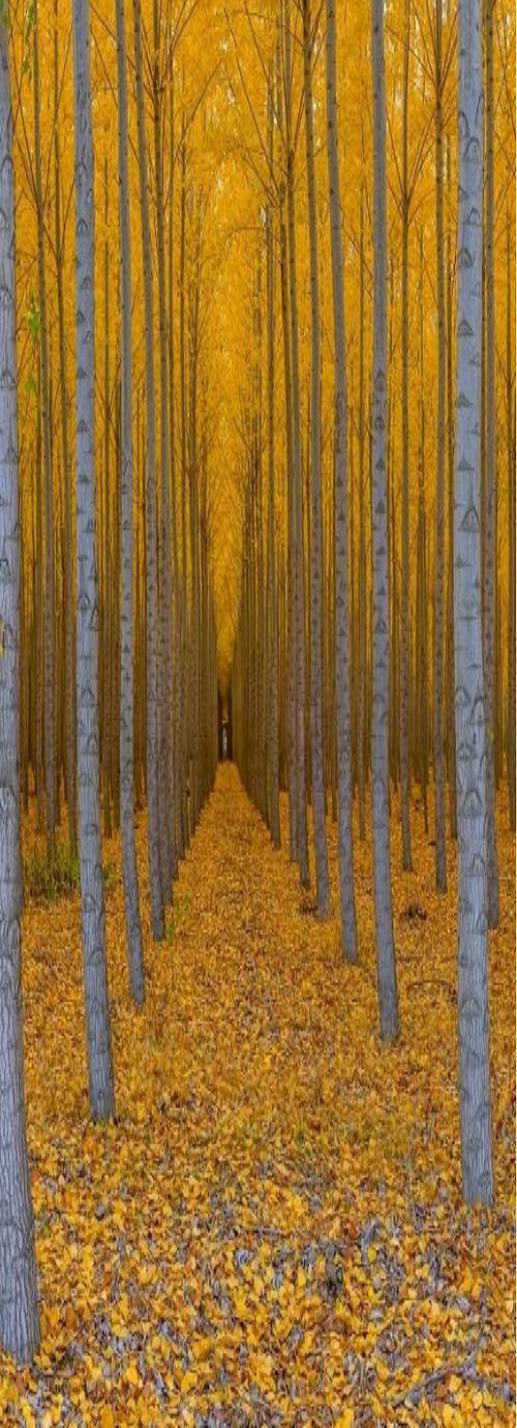
# Land Divisions

Minimum lot size 80 acres

Smaller parcels allowed for:

- Forest practices
- Some non-residential uses
- Existing dwelling before June 1995
- Two dwellings before Nov. 1993
- Open space or park
- Along urban growth boundaries





# Mixed Farm-Forest Zone

- Goal 3 and 4
- Dwellings:
  - Apply EFU or Forest standards based on predominant use of tract in 1993
- All non-residential EFU & Forest uses allowed
- Fire standards apply
- Land divisions same as forest zone



# Zone Changes

# Types of Zone Changes

Urban growth boundary expansion

Rural zone change:

- EFU to forest, forest to EFU
- Goal 3 or 4 exception
- Nonresource designation





# Goal Exceptions

An exception must be “exceptional.” *1000 Friends of Oregon v. LCDC. Court of Appeals (1984).*

Goal 3 or 4 exception ≠ exception from other Statewide Planning Goals

Types of exceptions:

- Physically developed
- Irrevocably committed
- Reasons



# Physically Developed

“land subject to the exception is physically developed to the extent that is no longer available for uses allowed by the applicable goal.”

- OAR 660-004-0025

Cannot be based on development allowed under the goal

e.g. nonfarm dwelling allowed by Goal 3

Uses allowed:

- Existing uses
- Rural uses, density, and public facilities that are compatible with adjacent uses



# Irrevocably committed

“land...is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable”

- OAR 660-004-0028

Land must be “impracticable” for:

- Farm use
- Propagation or harvesting forest products
- Forest operations and practices



# Irrevocably committed

## Uses allowed:

- Existing uses
- New rural uses, density, and public facilities must be compatible with adjacent uses
- New uses cannot irrevocably commit adjacent land



# Reasons exceptions

Why this location?

Why not somewhere that doesn't require an exception?

Uses allowed are those adopted in the reasons exception





# Reasons exceptions

1. **“Reasons justify why the state policy embodied in the applicable goals should not apply.”**

## Rural residential

- Demonstrate that housing need must be accommodated at this location
  - e.g. workforce housing for isolated industrial development
- Goal 14: Urbanization exception may be required if minimum parcel size less than 10 acres



# Reasons exceptions

1. **“Reasons justify why the state policy embodied in the applicable goals should not apply.”**

## Rural industrial

- Dependent on resource on ag or forest land  
e.g. aggregate, port
- Incompatible with urban uses
- Significant comparative advantage  
e.g. near existing industrial facility

## Other uses

- Need for the use based on Statewide Planning Goals or other reasons



# Reasons exceptions

**2. “Areas that do not require a new exception cannot reasonably accommodate the use.”**

Evaluate land in:

- Urban growth boundaries
- Existing exception areas
- Nonresource lands

Economic factors can be considered



# Reasons exceptions

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

Conduct E.E.S.E. analysis

Evaluate other lands zoned for ag or forest

# Reasons exceptions

**4. “The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.”**

Can the project be sited differently to minimize impacts? e.g. setbacks





# Nonresource Lands

Does not meet the definition of “agricultural land” or “forest land”

Rezoned for uses that comply with other Statewide Planning Goals

Two options:

1. Comprehensive review – ORS 215.788-791
2. Land does not meet definitions



# 2019 Legislation

# 2019 Legislation

## Agricultural land

- [HB 2573](#). Primary farm dwelling income reduced for cranberries.
- [HB 2844](#). Exempts small farm processing facilities from county siting standards.
- [HB 3024](#). Replacement dwellings
- [HB 3384](#). Schools near UGBs exempt from building capacity requirements.
  - Emergency clause. Currently in effect.
- [SB 287](#). Farm breweries
- [SB 408](#). Utility facility partitions

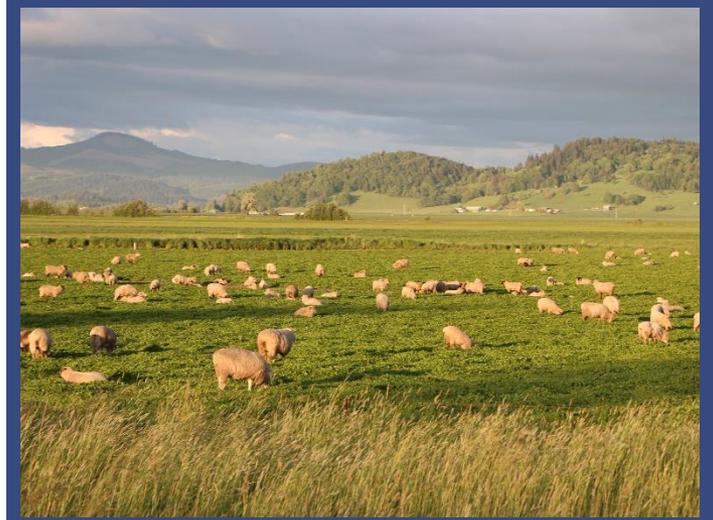
# 2019 Legislation

## Forest land

- [HB 2225](#). Template dwellings
  - Applicable in Clatsop on 11/1/2023
- [HB 2469](#). Relative forest dwellings

## Ag and forest

- [HB 2106](#). Permit expirations for dwellings.
  - Emergency clause. Currently in effect.
- [HB 2790](#). Outdoor mass gatherings.



**Goodbye!**  
**It's been fun**



**DLCD**

Department of  
Land Conservation  
& Development

September 9, 2019

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