



DLCD



Nonconforming Uses and Replacing Dwellings on Rural Lands

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Senate Committee on Natural
Resources & Wildfire
Recovery**

Overview

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Presentation Objectives

Offer an informative, high-level overview regarding:

- **Nonconforming Uses**
- **Replacing Dwellings**
- **LCDC Temporary Rules for Sheltering and Interim Housing on Rural Lands**

Nonconforming Uses

Generally, a use that is considered lawful at the time contrary zoning is applied because it:

- Received the necessary land use approval(s) under applicable provision at the time of establishment; or
- Was established prior to there being any applicable land use provisions.

The continuation, restoration, and replacement of nonconforming uses are protected under various statutes, including but not limited to: ORS 215.130 and ORS 215.215.

ORS 215.130

Primary Points:

- The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. ORS 215.130(5).
- Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within **one year** from the occurrence of the fire, casualty or natural disaster. ORS 215.130(6), emphasis added.
- A local government may adopt standards and procedures to implement the provisions of this section, which may include conditions of approval. ORS 215.130(10).

Lawfully Created Lot or Parcel

Definition:

A unit of land created through a legal partitioning or subdivision process consistent with all applicable land use provisions; or

A unit of land created by deed or land sales contract prior to any applicable partitioning, subdivision and land use provisions.

Possible Remedies for improperly created lots or parcels:

- New land division application
- ORS 92.176
- ORS 92.177
- ORS 92.178

Replacement Dwellings – Resource Zones

Lands Designated for Exclusive Farm Use (EFU):

- ORS 215.213(1)(q), ORS 215.283(1)(p), ORS 215.291
 - Current or previously existing lawfully established dwellings may be “altered, restored or replaced” upon local government determination of certain factors.

Lands Designated for Forest Use:

- ORS 215.755
 - Currently existing lawfully established dwellings may be “altered, restored or replaced” upon local government determination of certain factors.
- OAR 660-006-0025(3)(p)
 - A lawfully established dwelling that is destroyed by wildfire may be replaced within 60 months upon local government determination of certain factors.
 - Temporary Rule.

Replacement Dwellings – Other Zoning Districts

- State law does not limit the replacement of dwellings on lands planned and zoned for residential uses (i.e., rural residential), or that otherwise allow residential uses.
- Replacement of a legally established dwelling on lands that are planned and zoned for non-residential uses (i.e., commercial, industrial, public) that do not otherwise allow residential uses would be subject to the provisions of ORS 215.130.
- Local government may have additional code provisions regarding the replacement of dwellings or other activities on lands that are designated for Exclusive Farm Use (EFU) or Forest Uses.

LCDC Temporary Rules

- Rules are written to allow direct local application.
- Focus is on Sheltering & Interim Housing not Permanent Housing.
- Attempt to be responsive to:
 - Allowing people to stay in the community; and
 - Providing a long enough time-frame for recovery.
- Greatest opportunities in or near the built environment with expanded potential for other land categories.
- Scheduled to follow up with permanent rules in May, 2021.

LCDC Temporary Rules, Cont...

LCDC adopted temporary revisions to seven land use rules, primarily affecting four categories of lands outside of urban growth boundaries:

Land Category	Revision Summary
Unincorporated Communities	Temporary Residences, Transitional Housing Accommodations
Rural Residential Areas	Temporary Residences, Emergency Campgrounds, Debris Staging
Forest Lands	Refined Temporary Residences, Refined Emergency Campgrounds, Replacement of Dwellings, Debris Staging
Exclusive Farm Use (EFU)	Refined Temporary Residences, Refined Emergency Campgrounds, Replacement of Accessory Farm Dwellings
Rural Lands near Fire Damaged Communities.	Established a new opportunity to allow development on rural lands.

Conclusion

- Oregon's Land Use Program currently includes multiple provisions addressing the continuation, restoration, and replacement of nonconforming uses and legally established dwellings.
- Oregon's Land Use Program has ability to adapt and respond to new challenges.
- Oregon's Land Use Program and Practitioners stand ready to assist with recovery efforts required by natural disaster events.



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Questions?