POLK COUNTY BOARD OF COMMISSIONERS

DATE: **September 6, 2023**
TIME: **9:00 a.m.**
PLACE: **Polk County Courthouse, Dallas, Oregon**

THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS AT (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR TO PARTICIPATE IN THE MEETING VIRTUALLY.

PAGE: **AGENDA ITEMS**

1. CALL TO ORDER AND NOTE OF ATTENDANCE

2. ANNOUNCEMENTS

(a) Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00am on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.

(b) The Homeless Prevention Advisory Council will be meeting on September 13, 2023 from 12:00 pm to 1:30 pm located in the first floor conference room at 182 SW Academy St, Dallas Oregon, 97338.

3. COMMENTS (for items not on this agenda and limited to 3 minutes)

4. APPROVAL OF AGENDA

5. APPROVAL OF CONSENT CALENDAR

6. PUBLIC HEARING – COMMUNITY DEVELOPMENT
Legislative Amendment 23-02; Text amendments to the Polk County Zoning Ordinance Chapter 136, which pertains to the Exclusive Farm Use Zoning District
(Eric Knudson, Associate Planner)

CONSENT CALENDAR

(a) Polk County Contract No. 23-180, Lease Agreement
(Dean Bender, Emergency Operations Manager)

THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION PURSUANT TO ORS 192.660.

ADJOURNMENT

AMENDMENT #1

To

Polk County Eagle Crest Tower Space Lease Agreement
between
Polk County and Salem Health Hospitals and Clinics

WHEREAS, Polk County and Salem Health Hospitals and Clinics previously entered into a Radio System Intergovernmental Agreement on November 1st, 2020 (executed on November 20th 2020) for the use of its Communication System; and

WHEREAS, Polk County and Salem Health Hospitals and Clinics desire to modify the existing Agreement in order to change the location of the hardware installed on the tower;

NOW THEREFORE, in consideration of the mutual benefits and obligations set for herein, the parties agree as follows:

1) Salem Health Hospitals and Clinics will remove the existing antenna and standoff mount on the NW Leg at the 42' level and associated cabling; and

2) Salem Health Hospitals and Clinics will re-install a new transmit antenna and standoff mount at the 60' SE Leg along with associated cabling; and

3) Salem Health Hospitals and Clinics will install a new receive antenna and mount along with cabling at the top of the tower (150' level);

4) Radio System charges will increase accordingly with the additional antenna being installed at the top of the tower and the relocation/movement of the other antenna. The new quarterly rate will be $913 effective Oct 1st, 2023.

5) All other conditions of the agreement will remain in full force and effect.

IN WITNESS WHEREOF the parties have caused this Amendment #1 to be signed in their respective names by their duly authorized representatives as of the dates set forth below: (see page 2 of 2)

POLK COUNTY SIGNATURE SECTION

APPROVAL RECOMMENDED BY:

8-31-2023
Emergency Manager and Communications/Site Manager — Date

APPROVED BY:

8.31.23
County Administrative Officer — Date

LEGAL APPROVAL:

8-31-23
Polk County Legal Counsel — Date

BOARD APPROVAL:

Board of Commissioners - Chair — Date

SALEM HEALTH HOSPITALS AND CLINICS SIGNATURE SECTION

APPROVAL RECOMMENDED BY:

8/30/23
Nathan Behnke — Date
Salem Health Hospitals and Clinics
~~Emergency Preparedness Administrator~~
SYSTEM's ARCHITECT + DISPATCH SPVR

APPROVED BY:

Karl Wright 8/30/2023
Karl Wright — Date
Director, Supply Chain Services
Salem Health Hospitals and Clinic

POLK COUNTY
POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
(503) 623-9237

COMMUNITY DEVELOPMENT
AUSTIN McGUIGAN
Director

MEMORANDUM

TO: Polk County Board of Commissioners

FROM: Eric Knudson, Associate Planner

DATE: August 30, 2023

SUBJECT: Legislative Amendment 23-02: Text Amendments to Polk County Zoning Ordinance Chapter 136

Public Hearing – September 6, 2023

ISSUE:

The Polk County Board of Commissioners will hold a public hearing concerning potential text amendments to Polk County Zoning Ordinance (PCZO) Chapter 136, which pertains to the Exclusive Farm Use (EFU) Zoning District. The proposed text amendments are intended to bring PCZO Chapter 136 into compliance with State law, and to consider adopting optional changes for uses that could be permitted within the EFU zone.

RECOMMENDATION:

Staff recommends that the Board of Commissioners adopt the proposed text amendments to PCZO Chapter 136, as included in Attachment A.

STAFF REPORT:

I. BACKGROUND

Oregon Revised Statute (ORS) 197.646 states that when new land use statutes, statewide land use planning goals or rules implementing the statutes or the goals are enacted, counties must either adopt amendments to their local code to implement the changes to State law or apply those changes directly to land use applications. Currently, the Planning Division applies certain sections of ORS and Oregon Administrative Rules (OAR) directly to land use applications. Some changes in State law are not mandated to be adopted by the local government, but rather allow the local government the opportunity to be more restrictive than State law. The proposed legislative amendment is intended to provide conformity to PCZO Chapter 136 with land use regulations found in State law where required, and to consider optional changes to PCZO Chapter 136 where Polk County's local ordinance may be currently more restrictive than or differentiates from State law. It should be noted that many of the required text amendments to PCZO 136.030, 136.040, 136.060 and 136.070 found in Attachment A are not substantive changes but are rather intended to provide parity with the language found in State law.

Typically, text amendments solely intended for conformance with provisions in State law would be processed through a ministerial action, however, staff has chosen to consolidate those changes that are required and those changes that are optional into one legislative amendment process in order to evaluate all amendments to PCZO Chapter 136 simultaneously.

A public hearing was held before the Polk County Planning Commission on July 18, 2023, where Planning Staff made a recommendation to the Planning Commission regarding the proposed text amendments to PCZO Chapter 136. The Planning Commission concurred with staff on all proposed text amendments and recommended that the Board of Commissioners adopt Staff's recommendation. Since the Planning Commission public hearing, staff has made some further changes to the proposed text amendments that do not constitute substantive changes to the Planning Commission's recommendation, but were rather intended to correct any grammatical, typographical, formatting, or other errors. As discussed, the proposed text amendments to PCZO Chapter 136 are included as Attachment A.

II. COMMENTS RECEIVED

Attachments B-1, B-2:	Comments received prior to the Planning Commission Hearing
Attachments C-1, C-2, C-3:	Comments received after the Planning Commission Hearing, but prior to the Board of Commissioners Hearing

III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the PCZO may be approved provided that the request is based on substantive information and factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. The applicable review and decision criteria are listed in bold, followed by staff's analysis and findings.

1. AMENDING THE TEXT OF THE POLK COUNTY ZONING ORDINANCE.

(A) [ORS 197.612(1)] An amendment to the text of the Polk County Zoning Ordinance solely for the purpose of conforming the ordinance to new requirements in a land use statute, statewide land use planning goal or rule of the Land Conservation and Development Commission implementing the statutes or goals may be made without holding a public hearing when:

(1) Polk County gives notice to the Oregon Department of Land Conservation and Development of the proposed change in the manner provided by ORS 197.610 and 197.615;

(2) The Oregon Department of Land Conservation and Development confirms in writing that the only effect of the proposed change is to conform the Polk County Zoning Ordinance to the new requirements; and

(3) The Planning Division provides notice of the proposed change to the Planning Commission.

(B) An amendment to the text of the Polk County Zoning Ordinance under the provisions of subsection (A) of this section shall be considered a ministerial decision and not a land use action. Amendments under subsection (A) of this section need only be adopted on the Board of Commissioner's Consent agenda.

(C) All amendments to the text of the Polk County Zoning Ordinance that are not included in subsection (A) of the section shall be processed under the procedures and criteria for a legislative comprehensive plan amendment described in Chapter 115.

Staff Findings: The proposed text amendments are intended to bring PCZO Chapter 136 into conformance with State law where required, and to evaluate and consider adopting optional changes for uses that could be permitted in the EFU Zoning District. While a portion of these text amendments are included under subsection (A) of this criteria, not all of the changes are for the purpose of conforming PCZO Chapter 136 to new requirements found in Oregon Revised Statutes, Statewide Planning Goals, or Oregon Administrative Rules, but rather to consider adopting optional

changes. Therefore, staff has determined that the proposed text amendments shall be processed under the procedures and criteria for a legislative comprehensive plan amendment described in PCZO Chapter 115.

The Polk County Board of Commissioners initiated this legislative amendment process on April 11, 2023. Staff sent notice of the proposed text amendments to the Oregon Department of Land and Conservation Development (DLCD) on June 13, 2023. Staff sent notice of the Planning Commission Public Hearing to all interested parties on June 28, 2023, 20 days prior to the hearing. Notice of the Planning Commission public hearing was also published in the June 28, 2023 publication of the *Itemized Observer* newspaper and was posted on the Planning Division page of the Polk County website on June 28, 2023. Pursuant to PCZO 115.040, the Planning Commission conducted a public hearing on July 18, 2023 and made a recommendation to the Board of Commissioners to adopt staff's recommendation of the proposed amendments to PCZO Chapter 136. Staff sent notice of the September 6, 2023 Board of Commissioners public hearing to all interested parties on August 16, 2023, 20 days prior to the hearing. Notice of the Board of Commissioners public hearing was also published in the August 16, 2023 publication of the *Itemized Observer* newspaper and was posted on the Planning Division page of the Polk County website on August 16, 2023.

Planning Staff received two (2) public comments from citizens after the staff recommendation was issued, but prior to the Planning Commission public hearing. These comments are included as Attachments B-1 and B-2.

In the first public comment received, a citizen encouraged Polk County to "further strengthen the provisions for home occupations and commercial activities in conjunction with farm use to avoid the kind of nonfarm related businesses and large events that have been approved under these provisions in Marion, Yamhill and other Oregon counties." However, these comments did not include any specific suggestions to "further strengthen" those provisions. These comments also expressed support for staff's recommendation to not adopt the optional changes for temporary medical hardship dwellings, aerial fireworks businesses, and agri-tourism.

These comments were provided to the Planning Commission and were discussed by the Planning Commission in the July 18, 2023 public hearing. As discussed, the Planning Commission concurred with staff's recommendation and recommended that the Board of Commissioners adopt the proposed text amendments to PCZO Chapter 136. Since the Planning Commission public hearing, staff has made some further changes to the proposed text amendments that did not substantively change the Planning Commission's recommendation but were rather intended to correct any grammatical, typographical, formatting, or other errors. The proposed text amendments are included as Attachment A.

In the second public comment received, a citizen raised concerns regarding Planning Staff's procedure for providing the public with notice of the July 18, 2023 Planning Commission public hearing and the ability to submit comments for the application. Specifically, the comments provided indicated that Planning Staff listed July 7, 2023 as the deadline to submit public comments, which was 11 days prior to the hearing, and prior to the publishing of the Staff Report. The comments further indicate that this inhibited citizen involvement and was not consistent with the spirit of Oregon Statewide Planning Goal No. 1. Staff believes that this citizen misinterpreted the language found in the public notice form that was sent on June 28, 2023, which stated:

> **"Written comments received by 5:00 PM on July 7, 2023 will be included in the staff report to the Planning Commission. Comments received after this time, but prior to the hearing, will be provided to the Planning Commission at the hearing."**

Because the Staff Report and recommendation are required to be available for inspection at least seven (7) days prior to the public hearing, pursuant to PCZO 111.340(G), the July 7, 2023 date listed on the public notice form was merely a deadline for public comments that would be included in the Staff Report and recommendation, not a deadline for public comments or citizen involvement. The purpose of this deadline is to provide staff adequate time to address the public

comments. The public notice clearly indicated that any comments received after July 7, 2023 but prior to the hearing would be provided to the Planning Commission at the hearing. In this case, staff provided the Planning Commission with the two (2) public comments that were submitted after July 7, 2023, but prior to the hearing on July 18, 2023, which were received by the Planning Commission and considered as part of their recommendation to the Board of Commissioners.

The comments provided further state:

> "The significant failure is not having a 'Hearing LA 23-02 Sign-ups Sheet for Interested Citizens' in Hearing room, for the Record, and, to 'make-up appeal rules' that a "decision maker has to have an opportunity to respond", OR, a Citizen can't file a LUBA appeal on 'that issue'...(from today's Hearing?) It's not good to mix Planning Hearing rules & a Recommendation, with later BOC decisions, as it's confusing, and, does not help Citizens Involvement Goals."

Staff understands these comments to be raising concerns about appropriate sign-up sheets not being available for the public hearing, and the ability to present testimony to the Planning Commission or the Board of Commissioners. A sign-up sheet for public testimony was provided at the Planning Commission public hearing. No public testimony was received during the Planning Commission hearing and there were no members from the public in attendance. As discussed, this comment was provided to the Planning Commission during the July 18, 2023 public hearing, and was considered as part of the Planning Commission's recommendation to the Board of Commissioners. The record is still open and any comments received prior to the September 6, 2023 public hearing, or any testimony received during the public hearing, will be considered by the Board of Commissioners in their decision.

The Planning Commission found that the public notice form for the Planning Commission public hearing that was sent to all interested parties, published in the *Itemized Observer* newspaper, and the Polk County website complied with all public hearing notification requirements listed in PCZO 111.340, 111.350, and 111.370.

Staff's findings to address the criteria listed in PCZO 115.060 are provided below.

2. **Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4;** [PCZO 115.060(A)]

   (B) A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals. [ORS 197.646(1)]

   (C) When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the local government's land use decisions. The failure to adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [ORS 197.646(3)]

General Findings: ORS 197.646 states that when new land use statutes, statewide land use planning goals or rules implementing the statutes or the goals are enacted, counties must either adopt amendments to their local code to implement the changes to State law or apply those changes directly to land use applications. Currently, the Planning Division applies certain sections of ORS and OAR directly to land use applications. Some changes in State law are not mandated to be

adopted by the local government but rather allow the local government the opportunity to be more restrictive than State law.

OAR Chapter 660 Division 33 pertains to agricultural lands and the administrative rules that govern land uses that are consistent with Oregon Statewide Planning Goal 3. ORS 215.283 pertains to uses that may be allowed in the EFU zone. This text amendment is intended to add the changes found in OAR Chapter 660 Division 33 and ORS 215.283 to the PCZO where required and/or permitted by the State. Many of these changes are not substantive but are rather minor changes intended to add the language found in State law verbatim to the PCZO. In other cases, some of the changes would add additional provisions that have not been adopted by the County but have been applied directly to land use applications, as required by law. Because these required changes are not substantive but rather for the sake of conformance, staff will not review these changes in this report. The full text amendment with all changes can be found in Attachment A.

This report will be primarily concentrated on the evaluation of the changes found in OAR Chapter 660 Division 33 and ORS 215.283(2) that are not required to be adopted by the County, but are optional and allow local governments to be more restrictive than State law. Due to changes in State law, Chapter 136 is currently more restrictive than or differentiates from State law in its regulation of some land uses that may be allowed in the EFU zone. As part of this process, the Board of Commissioners could adopt the optional text amendments as proposed by Staff, adopt those text amendments with further restrictions, or choose to not adopt those text amendments. These changes will be referred to in this report as "optional changes," and are discussed in further detail below along with staff's recommendation for each change.

In other cases, there have been changes in State law to optional uses listed under ORS 215.283(2) which have resulted in the PCZO being less restrictive in some sections. Although these uses are optional, the changes are required to be added to the PCZO in order to continue to be in compliance with State law. These changes will be referred to in this report as "mandatory changes," and are discussed in further detail below.

Aquaculture: Mandatory Change

PCZO 136.050(B) currently permits the propagation, cultivation, maintenance and harvesting of aquatic species, subject to the review and approval of a conditional use permit. Aquaculture is authorized by the State pursuant to ORS 215.283(2)(p) and OAR 660-033-0130(27). Changes to the ORS and OAR have revised the evaluation standards for aquaculture to specify that aquaculture shall only include aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Based on these changes, PCZO 136.050(B) could be interpreted as being less restrictive than State law, therefore, staff finds that this text amendment is a mandatory change.

Temporary Medical Hardship Dwellings: Optional Change

PCZO 136.040(L) currently permits "one manufactured dwelling, recreational vehicle (RV), or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of hardship suffered by the existing resident or a relative of the resident," subject to the review and approval of an administrative review. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle must be removed or demolished, or returned to an allowed nonresidential use. Temporary medical hardship dwellings are authorized by the State pursuant to ORS 215.283(2)(L) and OAR 660-033-0130(10). State law indicates that a converted building can be converted back to an approved nonresidential use, while a manufactured dwelling or RV must be removed or demolished.

The Planning Division currently authorizes manufactured dwellings that were used as a temporary medical hardship dwelling to be "removed" by converting them to an approved nonresidential use. In some instances, this process requires the property owner to obtain a change of use building permit from the Polk County Building Division, which includes final inspections to be completed by the Building Official. In other instances, this process could require the property owner to obtain

planning authorization to use the manufactured dwelling for an approved use rather than physically removing it from the property. For example, a property owner could submit an application with the Planning Division to recertify a manufactured dwelling for the use of a temporary medical hardship dwelling rather than removing it from the subject property within three months of the end of the hardship. This process is intended to limit the burdens placed on the property owner while still conforming to the provisions in State law. For this reason, staff and the Planning Commission recommend not adopting this text amendment.

Procedure for Temporary Medical Hardship Dwellings: Mandatory Change

State law indicates that temporary medical hardship dwellings should be processed under a conditional use review, as this use is listed under ORS 215.283(2). As discussed above, temporary medical hardship dwellings are currently processed through an administrative review. Staff currently applies the general review standards listed under PCZO 136.060 to all conditional use applications. The purpose of this criteria is to ensure that the proposal would not force a significant change or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. While staff does not currently apply PCZO 136.060 directly to applications for temporary medical hardship dwellings, staff applies similar standards listed under 136.040(L)(5) and (6), which state "The dwelling will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;" and "The dwelling will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use." For this reason, changing this process from administrative review to a conditional use review would not alter staff's evaluation for a temporary medical hardship dwelling, rather it would merely change where the criteria derives from. This amendment would change this application from a Type A notification procedure to a Type B notification procedure, as specified in PCZO 111.240. This would require staff to send notice of a complete application to all neighboring property owners located within a 750 foot buffer surrounding the subject property prior to the issuance of the decision. Because this change would be required, staff began processing temporary medical hardship dwellings in the EFU zone under a Type B procedure earlier this year. Based on the information discussed above, staff finds that this text amendment is a mandatory change. Since the Planning Commission public hearing, staff has made some further changes to the recommended text amendments that did not substantively change the recommendation but were rather intended to correct some typographical and formatting errors. As discussed, the proposed text amendments to PCZO Chapter 136 are included as Attachment A.

Home Occupations: Optional Change

PCZO 136.050(K) currently permits home occupations that are operated by a resident of the property in which the business in located, subject to review and approval of a conditional use permit. Home occupations are authorized by the State pursuant to ORS 215.283(2)(i), ORS 215.448, and OAR 660-003-0130(14). State law currently authorizes home occupations to be operated by a resident or an employee of a resident of the property on which the business in located.

Under the current criteria listed in PCZO 136.050(K), home occupations must be operated by a resident of the property in which the business is located, but may employ up to five (5) employees. This proposed amendment would authorize home occupations to be operated by an employee of the resident, although, could not result in any additional employees and would not permit any uses or a size and scale that could not otherwise be permitted under the current criteria. Based on this information, staff finds that PCZO 136.050(K) could be interpreted as being more restrictive than State law. For these reasons, staff and the Planning Commission recommend adopting the proposed text amendment, as shown in Attachment A.

Commercial Dog Kennels, Training Classes or Testing Trials: Optional Change

PCZO 136.050(L) currently permits dog kennels, as defined by PCZO 110.301, on land not classified as high-value farmland, subject to review and approval of a conditional use permit. Commercial Dog Kennels, Training Classes or Testing Trials are authorized by the State pursuant to ORS 215.283(2)(n) and OAR 660-033-0120, Table 1. Changes to State law have removed

restrictions on high-value farmland and now authorize this use on any land in the EFU zone. State law also authorizes training classes or testing trials under this section that cannot otherwise be authorized under PCZO 136.040(U).

Under the current PCZO criteria, commercial dog kennels cannot be permitted on land classified as high-value farmland. The proposed amendment would remove this restriction. This use would still be subject to a conditional use permit and the general review standards listed in PCZO 136.060. Staff finds that PCZO 136.050(L) is currently more restrictive than State law, therefore, staff and the Planning Commission recommend removing this restriction and adopting the proposed text amendment, as shown in Attachment A.

Aerial Fireworks Business: Optional Change

Polk County does not currently permit aerial fireworks businesses. ORS 215.283(2)(v) and OAR 660-033-0130(35) currently authorize an aerial fireworks display business that has been in continuous operation at its current location within an EFU zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks. If adopted, this use would be subject to review and approval of a conditional use permit.

Staff is not aware of any existing aerial fireworks businesses located in the EFU zone of rural Polk County. Because this criteria only authorizes pre-existing businesses, staff and the Planning Commission find that this change would be unnecessary and recommend not adopting this text amendment.

Equine Therapeutic Counseling Activities: Optional Change

Polk County does not currently permit equine therapeutic counseling activities. In 2018, Senate Bill (SB) 1533 was passed by the State Legislature, which authorized equine and equine-affiliated therapeutic and counseling activities, pursuant to ORS 215.283(2)(bb) and OAR 660-033-0130(41). These activities are required to be conducted in buildings that were lawfully constructed on the property prior to January 1, 2019, or in new buildings that are accessory, incidental, and subordinate to the farm use on the tract. In addition, the individuals conducting the therapeutic or counseling activities are required to be acting within the proper scope of any licenses required by the State. If adopted, this use would be subject to review and approval of a conditional use permit.

The proposed amendment would permit equine therapeutic counseling activities but would not result in any additional development that would not otherwise be permitted for farm use pursuant to PCZO 136.030(A). The proposed use would also be subject to the general review standards listed under PCZO 136.060. Staff finds no reason to recommend any additional restrictions on the State provisions pertaining to this use. For this reason, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Mineral and Aggregate Operations: Optional Change

PCZO 136.050(Q)(2) currently permits the mining of aggregate and other mineral and subsurface resources which are included in the County inventory of mineral and aggregate resources when the quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less. In addition to mining, ORS 215.283(2)(b)(B) also authorizes the crushing and stockpiling of said aggregate and other mineral and subsurface resources, subject to the same standards as mining. As it currently reads, staff finds that PCZO 136.050(Q)(2) could be interpreted as being more restrictive than State law. For this reason, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Solid Waste Disposal Site: Optional Change

PCZO 136.050(X) currently permits solid waste disposal sites on lands not classified as high-value farmland, subject to review and approval of a conditional use permit. Changes to State law now authorize the maintenance, enhancement, or expansion of existing facilities on high-value farmland that are wholly within the EFU zone and on the tract in which the site is located, pursuant to ORS 215.283(2)(k) and OAR 660-033-0130(18)(a). As it reads, staff finds that PCZO 136.050(X) could

be interpreted as being more restrictive than State law. Staff finds that adopting this text amendment would not result in any new facilities on high-value farmland. For these reasons, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Commercial Power Generating Facilities: Optional Change

PCZO 136.050(Z) currently permits commercial power generating facilities, not including commercial wind power generation facilities listed in PCZO 136.050(AA), subject to review and approval of a conditional use permit. ORS 215.283(2)(g) and OAR 660-033-0130(17) and (22) currently authorize this use and contain additional language which clarifies what specific uses can be included under this section. According to statute, commercial utility facilities are for the purpose of generating power for public use by sale, but do not include wind power generation facilities listed in PCZO 136.050(AA) or photovoltaic solar power generating facilities listed in ORS 215.283(g) and OAR 660-033-0130(38). However, if the area is high-value farmland, a commercial photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may also be established under this section.

Staff finds the proposed text amendment would not result in any additional uses that are not otherwise permitted under the current ordinance, but would rather clarify the applicable review and decision criteria for specific uses that may fall under PCZO 136.050(Z). To provide clarity as to what uses are subject to this criteria, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Commercial Wind Power Generation Facilities: Optional Change

PCZO 136.050(AA) currently permits commercial wind power generation facilities that are commercial utility facilities, as defined in ORS 215.446, for the purpose of generating power for public use by sale as described in OAR 660-033-0130(37). ORS 215.283(2)(g) and OAR 660-033-0130(37) currently authorize this use and contain additional language which clarifies what specific uses can be included under this section. In addition, State law includes separate criteria when establishing this use on high-value farmland, arable lands, or non-arable lands. The proposed text amendment would include language requiring the applicant to demonstrate that they considered reasonable alternatives and potential negative impacts on agricultural operations conducted on the subject property. The full list of criteria can be found in Attachment A of this report.

Staff finds the proposed text amendment would not result in any additional uses that are not otherwise permitted under the current ordinance, but would rather clarify the applicable review and decision criteria for specific uses that may fall under PCZO 136.050(AA). To provide parity with State law, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Commercial Photovoltaic Solar Power Generating Facilities: Mandatory Change

The PCZO does not currently contain specific language or criteria for commercial photovoltaic solar power generating facilities. Staff currently evaluates this use under the criteria for commercial power generating facilities listed in PCZO 136.050(Z) and applies State law pertaining to photovoltaic solar power generating facilities directly to land use applications. ORS 215.283(2)(g) and OAR 660-033-0130(38) currently authorize commercial photovoltaic solar power generating facilities as a commercial utility facility as defined in ORS 215.446 for the purpose of generating power for public use by sale as described in OAR 660-033-0130(38). The specific review criteria is based on the soil types of the property. On high-value farmland, the photovoltaic solar power generating facility shall not use, occupy, or cover more than 12 acres unless an exception to Statewide Planning Goal 3 is granted. On arable farmland, the facility shall not use, occupy, or cover more than 20 acres. On non-arable farmland, the facility shall not use, occupy, or cover more than 320 acres. The full list of review and decision criteria can found in Attachment A.

Staff finds that the proposed text amendment would not result in any additional uses that would not otherwise be permitted in the EFU zone. Currently, staff applies this criteria from State law directly

to land use applications. Adopting the proposed text amendment would simply be for the purpose of communicating to property owners and applicants the applicable review and decision criteria for this use rather than referencing State law. Staff has not identified any issues that would warrant a recommendation to be more restrictive than State law. For this reason, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

In addition to the changes discussed above, OAR 660-033-0130(38)(c) and OAR 660-033-0130(g)(B) also authorized counties to permit dual-use development for both photovoltaic solar power generation facilities and farm use. This provision was repealed on January 1, 2022, therefore, staff finds that this provision is no longer applicable.

Private Parks, Playgrounds, Hunting and Fishing Preserves and Campgrounds: Optional Change

PCZO 136.050(DD) currently permits private parks, playgrounds, hunting and fishing preserves and campgrounds on lands not classified as high-value farmland, subject to review and approval of a conditional use permit. When the subject property is located within three miles of an urban growth boundary, additional criteria listed in PCZO 130.065(A) and (B) are applicable. ORS 215.283(2)(c) and OAR 660-033-0130(19) currently authorize campgrounds for emergency purposes to support natural hazard recovery efforts and contain specific criteria pertaining to those circumstances, including, but not limited to, the removal or conversion of the campground after 36 months. PCZO 136.050(DD) currently lists emergency purposes as a use permitted under this section but does not list any the review and decision criteria found in State law for those circumstances.

Upon review of OAR 660-033-0130, there appears to be two subsections labeled "(19)(a)" which pertain to private parks, playgrounds, hunting and fishing preserves and campgrounds. Staff identified discrepancies between the two sections, specifically, one of the sections includes specific criteria for campgrounds that are for emergency purposes. It appears that the first section labeled "(19)(a)" reflects the current text of PCZO 136.050(DD), in addition to new provisions pertaining to specific standards for private campgrounds established for emergency purposes. To provide parity with State law, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A, which clarifies the criteria for private campgrounds for emergency purposes.

Golf Courses and accessory uses: Mandatory Change

PCZO 136.050(FF) currently permits golf courses and accessory uses on a tract of land not classified as high-value farmland, subject to review and approval of a conditional use permit. In addition, existing golf courses on all farmlands may be maintained, enhanced, or expanded, up to 36 holes on the same tract. ORS 215.283(2)(f) and OAR 660-033-0130(20) currently restrict non-regulation golf courses under this section, which are defined as a golf course or golf course-like development that does not meet the State's definition of golf course, including, but not limited to, executive golf course, par three golf courses, pitch and putt golf courses, miniature golf courses, and driving ranges. Furthermore, State law contains specific language pertaining to accessory facilities, which states that food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests.

The proposed text amendment would clarify what uses are not included to be permitted under this section. As is reads, staff finds that the current text could be interpreted to be less restrictive than State law, as it does not clarify that "non-regulation golf courses" are not permitted under this section, nor does it define "non-regulation golf courses." In addition, the proposed text amendment would clarify the manner in which food and beverage facilities may be permitted when accessory to a golf course. As it reads, PCZO 136.050(FF) could be interpreted as being less restrictive than State law as it pertains to food and beverage facilities accessory to a golf course. For these reasons, staff finds these text amendments to be mandatory.

Planning Staff received three (3) public comments after the Planning Commission public hearing but prior to the Board of Commissioners public hearing pertaining to the proposed text amendments

to Golf Courses and accessory uses (see Attachments C-1 through C-3). The comments provided requested that additional language be added to this section to explicitly state that "non-regulation golf courses" include "frisbee, disc, or similar courses." The comments provided acknowledge that although it may be implied that "frisbee, disc, or similar courses" would be considered "non-regulation golf courses," this suggestion would help remove any ambiguity and create a more comprehensive description of what constitutes a "non-regulation golf course."

As discussed, the Board of Commissions may adopt provisions that are more restrictive than State law. Because staff has no reason to believe that a frisbee, disc, or similar course would meet the definition of a "regulation" golf course, as currently used in PCZO 136.050(FF), staff finds that adding the recommended language would not be a substantive change to the Planning Commission's recommendation, but could provide additional clarification as to what constitutes a "non-regulation golf course."

Schools: Mandatory Change

PCZO 136.050(II) currently permits new public or private schools on lands not classified as high – value farmland, including all buildings essential to the operation of a school, for kindergarten through grade 12 and primarily for residents of the rural area in which the school is located. Currently, schools located within three miles of an urban growth boundary may not be expanded beyond the requirements listed in PCZO 136.065(A) and (B). ORS 215.283(2)(aa) currently permits new schools on lands not classified as high-value farmland. OAR 660-033-0130(18) currently permits existing lawfully established schools that were formally allowed pursuant to ORS 215.213(1)(a) or ORS 215.283(1)(a) as in effect before January 1, 2010 to be expanded provided that the expansion complies with all the criteria listed in the OAR. Changes to State law prohibits the restrictions on the expansion of enclosed existing schools located within three miles of an urban growth boundary to no longer be limited to the requirements listed in PCZO 136.065(A) and (B). As it reads, staff finds that PCZO 136.050(II) is currently more restrictive than State law, where State law specifies that local jurisdictions cannot be more restrictive. For this reason, staff finds these text amendments to be mandatory.

Childcare Facilities: Optional Change

The PCZO does not currently have specific criteria for child care facilities in the EFU zone. Although, in the past, childcare facilities have been authorized in the EFU zone under the criteria for a conditional use home occupation. ORS 215.283(2)(dd) currently authorizes child care facilities when the facility would primarily be for the children of residents and workers of the rural area in which the facility or program would be located, and must be collocated with a community center or a public or private school.

Adopting this text amendment would authorize childcare facilities in the EFU zone. Although childcare facilities may be established as a conditional use home occupation, they are limited to establishment within an existing dwelling or structure that is normally associated with the EFU zone. Adopting the proposed text amendment would provide specific criteria for childcare facilities and could authorize the construction of a new structure to support this use. As with home occupations, childcare facilities would be subject to the review and approval of a conditional use permit, which includes compliance with PCZO 136.060. To provide clear parameters regarding the manner in which childcare facilities can be authorized in the EFU zone, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Agri-Tourism and other Commercial Events: Optional Change

Polk County currently permits single-day agri-tourism and commercial events, subject to a ministerial review, pursuant to PCZO 136.030(R). Polk County also permits agri-tourism and other commercial events that are in conjunction with a permitted winery, cider business, or farm brewery, or in conjunction with an existing farm operation subject to a conditional use permit. ORS 215.283(4)(c) authorizes counties to issue a limited use license for up to six (6) agri-tourism or other commercial events in a calendar year that are in conjunction with an existing farm use on a

tract. This license must be renewed every five (5) years. In addition, ORS 215.283(4)(d) authorizes counties to issue a limited use permit for up to 18 agri-tourism or other commercial events in a calendar year that are incidental and subordinate to the existing commercial farm use on the subject tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area. This permit must be renewed every five (5) years. Upon renewal of either a license or permit, the county would need to determine whether the agri-tourism is in compliance with the provisions listed in ORS 215.283(4)(c), which would include a cumulative impacts analysis to ensure that the agri-tourism, in combination with other agri-tourism events or activities on surrounding properties, have not materially altered the stability of the land use pattern in the area.

These laws trace back to Oregon Senate Bill 960 in 2011. Polk County has previously chosen not to adopt all of the agri-tourism criteria from this bill due to concerns related to the multi-year license and permit. Adopting this text amendment would authorize the issuance of multi-year licenses and permits for agri-tourism and other commercial activities or events.

As discussed above, the PCZO currently authorizes agri-tourism and other commercial activities and events in association with the following uses: commercial activity in conjunction with farm use (PCZO 136.050(I)), winery (PCZO 136.040(O)), cider business (PCZO 136.040(P)), and farm brewery (PCZO 136.040(Q)).

Multi-year licenses and permits for agri-tourism and other commercial events associated with wineries, cider businesses, and farm breweries are subject to the criteria listed under PCZO 117.090 and PCZO 117.100, respectively. In such cases, conditions of approval are imposed to limit the agri-tourism and other commercial events to the size and scale that are evaluated and proposed as part of the administrative review process, and the licenses/permits must be renewed every five (5) years.

Commercial activities in conjunction with farm use are subject to a conditional use review. In such cases where agri-tourism and other events are pursued through this criterion, the criteria listed under PCZO 136.060 must be addressed, which is intended to limit impacts and not increase the cost of surrounding farm and forest uses in the surrounding area.

In evaluating the adoption of this text amendment, staff considered the potential negative externalities that could be associated with the law that would otherwise be avoided. As discussed, PCZO Chapter 136 currently permits agri-tourism when associated with farm use without a five (5) year look back. If agri-tourism and other commercial events were to be adopted as a discrete use, as authorized by the State, the County would be required to consider a cumulative impacts analysis upon each license/permit renewal period. The cumulative impacts analysis is intended to evaluate whether the existing agri-tourism and other commercial events, together with other existing agri-tourism in the surrounding area, have materially altered the agricultural stability of the land use pattern in the surrounding area. Staff's primary concern with adopting this as a discrete use is that the required cumulative impacts analysis is concentrated on mitigating impacts that have already occurred, regardless of who is responsible for the impacts, rather than considering and preventing potential impacts before they occur. Analyzing whether the agri-tourism and other commercial events have materially altered the agricultural stability of the land use pattern of the surrounding area does nothing to prevent the impacts over the course of the initial five years. It also does not require businesses that are causing the most significant impact to change their practices. But, it could punish the first businesses that bring agri-tourism to the area at the end of the five years. For example, if, as part of the five year cumulative impacts analysis, the County finds that other new agri-tourism businesses, together with the first business, have significantly impacted the area, the County would be required to deny the five year renewal permit for the first business. A fundamental problem with this approach is that it would not attract the type of capital investment that may be needed to mitigate the impacts in the first place, as there would not be any certainty for an applicant making the investment that they would be allowed to continue their use beyond the initial five years.

Since this law took effect in 2011, Polk County has not had the need to enact the law. Farm operations have been permitted to pursue agri-tourism, including making the expensive fire, life, and safety changes the County required to ensure the public is safe.

Because the County already permits this use in conjunction with farm use, subject to either an administrative review or a conditional use permit, where staff imposes conditions to ensure the size and scale of such events do not impact surrounding farm and forest activities, staff believes that adopting a text amendment to allow for agri-tourism and other commercial events as a discrete use would be unnecessary. For the reasons described above, staff and the Planning Commission recommend not adopting this text amendment.

General Findings:

The recommended amendments to the PCZO would comply with and implement the applicable amendments to State law. Consequently, this update process would be consistent with ORS 197.646(1). An exception to the Oregon Statewide Planning Goals is not required to approve any of these amendments. Staff concludes that the proposed text amendments to the PCZO would comply with this criterion.

(B) Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]

Findings:

The Polk County Comprehensive Plan (PCCP) is implemented by the provisions in the PCZO and Polk County Subdivision and Partition Ordinance (PCSO). Section 7 of the PCCP, Implementation Techniques, states: "in theory, the zoning ordinance is a legislative expression of the Comprehensive Plan and must satisfy certain standards set out by statute." The PCCP is implemented within the bounds provided by State law. The PCCP can set goals and policies, which through implementation by the PCZO or PCSO, are more restrictive than State law. However, the provisions of the PCZO or PCSO may not be less restrictive than State law. Where Polk County requirements and ORS conflict, the County is required to apply the more restrictive of the two standards.

As discussed above, ORS 197.646 requires that Polk County update its local code to implement changes to State law. Until such changes are made, the County must implement the new provisions of State law directly. Planning Staff is currently applying State law directly to applications for many of the proposed changes. In light of the changes to State law, Polk County has an opportunity to evaluate and consider adopting these changes to PCZO Chapter 136. As discussed above, some of these changes are required and other changes are optional. Many of the changes are not substantive but are rather intended to provide parity between the local ordinance and the language found in State law.

The proposed text amendments would include changes to PCZO 136.030, which pertains to uses that are outright permitted in the EFU zone. These changes are mandatory and would add the language from ORS Chapter 215 and OAR Chapter 660 Division 33 verbatim in order to provide better parity with State law. The intent of this is to afford citizens the right to uses that have little or no impact on neighboring properties without requiring a land use application or license. By adopting the language found in State law verbatim, the county would be permitting all such uses that are outright permitted uses and authorized by ORS Chapter 215 and OAR Chapter 660, Division 33. The County does not have deference over any of these changes to uses that are outright permitted in the EFU zone.

The proposed text amendments would also include changes to PCZO 136.040, which pertains to farm and nonfarm uses that are subject to administrative review land use applications. Similar to PCZO 136.030, these changes are mandatory and are intended to provide better parity with State law by adopting the language found in the applicable ORSs and OARs verbatim. Many of these changes have been applied by County staff directly to land use applications. Therefore, the intent of

these changes is simply to add the language from State law to the local ordinance rather than applying the provisions directly from State law.

The proposed text amendments could include changes to PCZO 136.050, which pertains to farm and nonfarm uses that are subject to the review and approval of a conditional use land use application. The changes to this section are not mandatory, however, as discussed above, the County may be more restrictive than State law, though not less restrictive. As discussed in the previous section, the Planning Commission has made a recommendation to the Board of Commissioners regarding the adoption of each of these changes to the PCZO. The proposed amendments to the PCZO are designed to directly implement State law, with the exception of adopting uses that don't pertain to Polk County, such as aerial fireworks businesses; or, uses that could have unintended negative externalities, such as agri-tourism and other commercial events that are not in conjunction with a winery, cider business, or farm brewery. The Board of Commissioners could choose to recommend more restrictive standards in such cases where the Planning Commission has recommended adoption.

Conformance with specific PCCP goals and policies are discussed below.

1. **Polk County will strive to permit those uses that have little or no impact on neighboring properties without requiring a land use determination or limited land use determination.** [PCCP Section 2, Element A, Goal 1.3]
2. **Polk County will permit those farm and nonfarm uses in agricultural areas authorized by Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.4]
3. **Polk County will discourage the development of nonfarm uses in agricultural areas.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.5]
4. **Polk County will permit farm-related and non-farm residential use in agricultural areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.6]

Findings:

The proposed text amendments would directly implement ORS 215.283 and other applicable sections of ORS Chapter 215, and OAR Chapter 660, Division 33. These text amendments would be consistent with PCCP Section 2, Element B, Policy 1.4, which states that Polk County will permit those farm and nonfarm uses in agricultural areas authorized by ORS Chapter 215 and OAR 660-033. These text amendments would also be consistent with PCCP Section 2, Element B, Agricultural Lands Policy 1.6, which states that Polk County will permit farm-related and non-farm residential use in agricultural areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. In addition, the required text amendments, specifically the outright permitted uses listed in PCZO 136.030, would be consistent with PCCP Section 2, Element A, Goal 1.3, which states Polk County will strive to permit those uses that have little or no impact on neighboring properties without requiring a land use determination or limited land use determination.

The proposed text amendments would include amendments to nonfarm uses. PCCP Section 2, Element B, Agricultural Lands Policy 1.5 is intended to discourage nonfarm uses in the EFU zone, although, it is acknowledged that some nonfarm uses are permitted subject to review and approval of an administrative or conditional use application. As mentioned, in such cases where additional nonfarm uses could be permitted or where there have been changes to State law pertaining to nonfarm uses, staff has designed the proposed amendments to the PCZO to directly implement State law. Because such nonfarm uses are subject to review and approval from the Planning Division, limitations and conditions can be imposed to limit the impacts of those nonfarm uses. For this

reason, staff finds the proposed text amendments would be consistent with PCCP Section 2, Element B, Agricultural Lands Policy 1.5.

5. **Polk County will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.1]

6. **Polk County will apply standards to high-value farmland areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.3]

Findings:

ORS 215 and OAR Chapter 660 Division 33 apply specific provisions for some uses on agricultural lands that are classified as high-value farmland, as defined in OAR 660-033-0020(8)(a)-(f). As discussed, the proposed text amendments would be implemented directly from State law. By updating the PCZO to be consistent with State law, nonfarm uses on high-value soils would be limited and subject to the provisions found in State law. The Board of Commissioners may adopt further restrictions for uses on high-value farmlands to further limit the potential interference and conflict of nonfarm uses, however, potential conflicts would also be evaluated on a case-by-case basis through the conditional use review process. Staff finds that by adopting State law directly, the proposed amendments would be consistent with PCCP Section 2, Element B, Agricultural Lands Policy 1.1 and 1.3.

(C) That the proposed change is in the public interest and will be of general public benefit; and

Findings: The purpose of this legislative amendment is to update the PCZO in order to reflect changes in State law or discrepancies found between State law and the PCZO. The proposed amendments would be in the public interest because they would provide continuity between the requirements of State law and the PCZO. Currently, the Planning Division must apply ORS 215 and OAR Chapter 660 Division 33 directly to some types of land use applications. This situation makes it difficult for applicants and property owners to understand what provisions apply to their property. The proposed text amendments would resolve that issue. This continuity would benefit both applicants and other property owners seeking to understand their property rights.

This process also provides the opportunity for the Board of Commissioners to consider how to regulate specific optional uses where the county can be more restrictive than State law. For those optional changes discussed in this report, the Board of Commissioners could recommend adopting the text amendments as proposed by Staff, recommend further restrictions, or recommend not adopting the text amendments. In some cases, there have been changes in State law to optional uses which have resulted in the PCZO as being less restrictive in some sections. Although these uses are optional, the changes are required to be adopted in order to continue to be in compliance with State law. For such changes, the Board of Commissioners shall adopt those changes as required to no longer be less restrictive than State law.

Staff believes that adopting the language from State law directly rather than being more restrictive than State law would be in the public interest and of general public benefit because it removes certain restrictions and would afford property owners the full property rights that are authorized by the State. As discussed above, staff and the Planning Commission have also recommended that some optional changes should not be adopted. For those changes, staff believes that adoption would be unnecessary and it would be in the public interest and would be of general public benefit to not adopt those changes at this time. Staff and the Planning Commission's recommendations on the specific optional changes are discussed in further detail above.

(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land.

Findings:

Polk County has adopted intergovernmental agreements (IGAs) with each of the cities that have urban growth boundaries (UGB) that extend outside of city limits and into Polk County's planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. The Falls City UGB is entirely located within city limits; therefore, Polk County does not have an IGA regarding UGB land use management with Falls City.

The proposed text amendments to the PCZO would amend the standards for some uses that are outright permitted and some uses that are subject to review and approval of an administrative review or conditional use application. While most properties in the UGB are zoned Suburban Residential (SR), where these text amendments would not apply, some properties in UGBs are zoned EFU. Most IGAs require that the County provide the City with advanced notification of any land use application and IGA provisions would not be affected by the proposed updates. Staff provided notice of the proposed text amendments to all cities in Polk County on June 28, 2023.

Staff finds that the proposed text amendments would comply with this criterion.

IV. CONCLUSION

Based on the findings above, staff concludes that the proposed amendments to the Polk County Zoning Ordinance would comply with all of the applicable review and decision criteria for a legislative amendment. As discussed, staff and the Planning Commission recommend that the Board of Commissioners adopt the following text amendments found in Attachment A:

1) All mandatory changes to PCZO 136.030, 136.040, 136.060, and 136.070.

2) All mandatory changes to PCZO 136.050, including changes to:

- Aquaculture (PCZO 136.050(B))
- Procedure for Processing Temporary Medical Hardship Dwellings (PCZO 136.040(L))
- Golf Courses and Accessory Uses (PCZO 136.050(FF))
- Schools (PCZO 136.050(II))

3) All optional changes to PCZO 136.050, including changes to:

- Home occupations (PCZO 136.050(K))
- Commercial Dog Kennels, Training Classes, or Testing Trials (PCZO 136.050(L))
- Mineral and Aggregate Operations (PCZO 136.050(Q)(2))
- Solid Waste Disposal Sites (PCZO 136.050(X))
- Commercial Power Generating Facilities (PCZO 136.050(Z))
- Commercial Wind Power Generation Facilities (PCZO 136.050(AA))
- Private Parks, Playgrounds, Hunting and Fishing Preserves and Campgrounds (PCZO 136.050(DD))

4) All new uses and/or provisions that would be listed under PCZO 136.050, including:

- Equine Therapeutic Counseling Activities
- Commercial Photovoltaic Solar Power Generation Facilities
- Childcare Facilities

In addition, staff recommends that the Planning Commission recommend to the Board of Commissioners not adopting the following text amendments:

- Additional provisions for Temporary Medical Hardship Dwellings (PCZO 136.040(L))

- Allowing Aerial Fireworks Businesses
- Allowing Agri-Tourism and other Commercial Events when not ancillary to a winery, cider business, or farm brewery.

BOARD OF COMMISSIONERS ACTION:

After opening the public hearing and receiving testimony, the Board of Commissioners options include the following:

(1) Move to approve Legislative Amendment 23-02 as recommended by Staff and the Planning Commission; thereby amending the PCZO Chapters 136 by:

(a) Adopting the PCZO amendments presented in Attachment A, or

(b) As further amended by the Board of Commissioners (state revisions); or

(2) Continue the public hearing; or

(3) Other.

ATTACHMENTS:

A	-	Proposed Amendments to PCZO Chapter 136
B-1, B-2	-	Comments provided prior to the Planning Commission Hearing
C-1, C-2, C-3	-	Comments provided after the Planning Commission Hearing, but prior to the Board of Commissioners Hearing

Amendments to Polk County Zoning Ordinance Chapter 136;

Exclusive Farm Use (EFU) Zoning District

Additions are double underlined

Deletions are in ~~strikethrough~~

136.030. USES PERMITTED BY RIGHT. The following uses are permitted, subject to applicable standards set forth in the Polk County Zoning Ordinance and as may otherwise be indicated by federal, state and local permits or regulations:

(E) *Operations for the Exploration for and Production of Geothermal ~~, Oil and Gas~~ Resources*, as defined under ORS 522.005 and ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(2)(a) or (b).

(F) ~~*Mineral Exploration*~~Operations for the Exploration for Minerals, as defined in ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(2)(a) or (b).

(H) *Reconstruction or Modification of Public Roads and Highways*, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, removal or displacement of buildings or creation of new land parcels.

(N) *Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district* as defined in ORS 540.505.

(O) *Utility facility service* lines *[OAR 660-033-0130(32)]*, and accessory facilities or structures that end at a point where the utility service is received by the customer and that are located on one or more of the following:

(1) A public right of way; or

(2) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(3) The property to be served by the utility.

(Q) *Farm Stand [OAR 660-033-0130(23)]*, subject to the following requirements:

(1) The structures are temporary, do not require building permits under the Oregon Structural Specialty Code, and are used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon, including the sale of retail incidental items to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items do not make up more than 25 percent of the total annual sales of the farm stand; and

(2) If retail incidental items are offered for sale, they shall be offered for sale at the same time and location as the farm crops and livestock sold by the farm stand.

(3) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(4) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items. Notwithstanding the foregoing, a farm stand used in conjunction with a marijuana crop is not permitted.

(5) Farms stands that would include fee based activities to promote the sale of farm crops or livestock sold at the farm stand shall be reviewed under PCZO 136.040(P). **[Amended by Ordinance 13-05 and 16-01]**

(6) A farm stand may not be used for the sale, or to promote the sale, or marijuana products or extracts.

136.040. USES SUBJECT TO ADMINISTRATIVE REVIEW. The following uses are permitted, subject to review and approval under the prescriptive standards specified herein and as may otherwise be indicated by federal, state and local regulations and permits:

SINGLE-FAMILY RESIDENCES

(A) *Dwelling for the Farm Operator on High-Value Farmland [OAR 660-033-0135(4) and (95)]*. A Farm Dwelling may be authorized on a tract of land classified as high value, where the tract meets the following criteria:

(1) The subject tract is currently ~~in~~ employed for farm use, as defined in ORS 215.203, on which the farm operator ~~and~~ has ~~produced~~ earned at least $80,000 in gross annual income from the sale of farm products, in each of the last 2 years, or 3 out of the ~~past~~ last 5 years, or ~~in an~~ based on the average farm income earned on the tract ~~of~~ in the best three of the last five years. Only gross income from land owned, not leased or rented shall be counted. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income attributed to the farm or ranch operation as defined in OAR 660- 033-0135(11)(b). Noncontiguous lots or parcels designated for exclusive farm use in Polk County or a contiguous county may be used to meet the gross income requirements. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used unless both dwellings are subsequently authorized by provision of law; **[Amended by Ordinance 18-01]**

(2) ~~The tract is currently vacant (no dwellings, e~~ Except~~ing~~ for lawfully established seasonal farm worker housing approved prior to 2001, there are no other dwelling(s) on lands designated for exclusive farm use owned by the farm or ranch operator or on the farm or ranch operation~~)~~; and

(3) The dwelling will be occupied by a person or persons who produced the commodities ~~which provided~~ that grossed the income under subsection 1 above.

(4) At the time of application for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide a title report,

for those lots or parcels located within a contiguous county, that was generated within 30 days of date the application is submitted.

(5) Prior to ~~issuance of construction permits~~ final approval for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide for the recording of a deed restriction with the Polk County Clerk consistent with that required by OAR 660-033-0135(~~9~~5)(b) for the properties subject to the application that precludes:

(a) All future rights to ~~the establishment of~~ construct a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and

(b) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling. **[Amended by Ordinance 16-01]**

(B) *Small Tract Dwelling on High-Value Farmland [OAR 660-033-0130(3)(~~d~~a)].* A dwelling may be authorized on a tract of land classified as high-value, where the tract meets the following requirements:

(1) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner since prior to January 1, 1985 (Note: Present owner may also qualify, if the property was inherited by devise or intestate secession from a person that acquired and had owned continuously the lawfully created parcel since prior to January 1, 1985);

(2) The tract ~~is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing)~~ on which the dwelling will be sited does not include a dwelling;

(3) ~~If t~~ The lot or parcel on which the dwelling will be sited was part of a tract existing on November 4, 1993 and no dwelling exists on another lot or parcel that was part of that tract;

(4) The proposed dwelling ~~meets all other~~ is not prohibited by, and will comply with, the requirements of the Comprehensive Plan and land use regulations, including but not limited to regulations which apply to flood hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource areas, such as riparian or big game habitat; ~~and~~

(5) When the lot or parcel on which the dwelling will be sited lies within an area designated in the Comprehensive Plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the Comprehensive Plan and land use regulations intended to protect the habitat are based; and

(~~5~~6) ~~Any adjacent lot(s) or parcel(s) owned by the applicant shall be combined with the subject parcel to form a single lot or parcel~~ When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(~~6~~7) The tract ~~where~~ on which the dwelling ~~would~~ will be sited is:

(a) Not composed predominately of prime, unique Natural Resource Conservation Service (NRCS) Class I or II soils identified in OAR 660-033-0020(8)(a) ~~or (b)~~;

(b) Composed predominately of high-value (NRCS) Class III and IV soils identified in OAR 660-033-0020(8)(c) or (d); ~~or~~ and;

(c) Composed predominantly of a combination of high-value NRCS Class III and IV soils identified in OAR 660-33-020(8)(c) or (d) and prime, unique, NRCS Class I or II soils identified in OAR 660-033-0020(8)(a) or (b);

(d) Twenty-one (21) acres or less in size; and

(e) Bordered on at least 67% of its perimeter by tracts less than 21 acres in size and at least 2 such tracts had dwellings on them on Jan. 1, 1993; or,

(f) The tract is not a flag lot and is bordered on at least 25% of its perimeter by tracts less than 21 acres in size and at least four dwellings existed on Jan. 1, 1993, within one-quarter mile of the center of the subject tract. Where the tract abuts an urban growth boundary, up to 2 of the 4 dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(g) The tract is a flag lot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within ¼ mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. Where the tract abuts an urban growth boundary, up to 2 of the 4 dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary. The center of the tract shall be the point where half of the acreage is north, south, east, and west of the point, unless requested by the applicant to use the "geographic center of the flag lot," as long as that interpretation does not cause the center to be located outside of the flag lot. Flag lot means a tract containing a narrow strip of panhandle of land providing access from the public road to the rest of the tract. The geographic center of the flag lot means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flag lot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flag lot. Regardless of the method of determining the center, the center of the subject tract shall be located on the subject tract.

Notes: (1) As used in this subsection, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or a business entity owned by any one or a combination of these family members.

(2) Upon approval, the Planning Director shall notify the County Assessor that the governing body intends to allow the dwelling. [660-033-0130(3)(h)]

(3) An authorization to establish a dwelling pursuant to this subsection is valid for the duration specified in Section 136.160 for the applicant that qualified for the dwelling and for any other person that the qualified applicant transferred the property to after the date of the land use decision. [660-033-0130(3)(i)]

(C) *Lot-of-Record Dwelling on High-Value Farmland [OAR 660-033-0130(3)(c)].* A dwelling may be authorized on a tract of land classified as high-value, where the tract meets the following criteria:

(1) The Polk County Hearings Officer shall determine whether the subject parcel is a lot-of-record, based on the following criteria:

(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner since prior to January 1, 1985 (Note: Present owner may also qualify, if the property was inherited by devise or intestate secession from a person that acquired and had owned continuously the lawfully created lot or parcel prior to January 1, 1985);

(b) The tract on which the dwelling will be sited ~~is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing)~~ does not include a dwelling;

(c) ~~If t~~ The lot or parcel on which the dwelling will be sited was part of a tract existing on November 4, 1993 no dwelling exists on another lot or parcel that was part of that tract;

(d) The proposed dwelling ~~meets~~ is not prohibited by, and will comply with, the requirements of the Comprehensive Plan and all other land use regulations, including but not limited to regulations which apply to flood hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource areas, such as riparian or big game habitat; ~~and~~

(e) When the lot or parcel on which the dwelling will be sited lies within an area designated in the Comprehensive Plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the Comprehensive Plan and land use regulations intended to protect the habitat are based; and

(ef) ~~Any adjacent lot(s) or parcel(s) owned by the applicant shall be combined with the subject lot to form a single lot or parcel.~~ When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.

(2) The Hearings Officer shall determine that:

(a) The parcel cannot practicably be managed for farm use, by itself, or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. This criterion requires evidence that the subject lot or parcel cannot be physically used for farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad, or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use

despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;

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

(c) The dwelling will not significantly increase the cost of farm or forest practices on surrounding lands devoted to farm and forest use; and

(d) The applicant shall demonstrate that the proposed lot-of-record dwelling will not materially alter the stability of the overall land use pattern in the area~~.~~ by applying the standards set forth in OAR 660-033-0130(4)(a)(D).

(3) Notice of the public hearing shall be provided to the ~~State~~ Oregon Department of Agriculture at least 20 calendar days prior to the public hearing before the hearings officer. Upon approval, the Planning Director shall notify the County Assessor that the governing body intends to allow the dwelling. [660-033-0130(3)(h)]

(4) Authorization of a single-family dwelling under the provisions of this subsection may be transferred by a person who has qualified under this subsection to any other person after the effective date of the land use decision. An authorization to establish a dwelling pursuant to this subsection is valid for the duration specified in Section 136.160 for the applicant that qualified for the dwelling and for any other person that the qualified applicant transferred the property to after the effective date of the land use decision. [660-033-0130(3)(i)]

Note: As used in this subsection, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or a business entity owned by any one or a combination of these family members.

(D) *Dwelling for the Farm Operator on Other Farmland – Acreage Standard [OAR 660-033-0135(1)].* A farm dwelling may be considered customarily provided in conjunction with farm use ~~authorized~~ on a tract of land not classified as high value farmland pursuant to OAR 660-033-0020(8), subject to the following standards:

(1) The parcel on which the dwelling is to be located is at least 160 acres in size;

(2) The subject tract is currently ~~in~~ employed for farm use, as defined in ORS 215.203;

(3) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the ~~land~~ subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and

(4) The subject tract is currently vacant (no other dwellings, excepting lawfully established seasonal farm worker housing approved prior to 2001).

(E) *Dwelling for the Farm Operator on Other Farmland – Income Standard [OAR 660-033-0135(3)~~,~~ and (5) ~~and (6)~~].* A farm dwelling may be considered customarily provided in conjunction with farm use ~~authorized~~ on a tract of land, not classified as high value farmland, subject to the following standards:

(1) The subject tract is currently employed for farm use ~~and has produced at least $40,000 in gross annual income from the sale of farm products during each of the past two (2) years, or three (3) of the past five (5) years, or in an average of three (3) of the last five (5) years. Only gross income from land owned, not~~

~~leased or rented shall be counted. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income attributed to the farm or ranch operation. Noncontiguous lots or parcels designated for exclusive farm use in Polk County or a contiguous county may be used to meet the gross income requirements. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used unless both dwellings are subsequently authorized by provision of law; or~~ , as defined in ORS 215.203, on which, in each of the last two (2) years, or three (3) of the last five (5) years, or an average of the best three (3) of the last five (5) years, the farm operator earned the lower of the following:

(a) At least $40,000 in gross annual income from the sale of farm products; or

(b) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon; and

(2) Only gross income from land owned, not leased or rented shall be counted. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income attributed to the farm or ranch operation. Noncontiguous lots or parcels zoned for farm use in Polk County or a contiguous county may be used to meet the gross income requirements. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used unless both dwellings are subsequently authorized by provision of law; or

~~(2) The subject tract is currently employed for farm use and has produced gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of $10,000 or more according to the 1992 Census of Agriculture during each of the past two (2) years or three (3) of the past five (5) years. When determining gross annual income for livestock operations, the cost of purchased livestock must be deducted from the total gross income;~~

(3) ~~The subject tract, and all parcels subject to the application are currently vacant (no dwellings, excepting~~ Except for lawfully established seasonal farm worker housing approved prior to 2001, there are no other dwelling(s) on lands designated for exclusive farm use owned by the farm or ranch operator or on the farm or ranch operation~~)~~; ~~and~~

(4) The dwelling will be occupied by a person or persons who produced the commodities during each of the past two (2) years, ~~or~~ three (3) of the past five (5) years~~.~~, or an average of the best three (3) of the last five (5) years.

(5) At the time of application for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide a title report, for those lots or parcels located within a contiguous county, that was generated within 30 days of date the application is submitted.

(6) Prior to issuance of construction permits for a dwelling that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross income requirements, the property owner shall provide for the recording of a deed restriction with the Polk County Clerk consistent with that required by OAR 660-033-0135(~~9~~5)(b) for the subject properties that precludes:

(a) All future rights to ~~the establishment of~~ construct a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and

(b) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling; **[Amended by Ordinance 16-01]**

(F) *Dwelling for the Farm Operator on Other Farmland - Sales Capability Test [OAR 660-033-0135(2)].* A farm dwelling may be authorized on a tract of land, not classified as high-value that is:

(1) The subject tract is ~~A~~ at least as large as the median size of those commercial farm and ranch tracts capable of generating at least $10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract;

(2) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size under subsection (1) above, provided, however, that marijuana is not used as a county indicator crop; **[Amended by Ordinance 16-01]**

(3) The subject tract is ~~C~~ currently employed for farm use, as defined in ORS 215.203, at a level capable of producing the gross annual sales requirement under subsection (2) above. (Note: If no farm use has been established at the time of application, land use approval shall be subject to full establishment of the farm use, as described under subsection 2 above, prior to issuance of a building permit for the dwelling);

(4) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the ~~land~~ subject tract, such as planting, harvesting, marketing, or caring for livestock at a commercial scale;

(5) The subject lot or parcel on which the dwelling is proposed is ~~A~~ at least 10 acres in size; and

(6) ~~Currently vacant (no dwellings, excepting~~ Except for lawfully established seasonal farm worker housing approved prior to 2001, there is no dwelling on the subject tract~~).~~;

(7) In determining the gross sales capability required subsections (3) above:

(a) The actual or potential cost of purchased livestock shall be deducted from the total gross sales attributed to the farm or ranch tract;

(b) Only actual or potential gross sales from land owned, not leased or rented, shall be counted; and

(c) Actual or potential gross farm sales earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(8) In order to identify the commercial farm or ranch tracts to be used in subsection 1 above, the gross sales capability of each tract in the study area, including the subject tract, must be determined, using the gross sales figures prepared by the county pursuant to OAR 660-033-0135(2)(c) as follows:

(a) Identify the study area. This includes all the land in the tracts wholly or partially within one mile of the perimeter of the subject tract;

(b) Determine for each tract in the study area the number of acres in every land classification from the county assessor's data;

(c) Determine the potential earning capability for each tract by multiplying the number of acres in each land class by the gross sales per acre for each land class provided by the commission pursuant to OAR 660-033-0135(2)(c). Add these to obtain the potential earning capability for each tract;

(d) Identify those tracts capable of grossing at least $10,000 based on the data generated in subsection (8)(c) above; and

(e) Determine the median size and median gross sales capability for those tracts capable of generating at least $10,000 in annual gross sales to use in subsections (1) and (2) above.

(G) *Lot-of-Record Dwelling Not High-Value Farmland [(OAR 660-033-0130(3)(a)].* A dwelling may be authorized on a lot-of-record on land not classified as high-value farmland. To qualify as a lot-of-record, the parcel must meet the following criteria:

(1) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner since prior to January 1, 1985 (Note: The owner may also qualify if the property was inherited by devise or intestate succession from a person that acquired and had owned continuously the lawfully created lot or parcel since prior to January 1, 1985);

(2) The tract on which the dwelling will be sited does not include a dwelling ~~(excepting lawfully established seasonal farm worker housing)~~;

(3) The lot or parcel on which the dwelling will be sited was part of a tract existing on November 4, 1993 and no dwelling exists on another lot or parcel that was part of that tract;

(4) The proposed dwelling ~~meets all other~~ is not prohibited by, and will comply with, the requirements of the Comprehensive Plan and land use regulations, including but not limited to regulations which apply to flood hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource areas, such as riparian or big game habitat; ~~and~~

(5) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(~~5~~6) ~~Any adjacent lot(s) or parcel(s) owned by the applicant shall be combined with the subject lot or parcel to form a single lot or parcel.~~ When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(~~6~~7) An authorization to establish a dwelling pursuant to this subsection is valid for the duration specified in Section 136.160 for the applicant that qualified for the dwelling and for any other person that the qualified applicant transferred the property to after the effective date of the land use decision. [OAR 660-033-0130(3)(i)]

(~~7~~8) Upon approval, the Planning Director shall notify the County Assessor that the governing body intends to allow the dwelling. [OAR 660-033-0130(3)(h)]

Notes: (1) As used in this subsection, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or a business entity owned by any one or a combination of these family members. [660-033-0130(3)(g)]

(2) 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. For purposes of approving a land use application under Section 136.040(G), 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) 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

(c) 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~~ subsection 2(b) and finds the analysis in the report to be soundly and scientifically based. [ORS 215.710(5)]

(H) *Dwelling for Family Farm Help [OAR 660-033-0130(9)].* A dwelling for family farm help may be authorized, on the same lot or parcel as the dwelling of the farm operator and must be on real property used for farm use, where the dwelling will be occupied by a relative of the farm operator whose assistance in the management and farm use of the existing commercial farm operation is required by the farm operator. However, farming of marijuana crop may not be used to demonstrate compliance with the approval criteria for a relative farm help dwelling. The farm operator shall continue to play the predominant role in the management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing. "Relative" means ~~the farm operator or farm operators' spouses~~ grandparent, step-grandparent, grandchild, parent, step-parent, child~~, brother, sister~~, sibling, step-sibling, niece, nephew, or first cousin of either of the farm operator, or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under 215.780, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may

also foreclose on the "homesite", as described in 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect. "Forclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).

(J) *Replacement of Historic Dwelling [ORS 215.283(1)(l) and OAR 660-033-0130(12)].* A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed on the Polk County Historic Inventory and on the National Register of Historic Places, as defined in ORS 328.480, which has been partitioned from the farm tract as provided by ORS 215.263(9)(b), may be replaced on a portion of the farm tract.

(K) *Accessory Farm Dwellings [OAR 660-033-0130(24)].* Each accessory dwelling customarily provided in conjunction with farm use is authorized, subject to review and approval under the following criteria:

(1) Each dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing, or caring for livestock, is or will be required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates the farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing;

(2) The accessory dwelling will be located:

(a) On the same lot or parcel as the primary farm dwelling; or

(b) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcel in the tract; or

(c) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is re-authorized under these rules; or

(d) On any lot or parcel ~~on which the primary farm dwelling is not located~~, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under this subparagraph shall be removed, demolished, or converted to an authorized non-residential use when farm-worker housing is no longer required. "Farmworker housing" shall have the meaning set forth in ORS 215.278 and not the meaning in ORS 315.163. or

(e) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5~~3~~) or (7~~4~~), whichever is applicable, and

(3) There is no other dwelling on lands zoned for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling; and

(4) The primary farm dwelling, to which the proposed dwelling would be accessory, meets one of the following:

(a) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which ~~and produced~~ 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, the farm operator earned the lower of the following:

(i) At least $40,000 ~~(1994 dollars)~~ in gross annual income from the sale of farm products (Note: Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract); or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. (Note: Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling. In determining the gross income, the cost of purchased livestock, shall be deducted from the total gross income attributed to the tract); or

(b) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned ~~and has produced~~ 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 an average of three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Gross farm income earned from a marijuana crop may not be used to qualify a lot or parcel for a dwelling;

(c) On land defined as a commercial dairy pursuant to OAR 660-033-0135(~~11~~8) and the following:

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and ORS 468B.200 to 468B.230; and

(iii) The Oregon Department of Agriculture has approved a permit for a Producer License for the sale of dairy products under ORS 621.072.

(5) A partition shall not be approved that separates the accessory farm dwelling from the primary farm dwelling, unless a subsequent land use application

determines that the accessory farm dwelling and the primary farm dwelling both qualify pursuant to the applicable provisions contained in Sections 136.040(A), (D), (E), or (F). A parcel may be created consistent with the minimum parcel size for the zone.

(6) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use.

(7) Farming of marijuana crop shall not be used to demonstrate compliance with the approval criteria for an accessory farm dwelling.

(8) Accessory farm dwellings destroyed by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.10 may be replaced. The temporary use of modular structures, manufactured housing, fabric structures, tents and similar accommodations is allowed until replacement under this section occurs.

Note: "Accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code. **[Amended by Ordinance 16-01]**

~~(L) *Temporary Hardship Dwelling [OAR 660-033-0130(10)].* One manufactured dwelling, recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of the hardship suffered by the existing resident or a relative of the resident, provided that:~~

~~(1) The hardship is certified by a licensed physician;~~

~~(2) The manufactured home or existing building converted to residential use is connected to the existing sewage disposal system; except when the County Sanitarian finds the existing system to be inadequate and that it cannot be repaired or is not physically available; If the manufactured home will use a public sanitary system, such condition will not be required.~~

~~(3) The applicant agrees to renew the permit every two years.~~

~~(4) Within 3 months of the end of the hardship, the manufactured dwelling, recreational vehicle, or building converted to a temporary residential use, shall be removed, demolished, or converted to an approved nonresidential use.~~

~~(5) The dwelling will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and~~

~~(6) The dwelling will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.~~

~~(7) As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.~~

~~(8) A temporary residence approved under this section is not eligible for replacement under Section 136.040(I).~~

(~~M~~L) *Dwelling in conjunction with a commercial dairy [OAR 660-033-0135(7)].* A dwelling may be considered customarily provided in conjunction with a commercial dairy farm as defined in OAR 660-033-0135(~~11~~8) if:

(1) The subject tract will be employed as a commercial dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income from the sale of fluid milk required by:

(a) Section 136.040(A) if located on high-value farmland; or

(b) Section 136.040(E) if located on non-high-value farmland, whichever is applicable; and

(c) "Farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203;

(2) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and

(3) The subject tract is vacant (no dwellings, excepting lawfully established seasonal farm worker housing, approved prior to 2001);

(4) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm; and

(5) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and

(6) The Oregon Department of Agriculture has approved the following:

(a) A permit for a "confined animal feeding operation" under ORS 468B.050 and ORS 468B.200 to 468B.230; and

(b) A Producer License for the sale of dairy products under ORS 621.072.

(~~N~~M) *Relocated farm operation dwelling [OAR 660-033-0135(9)]*. A dwelling may be considered customarily provided in conjunction with farm use if:

(1) Within the last two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by Section 136.040(A) or (E), whichever is applicable;

(2) The subject lot or parcel on which the dwelling will be located is:

(a) Currently employed for the farm use, as defined in Section 110.223, that produced in the last two years or three of the last five years the gross farm income required by Section 136.040(A) or (E), whichever is applicable; and

(b) At least the size of the applicable minimum parcel size; and

(3) The subject tract is vacant (no dwellings, excepting lawfully established seasonal farm worker housing approved prior to 2001); and

(4) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in paragraph (1) of this subsection;

(5) In determining the gross income required by subsections (1) and (2)(a), of this subsection:

(a) The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and

(b) Only gross income from land owned, not leased or rented, shall be counted.

COMMERCIAL USES

(~~O~~N) *Winery [ORS 215.452]*, subject to the requirements of PCZO Chapter 117. **[Amended by Ordinance 11-09]**

(~~P~~O) *Cider Business [ORS.283.451]*, subject to the requirements of PCZO Chapter 117. **[Amended by Ordinance 20-01]**

(~~Q~~P) *Farm Brewery ~~[Senate Bill 287 (2019)~~ ORS 215.449]*, subject to the requirements of PCZO Chapter 117. **[Amended by Ordinance 20-01]**

(~~R~~Q) *Farm Stand [OAR 660-033-0130(23)]*, A farm stand, not including those farm stands that are outright permitted in Section 136.030(Q), may be approved if:

(1) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(3) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in Oregon. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items. ~~Notwithstanding the foregoing, a farm stand used in conjunction with a marijuana crop is not permitted.~~ **[Amended by Ordinances 11-03, 13-05 and 16-01]**

(4) A farm stand may not be used for the sale, or to promote the sale, of marijuana products or extracts.

(~~S~~R) *Processing Facility for Farm Crops [~~OAR 660-033-0130(28)]~~, or the production of biofuel as defined in ORS 315.141, located on a farm operation that provides at least one-fourth of all the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards, but the standards shall not be applied in a manner that prohibits the siting of the processing facility. Note: A land division that separates the processing facility from the farm operation is not allowed.* **[Amended by Ordinance 11-03]**

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

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

(b) Notwithstanding any applicable siting standard, uses less than 2,500 square feet for its processing area. However, a local government shall apply applicable standards and criteria pertaining to floodplains,

geologic hazards, beach and dune hazards, airport safety, tsunami hazards and fire siting standards.

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

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

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

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

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

(b) "Processing area" means the floor area of a building dedicated to farm product processing. "Processing area" does not include the floor area designated for preparation, storage, or other farm use.

(~~T~~S) *Parking of Log Trucks [ORS 215.311]*, not more than seven log trucks may be parked on a tract when the applicant:

(1) Describes the surrounding land uses and farm and forest practices on the surrounding properties wholly or partially located within at least 750-feet of the outside perimeter of the subject property.

(2) Demonstrates that the proposed use would not force a significant change or increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use.

(~~U~~T) *Dog training classes or testing trials [ORS 215.283(1)(x) and OAR 660-033-0130(39)]*, which may be conducted outdoors or in preexisting farm buildings that existed on January 1, 2019, when:

(1) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(2) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year. **[Amended by Ordinance 18-01]**

UTILITIES AND SOLID WASTE DISPOSAL FACILITIES

(~~V~~U) *Utility Facilities Necessary for Public Service [ORS 215.275 and OAR 660-033-0130(16)]*, including associated transmission lines as defined in ORS 469.300 and wetland waste treatment systems, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height.

(1) A utility facility established under ORS 215.283(1)(c)(A) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an Exclusive Farm Use zone due to one or more of the following factors:

(a) Technical and engineering feasibility;

(b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(c) Lack of available urban and nonresource lands;

(d) Availability of existing rights of way;

(e) Public heath and safety; and

(f) Other requirements of state and federal agencies.

(2) Costs associated with any of the factors listed in subsection (~~T~~U)(1) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(3) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agriculture land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(4) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility siting to migrate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(5) The utility facility necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to OAR 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a subsequent application. Such a request shall have no effect on the original approval. **[Amended by Ordinance 11-03]**

(6) In addition to the provisions of subsections (~~T~~U)(1) to (4) of this section, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(7) The provisions of subsections (~~T~~U)(1) to (4) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulations by the Federal Energy Regulatory Commission.

(8) Communication towers authorized under this section shall comply with the standards listed in Section 112.135. **[Amended by Ordinance 11-03]**

(9) An associated transmission line is necessary for public service and shall be approved by the Planning Director if an applicant for approval under

215.283(1)(c) demonstrates that the associated transmission line meets either the requirements of subsection (a) or (b) below.

(a) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;

(ii) The associated transmission line is co-located with an existing transmission line;

(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or

(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

(b) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to subsections (c) and (d), two or more of the following criteria:

(i) Technical and engineering feasibility;

(ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;

(iv) Public health and safety; or

(v) Other requirements of state or federal agencies.

(c) As pertains to subsection (b), the applicant shall present findings to the governing body of the county on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.

(d) The governing body of a county may consider costs associated with any of the factors listed in subsection (b), but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

(~~W~~V) *Wind energy systems utilizing a tower and meteorological towers outside of an adopted urban growth boundary that are not commercial power generating facilities* that would utilize a tower(s) that requires lighting or that requires modification to the height or type of construction standards described in Section 112.135(C)(1), as provided in Sections 112.135 and 112.137. **[Amended by Ordinance 09-06]**

(~~X~~W) *Composting Facilities High-Value Farmland [OAR 660-033-0130(29)(a)]*, Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Existing facilities wholly within a farm use zone may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law. **[Amended by Ordinance 11-03]**

PARKS/PUBLIC/QUASI-PUBLIC FACILITIES

(~~Y~~X) *Model Airplane Take off and Landing Sites [ORS 215.283(1)(g) and OAR 660-033-0130(26)]*, including such buildings or facilities as may reasonably be necessary with a site for the takeoff and landing of model aircraft. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility pre-existed the use as a model airplane site. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use as a model airplane site. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. **[Amended by Ordinance 10-10]**

As used in this paragraph:

(1) "Model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible, or balloon that is used or is intended to be used for flight and is controlled by radio, lines, or design by a person on the ground.

(~~Z~~Y) *Firearms training facility as provided in ORS 197.770*, subject to the standards listed in Section 136.065.

136.050 CONDITIONAL USES [OAR 660-033-0130]. The following uses may be approved, subject to compliance with the procedures and criteria under Chapter 119, applicable state and federal regulations, and other specific criteria as may be indicated:

RESOURCE-RELATED USES

(A) *Facility for the Primary Processing of Forest Products [ORS 215.283(2)(j) and OAR 660-033-0130(6)]*. A facility for the primary processing of forest products, subject to compliance with Section 136.060, is authorized provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest ~~production~~ product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or ~~tract~~ contiguous land where the primary processing facility is located.

(B) *Aquaculture [ORS 215.283(2)(p) and OAR 660-033-0130(27)]*, including the propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species, subject to compliance with Section 136.060.

(1) Notice of the application shall be provided to the ~~State~~ Oregon Department of Agriculture at least 20 calendar days prior to any administrative ~~action~~ decision or initial public hearing on the application.

(C) *Insect Breeding [OAR 660-033-0130(27)]*, including the propagation, cultivation, maintenance and harvesting of insect species, subject to compliance with Section 136.060 and the following criteria:

(1) Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture.

(2) Notice of the application shall be provided to the ~~State~~ Oregon Department of Agriculture at least 20 calendar days prior to any administrative action or initial public hearing on the application.

SINGLE FAMILY RESIDENCES

(E) *Nonfarm Dwelling - Not High-Value Farmland, (except as noted) [ORS 215.284(1) and OAR 660-033-0130(4)(a)].* A nonfarm dwelling may be authorized on a parcel, not classified as high-value farmland, except as noted, subject to the following criteria:

(1) The dwelling or activities associated with the dwelling will not force a significant change in accepted farm or forest practices on ~~surrounding~~ nearby lands devoted to farm and forest use;

(2) The dwelling or activities associated with the dwelling will not significantly increase the cost of farm or forest practices on ~~surrounding~~ nearby lands devoted to farm and forest use;

(3) The dwelling will be ~~placed~~ sited on a lot or parcel created before January 1, 1993;

(4) The dwelling will be ~~located~~ sited on a lot or parcel that is predominately composed of NRCS Class IV through VIII soils that, when irrigated, would not be classified as prime or unique, Class I or II soils (Note: This includes those Class IV soils defined as high-value farmland in OAR 660-033-0020(8)(c));

(5) The applicant shall demonstrate that the proposed nonfarm dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the County shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area and similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area. To address this standard, the applicant shall prepare a cumulative impact study that:

(a) Includes at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcels and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall be identified but not be included in the study area;

(b) The cumulative impacts study shall identify the broad types of farm uses (irrigated or nonirrigated corps, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc), and the dwelling development trends since 1993. Determine the potential number of nonfarm / lot-of-record dwellings that could be approved under Sections 136.040(B) and (G) and 136.050(E). The study shall identify the predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under Section 136.050(F) and Section 136.070(C). Findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(c) Describes whether the proposed dwelling in conjunction with the dwellings identified in (b) above will make it more difficult for the existing 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. Determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. (Note: The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing 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).

~~(6) The county shall consider the cumulative impact of possible new nonfarm and lot-of-record dwellings and together with existing nonfarm dwellings on other lots or in the area when determining whether the proposed nonfarm dwelling will alter the stability of the land use pattern in the area.~~

(~~7~~6) The dwelling complies with other applicable conditions.

Note: The parcel qualifying for a dwelling under this section shall be disqualified for Farm Use Assessment pursuant to ORS 215.236.

(F) *Nonfarm Dwelling on a Nonfarm Parcel - Not High-Value Farmland [ORS 215.284(4)(a) and OAR 660-033-0130(4)(b)].* A nonfarm dwelling may be authorized on a nonfarm parcel created under Section 136.070(C), subject to the following criteria:

(1) The dwelling or activities associated with the dwelling will not force a significant change in accepted farm or forest practices on ~~surrounding~~ nearby lands devoted to farm and forest use;

(2) The dwelling or activities associated with the dwelling will not significantly increase the cost of farm or forest practices on ~~surrounding~~ nearby lands devoted to farm and forest use;

(3) The applicant shall demonstrate that the proposed nonfarm dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the County shall consider the cumulative impact of

nonfarm dwellings on other lots or parcels in the area and similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area. To address this standard, the applicant shall prepare a cumulative impact study that:

(a) Includes at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall described the study area its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcels and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall be identified, but not included in the study area;

(b) The cumulative impacts study shall identify the broad types of farm uses (irrigated or nonirrigated corps, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc), and the dwelling development trends since 1993. Determine the potential number of nonfarm / lot-of-record dwellings that could be approved under Sections 136.040(B) and (G) and 136.050(E). The study shall identify the predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under Section 136.050(F) and Section 136.070(C). Findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(c) Describes whether the proposed dwelling in conjunction with the dwellings identified in (b) above will make it more difficult for the existing 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. Determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. (Note: The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing 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).

~~(4) The county shall consider the cumulative impact of possible new nonfarm and lot-of-record dwellings and together with existing nonfarm dwellings on other lots or in the area when determining whether the proposed nonfarm dwelling will alter the stability of the land use pattern in the area.~~

(~~5~~4) The dwelling complies with other applicable conditions.

Note: The parcel qualifying for a dwelling under this section shall be disqualified for Farm Use Assessment pursuant to ORS 215.236.

(G) *Temporary Medical Hardship Dwelling [OAR 660-033-0130(10)].* One manufactured dwelling, recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of the hardship suffered by the existing resident or a relative of the resident, subject to compliance with Section 136.060, provided that:

(1) The hardship is certified by a licensed physician;

(2) The manufactured home or existing building converted to residential use is connected to the existing sewage disposal system; except when the County Sanitarian finds the existing system to be inadequate and that it cannot be repaired or is not physically available to serve the additional dwelling; If the manufactured home will use a public sanitary system, such condition will not be required.

(3) The applicant agrees to renew the permit every two years.

(4) Within 3 months of the end of the hardship, the manufactured dwelling, recreational vehicle, or building converted to a temporary residential use, shall be removed, demolished, or converted to an approved nonresidential use.

(5) As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(6) A temporary residence approved under this section is not eligible for replacement under Section 136.040(I).

OTHER RESIDENTIAL USES

(~~G~~H) *Residential Home [ORS 215.283(2)(o)]*, as defined in ORS 197.660, in existing dwellings subject to compliance with Section 136.060.

(~~H~~I) *Room and Board Arrangements [ORS 215.283(2)(u)]*, for a maximum of five unrelated persons in existing residences subject to compliance with Section 136.060.

COMMERCIAL ACTIVITIES

(~~I~~J) *Commercial Activities that are in Conjunction with Farm Use [ORS 215.283(2)(a)]*, including the processing of farm crops into biofuel not permitted under the definition of "farm use" in ORS 215.203(2)(b)(~~L~~ K) or Section 136.040(~~Q~~ R) but not including the processing of farm crops as described in Section 136.040(~~Q~~ R), subject to compliance with Section 136.060. Notwithstanding the foregoing, a commercial activity carried on in conjunction with a marijuana crop is not permitted. **[Amended by Ordinances 11-03, 13-05 and 16-01]**

(~~J~~K) *Commercial Activity in Conjunction with Farm Use – Food Service Safe Harbor. [ORS 215.283(2)(a)]*. Food service shall be considered a commercial activity in conjunction with farm use where the food service operation complies with the general review standards under Section 136.060 and the following standards and conditions:

(1) Each menu item shall incorporate and feature an unprocessed or processed farm product(s) produced by the subject farming operation.

(a) For the purposes of this section, a farm product is "featured" in a menu item if the menu item places an emphasis on the flavors of the farm product.

(b) For the purposes of this section, "processed farm product(s)" includes jams, syrups, apple cider, wine, animal products and other similar farm

crops and livestock that have been processed from farm products grown on the subject farm operation and converted into another product either by the subject farming operation or by an off-site processing facility.

(2) The featured unprocessed or processed farm product(s) described in subsection (1) shall be offered for retail sale where the food service is offered.

(3) At least 25% of food input value, or 50% by weight of raw ingredients, of menu items offered by the food service operation shall be attributed to the farm products (prior to processing) produced by the subject farming operation.

(4) The size of the public seating area shall not exceed 500 square feet. The food service operation shall be operated substantially within a building.

(5) The food service operation shall be located on the subject farming operation and operated by the owner(s) or employee(s) of the subject farm operation. **|Amended by Ordinance 13-04|**

(~~K~~L) *Home Occupations [ORS 215.283(2)(i) and OAR 660-033-0130(14)]*~~.~~; The establishment of a home occupation and the parking of vehicles is subject to the general review standards under Section 136.060 and the following standards and conditions from ORS 215.448:

(1) The home occupation shall be ~~is~~ operated by a resident or employee of a resident of the property on which the business is located;

(2) The business shall employ on the site ~~N~~no more than five full or part-time persons ~~are employed by the business~~;

(3) The business ~~is conducted~~ shall be operated substantially within the dwelling or other building(s) normally associated with uses permitted within ~~this~~ the zone in which the property is located; and

(4) The business shall not unreasonably ~~will not~~ interfere with ~~existing~~ uses permitted within the zone in which the property is located. ~~on nearby land or with other permitted uses.~~ **|Amended by Ordinance 13-05|**

(~~L~~M) *Commercial Dog ~~k~~Kennels, Training Classes, or Testing Trials [ORS 215.283(2)(n)]*, Commercial dog kennels, as defined by Section 110.301, may be authorized ~~on land not classified as high-value farmland,~~ subject to compliance with Section 136.060. ~~(Note: Existing facilities on high-value farmland may be maintained, enhanced, or expanded on the same tract subject to other requirements of law.)~~ Dog training classes or testing trials that cannot be established under Section 136.040(T) may also be authorized, subject to compliance with Section 136.060.

(~~M~~N) *On-site Filming and Activities Accessory to On-site Filming*, for more than 45 days as provided for in ORS 215.306, subject to compliance with Section 136.060.

(~~N~~O) *Destination Resort [ORS 215.283(2)(t)]*, subject to compliance with the requirements of Oregon Statewide Planning Goal 8 and Section 136.060. (Note: destination resorts are not authorized on lands classified as high-value.)

(~~O~~P) *Landscape Contracting Business [ORS 215.283(2)(z) and OAR 660-033-0120, Table 1]*, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, may be authorized if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use, subject to compliance with Section 136.060. **|Amended by Ordinance 11-03|**

(~~P~~Q) *Winery with a Full-Service Restaurant [ORS 215.453]*, subject to the requirements of PCZO Chapter 117. **|Amended by Ordinance 11-09 and Ordinance 20-01|**

(R) *Equine Therapeutic and Counseling Activities [ORS 215.283(2)(bb) and OAR 660-033-0130(41)].* Equine and equine-affiliated therapeutic and counseling activities may be authorized, subject to compliance with Section 136.060 and the following standards:

(1) The activities are conducted in existing buildings there were lawfully constructed on the property before January 1, 2019 or in new building(s) that are accessory, incidental and subordinate to the farm use on the tract; and

(2) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

MINERAL AND AGGREGATE OPERATIONS

(~~Q~~S) The following operations are permitted subject to compliance with ORS 215.298, which describes mining activities in exclusive farm use zones, and with Section 136.060:

(1) Mining and processing of geothermal resources as defined by ORS 522.005, and oil and gas as defined by ORS 520.005, not otherwise permitted under ~~the Polk County Zoning Ordinance~~ PCZO 136.030(E); [ORS 215.283(2)(b)(A)]

(2) Mining, crushing, or stockpiling of aggregate and other mineral and subsurface resources which are included in the County inventory of mineral and aggregate resources when the quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or more, subject to Chapters 115 and 174; [ORS 215.283(2)(b)(B)]

(3) Mining of aggregate and other mineral and subsurface resources which are included in the County inventory of mineral and aggregate resources when the quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less, subject to Chapter 115 and the following:

(a) Not more than 35 percent of the proposed mining area consists of soil:

(i) Classified as Class I on Natural Resource and Conservation Service (NRCS) maps available on June 11, 2004; or

(ii) Classified as Class II or of a combination of Class II and Class I or Unique soil, on NRCS maps on June 11, 2004, unless average thickness of the aggregate layer within the mining area exceeds 25 feet in depth; or

(b) A local land use permit that allows mining on the site was issued prior to April 3, 2003, and the permit is in effect at the time of the significance determination; and

(c) The applicant shall propose and Polk County shall determine the post-mining use and provide this use in the Comprehensive Plan and land use regulations.

(i) For significant aggregate sites on NRCS Class I, II and Unique farmland, post-mining use shall be limited to farm uses permitted in Sections 136.030 and 136.040 (H)-(J), (~~O~~N)-(~~X~~W), and fish and wildlife habitat uses, including wetland mitigation banking. Post-mining uses shall be coordinated with the Oregon Department of Geology and Mineral Industries (DOGAMI) regarding the regulation and reclamation of mineral

and aggregate sites, except where exempt under ORS 517.780. [OAR 660-023-0180(4) and (6)]~~]~~

(4) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement more than two miles from one or more ~~a~~ planted vineyards~~, at least~~ totaling 40 acres or more in size, planted as of the date the application for batching and blending is filed; and [ORS 215.283(2)(b)(C)~~]~~ and OAR 660-033-0130(15)]

(5) Processing of other mineral resources and other subsurface resources. [ORS 215.283(2)(b)(D)]

TRANSPORTATION

(~~R~~T) *Personal Use Airports and Helipads [ORS 215.283(2)(h) and OAR 660-033-0130(7)]*, including associated hangar, maintenance and service facilities, subject to compliance with Section 136.060. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(~~S~~U) *Construction of Additional Passing and Travel Lanes [ORS 215.283(2)(q)]*, requiring the acquisition of right-of-way, but not resulting in the creation of new land parcels, subject to compliance with Section 136.060.

(~~T~~V) *Reconstruction or Modification of Public Roads and Highways [ORS 215.283(2)(r)]*, involving the removal or displacement of buildings, but not resulting in the creation of new land parcels, subject to compliance with Section 136.060.

(~~U~~W) *Improvements to ~~Existing~~ Public Road and Highway Related Facilities [ORS 215.283(2)(s)]*, such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required but not resulting in the creation of new land parcels, subject to compliance with Section 136.060.

(~~V~~X) *Transportation Facilities [ORS 215.283(3)(b) and OAR 660-012-0065(3)]*. The following transportation facilities may be established, subject to compliance with Section 136.060:

(1) Accessory transportation improvements for an authorized land use to provide safe and efficient access to the use. Such accessory transportation improvements are subject to the same requirements applicable to the land use to which they are accessory;

(2) Channelization;

(3) Realignment of roads;

(4) Replacement of an intersection with an interchange;

(5) Continuous median turn lane;

(6) New access roads or collectors consistent with OAR 660-012-0065(3)(g) (i.e., where the function of the road is to reduce local access to or local traffic on a state highway). These roads shall be limited to two travel lanes. Private

access and intersections shall be limited to rural needs or provide adequate emergency access.

(7) Bikeways, footpaths, and recreation trails not otherwise allowed as a modification or part of an existing road;

(8) Park and ride lots;

(9) Railroad mainlines and branchlines;

(10) Pipelines;

(11) Navigation channels;

(12) Replacement of docks and other facilities without significantly increasing the capacity of those facilities;

(13) Expansions or alterations of public use airports that do not permit service to a larger class of airplanes; and

(14) Transportation facilities, services and improvements other than those listed in this section that serve local travel needs. The travel capacity and level of service of facilities and improvements serving local travel needs shall be limited to that necessary to support rural land uses identified in the acknowledged comprehensive plan or to provide adequate emergency access. **[Amended by Ordinance 01-10]**

UTILITIES AND SOLID WASTE DISPOSAL FACILITIES

(~~W~~Y) *Communication and Broadcast Towers over 200 feet in Height [ORS 215.283(2)(m)]*, subject to compliance with Section 136.060, Section 112.135, and the following criteria:

(1) The location, size, design and functional characteristics of the tower are reasonably compatible with and have a minimum impact on the livability and development of other properties in the area;

(2) The tower shall be located so as to not interfere with air traffic; and

(3) The tower will not have a significant adverse effect on identified sensitive fish or wildlife habitat, natural areas, or scenic areas designated on the comprehensive plan;

(~~X~~Z) *Solid Waste Disposal Site ~~under ORS 459.245~~ [ORS 215.283(2)(k) and OAR 660-033-0130(18)(a)]*, subject to compliance with Section 136.060 and ORS 459.245 for which a permit has been granted by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation. New solid waste disposal sites are not authorized on lands classified as high-value. Existing facilities wholly within a farm use zone may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law.

(~~Y~~AA) *Composting Facilities on Not High-Value Farmland [OAR 660-033-0130(29)(b)]*, subject to compliance with Section 136.060. Composting operations and facilities allowed on land not defined as high-value farmland shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle. **[Amended by Ordinance 11-03]**

(~~Z~~BB)*Commercial Power Generating Facilities [ORS 215.283(2)(g) and OAR 660-033-0130(17) and (22)]*, subject to compliance with Section 136.060. Commercial utility facilities for the purpose of generating power for public use by sale, not including commercial wind power generation facilities listed in Section 136.050(~~Z~~CC) or photovoltaic solar power generation facilities listed in Section 136.050(DD), ~~subject to compliance with Section 136.060.~~ If the area is high-value farmland, a photovoltaic solar power generations facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility. On high-value farmland, an exception to the statewide Agricultural Lands Planning Goal is required where the permanent features of the power generating facility ~~removes~~ use, occupy, or cover more than 12 acres from commercial agricultural production. On farmland not classified as high-value, an exception to the statewide Agricultural Lands Planning Goal is required where the permanent features of the power generating facility ~~removes~~ uses, occupies, or covers more than 20 acres from commercial agricultural production. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be requested through a subsequent conditional use application. Such a request shall have no effect on the original approval. **|Amended by Ordinance 11-03|**

(~~AA~~CC)*Commercial Wind Power Generation Facilities [ORS 215.283(2)(g) and OAR 660-033-0130(37)]*, wind power generation facilities may be established as a ~~that are~~ commercial utility facility~~ies~~ as defined in ORS 215.446 for the purpose of generating power for public use by sale as described in OAR 660-033-0130(37), subject to compliance with Section 136.060. For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a wind power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power generation facility shall be subject to the following provisions:

(1) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(a) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under subsection (1)(b) below;

(b) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils;

(c) Costs associated with any of the factors listed in subsection (1)(a) above may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary;

(d) The owner of a wind power generation facility approved under subsection (1) above shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and

(e) The criteria of subsection (2) below are satisfied.

(2) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(a) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;

(b) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;

(c) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices.

The approved plan shall be attached to the decision as a condition of approval; and

(d) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(3) For nonarable lands, meaning lands that are not suitable for cultivation, the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(4) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of 660-033-0130(37)(b) shall apply to the entire project. **[Amended by Ordinance 11-03]**

(DD) *Commercial Photovoltaic Solar Power Generation Facilities [OAR 660-033-0130(38)]*. photovoltaic solar power generation facilities may be established as a commercial utility facility as defined in ORS 215.446 for the purpose of generating power for public use by sale as described in OAR 660-033-0130(38), subject to compliance with Section 136.060. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447, subject to compliance with Section 136.060.

(1) A proposal to site a photovoltaic solar power generation facility shall be subject to the following definitions and provisions:

(a) "Arable land" means land in a tract that is predominantly cultivated or, if not currently cultivated, predominantly comprised of arable soils.

(b) "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high-value farmland soils described at ORS 195.300(10) unless otherwise stated.

(c) "Nonarable land" means land in a tract that is predominantly not cultivated and predominantly comprised of nonarable soils.

(d) "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability class V–VIII and no history of irrigation shall be considered nonarable in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.

(e) "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation

facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the operating business structure. A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300 and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.

(2) For high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not use, occupy, or cover more than 12 acres unless:

(a) The provisions of paragraph (3)(h) are satisfied;

(3) The following criteria must be satisfied in order to approve a photovoltaic solar power generation facility on high-value farmland described at ORS 195.300(10):

(a) The proposed photovoltaic solar power generation facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;

(b) The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied. The approved plan shall be attached to the decision as a condition of approval;

(c) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;

(d) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weed species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The

approved plan shall be attached to the decision as a condition of approval;

(e) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

(f) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:

(i) Non high-value farmland soils are not available on the subject tract;

(ii) Siting the project on non high-value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of non high-value farmland soils; and

(g) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.

(ii) When at least 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches 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.

(h) A photovoltaic solar power generation facility may be sited on more than 12 acres of high-value farmland described in ORS 195.300(10)(f)(C) without taking an exception pursuant to ORS 197.732 and OAR chapter 660, division 4, provided the land:

(i) Is not located within the boundaries of an irrigation district;

(ii) Is not at the time of the facility's establishment, and was not at any time during the 20 years immediately preceding the

facility's establishment, the place of use of a water right permit, certificate, decree, transfer order or ground water registration authorizing the use of water for the purpose of irrigation;

(iii) Is located within the service area of an electric utility described in ORS 469A.052(2);

(iv) Does not exceed the acreage the electric utility reasonably anticipates to be necessary to achieve the applicable renewable portfolio standard described in ORS 469A.052(3); and

(v) Does not qualify as high-value farmland under any other provision of law; or

(4) For arable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 20 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on arable land:

(a) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

(b) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:

(i) Nonarable soils are not available on the subject tract;

(ii) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(iii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;

(c) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(d) A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:

(i) If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary.

(ii) When at least 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or as multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the land use pattern will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will

make it more difficult for the existing farms and ranches 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; and

(e) The requirements of OAR 660-033-0130(38)(h)(A), (B), (C) and (D) are satisfied.

(5) For nonarable lands, a photovoltaic solar power generation facility shall not use, occupy, or cover more than 320 acres. The governing body or its designate must find that the following criteria are satisfied in order to approve a photovoltaic solar power generation facility on nonarable land:

(a) Except for electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, the project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(a);

(b) The project is not located on those high-value farmland soils listed in OAR 660-033-0020(8)(b)-(e) or arable soils unless it can be demonstrated that:

(i) Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or

(ii) The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract as compared to other possible sites also located on the subject tract, including sites that are comprised of nonarable soils;

(c) No more than 12 acres of the project will be sited on high-value farmland soils described at ORS 195.300(10);

(d) No more than 20 acres of the project will be sited on arable soils;

(e) The requirements of OAR 660-033-0130(38)(h)(D) are satisfied;

(f) If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the Comprehensive Plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the Comprehensive Plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and

(g) If a proposed photovoltaic solar power generation facility is located on lands where, after site specific consultation with an Oregon Department of Fish and Wildlife biologist, it is determined that the potential exists for adverse effects to state or federal special status species (threatened,

endangered, candidate, or sensitive) or habitat or to big game winter range or migration corridors, golden eagle or prairie falcon nest sites or pigeon springs, the applicant shall conduct a site-specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site-specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife habitats are anticipated. Based on the results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife habitats as described above. If the applicant's site-specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project-specific mitigation to offset the potential adverse effects of the facility. Where the applicant and the resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

(6) An exception to the acreage and soil thresholds in subsections (2), (3), (4), and (5) of this section may be taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(7) The county governing body or its designate shall require as a condition of approval for a photovoltaic solar power generation facility, that the project owner sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

(8) Nothing in this section shall prevent the County from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.

(9) If ORS 469.300(11)(a)(D) is amended, the commission may re-evaluate the acreage thresholds identified in subsections (2), (3) and (4) of this section.

(~~BB~~EE) *Wind energy systems utilizing a tower and meteorological towers within an adopted urban growth boundary up to 100 feet in height that are not commercial power generating facilities*, as provided in Sections 112.135 and 112.137. **[Amended by Ordinance 09-06]**

PARKS/PUBLIC/QUASI-PUBLIC FACILITIES

(~~CC~~FF) *Parks, Public or Nonprofit, including Playgrounds [OAR 660-033-0130(31)]*, with public parks to include only the uses specified under OAR 660-034-0035, or OAR 660-034-0040 which ever is applicable, subject to compliance with Sections 136.060 and 136.065. A public park may be established consistent with the provisions of ORS 195.120.

(~~DD~~GG) *Private Parks, Playgrounds, Hunting and Fishing Preserves and Campgrounds [ORS 215.283(2)(c) and OAR 660-033-0130(19)]*, subject to compliance with Section 136.060. New facilities are not allowed on lands classified as high-value. New facilities on not high-value farmland within three miles of an urban growth boundary shall be subject to the standards listed in Sections 136.065(A) and (B). Existing facilities on all farmlands may be maintained, enhanced, or expanded subject to Section 136.065. ~~Except on a lot or parcel contiguous to a lake or~~

~~reservoir, private campgrounds shall not be allowed within three (3) miles of an urban growth boundary unless an exception to Statewide Planning Goal 3, pursuant to ORS 197.732 and OAR Chapter 660, Division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site that is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. A camping site may be occupied by a tent, travel trailer or recreation vehicle. Separate sewer, water, or electric hook-ups shall not be provided to individual camp sites. Campgrounds authorized under this provision shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six (6) month period. A private campground may provide yurts for overnight camping, however, no more than one-third or a maximum of ten (10) campsites, whichever is smaller, may include a yurt.~~ **~~[Amended by Ordinance 11-03]~~**

(1) A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

(2) Vacation or recreational purposes. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds devoted to vacation or recreational purposes shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Campgrounds approved under this provision must be found to be established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground and designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(d) of this rule.

(3) Emergency purposes. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive

Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because adequate amounts of permanent housing is not reasonably available. A county must process applications filed pursuant to this section in the manner identified at ORS 215.416(11).

(a) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.

(b) Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.

(c) A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (19)(c) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this paragraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.

(4) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in Section 136.060. As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(5) For applications submitted under subsection (3) of this section, this criteria of Section 136.060 can be found to be satisfied when:

(a) The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.

(b) The subject property is not irrigated.

(c) The subject property is not high-value farmland.

(d) The number of proposed campsites does not exceed 12; or

(e) The number of proposed campsites does not exceed 36: and

(f) Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goal 3, Goal 4, or both.

As used in this paragraph:

(1) "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(~~EE~~HH)*Expansion of Existing County Fairgrounds [ORS 215.283(2)(w)]*, and activities directly related to county fairgrounds governed by county fair boards established pursuant to ORS 565.210, subject to compliance with Section 136.060.

(~~FF~~II)*Golf Courses and accessory uses [ORS 215.283(2)(f) and OAR 660-033-0130(20)]*~~:~~, subject to compliance with Section 136.060. A new golf course and accessory uses may be approved on a tract of land determined not to be high-value farmland, as defined in ORS 195.300(10). ~~consistent with Section 136.060.~~ An existing golf course on all farmlands may be maintained, enhanced, or expanded, up to 36 holes on the same tract, consistent with Section 136.060 and OAR 660-033-0130(18). In addition, new golf courses or the expansion of existing golf courses within three miles of an urban growth boundary shall be subject to the standards listed in Section 136.065.

As used in this paragraph:

(1) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or 18 regulation golf course holes, or a combination 9 and 18 holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards, consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land-, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes.

(b) A regulation ~~nine~~ 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes.

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including, but not limited to, executive golf course, Par three golf courses, pitch and putt golf courses, miniature golf courses, and driving ranges.

(ed) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course and conforms to the following:

(i) An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course include parking, maintenance buildings, cart storage and repair, practice range or driving range, clubhouse, restrooms, lockers and showers, food and beverage service, pro-shop, a practice or beginners course as part of an 18 hole or larger golf course, or golf tournament.

(ii) Accessory uses to a golf course do not include sporting facilities unrelated to golf such as tennis courts, swimming pools, or weight rooms, wholesale or retail operations oriented to the non-golfing public, or housing.

(iii) A use is accessory to a golf course only when limited in size and orientation to serve the needs of persons and their guests who patronize the golf course to golf.

(iv) Commercial ~~activities~~ services such as a pro shop are accessory to a golf course when located in the clubhouse.

(v) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designated for or include structures for banquets, public gatherings or public entertainment.

(~~GG~~II)*Community Centers [ORS 215.283(2)(e) and OAR 660-033-0130(36)]*, owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community, subject to compliance with Sections 136.060 and 136.065. A community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services. **[Amended by Ordinance 11-03]**

(~~HH~~JJ)*Living History Museum [ORS 215.283(2)(x) and OAR 660-033-0130(21)]*, related to resource based activities owned and operated by a governmental agency or a local historical society, subject to compliance with Sections 136.060 and 136.065. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. **[Amended by Ordinance 11-03]**

As used in this paragraph:

(1) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events.

(2) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS Chapter 65.

(~~H~~KK)*Schools [ORS 215.283(2)(aa) and OAR 660-033-0130(18)(b)]*. New schools and the expansion of existing schools are subject to Section 136.060 and the following standards:

(1) New public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, shall be ~~for kindergarten through grade 12 and~~ primarily for residents of the rural area in which the school is located. New schools under this section are not authorized on high-value farm land. ~~New schools that are located within three miles of an urban~~

~~growth boundary shall comply with the standards listed in Section 136.065(A) and (B).~~

(2) Notwithstanding ORS 215.130, 215.213, or 215.283 or any local zoning ordinance or regulation, an ~~E~~existing public or private school, including buildings essential to the operation of the ~~schools that were~~ lawfully established school ~~prior to January 1, 2009, do not comply with the standards listed in subsection (1) of this section, and that were~~ formerly allowed pursuant to ORS 215.213(1)(a) or ORS 215.283(1)(a) as in effect before January 1, 2010, ~~are~~ is a non-conforming uses and subject to the standards of Chapter 114. and may be expanded provided: ~~Such schools may be expanded under the standards listed in Chapter 114 and OAR 660-033-0130(18)(b) and (c). Enclosed existing structures within three miles of an urban growth boundary may not be expanded beyond the requirements listed in Section 136.065(A) and (B).~~

(a) The expansion complies with Section 136.060;

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

(c) The expansions occurs on a tax lot:

(i) On which the school was established; or

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

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

(e) A county may not deny upon an expansion under this section upon any rule or condition establishing:

(i) A maximum capacity of people in the structure or group of structures;

(ii) A minimum distance between structures; or

(iii) A maximum density of structures per acre.

(3) Existing schools facilities wholly within a farm use zone, not including those listed in subsection (2) of this section, may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law. ~~Enclosed existing structures within three miles of an urban growth boundary may not be expanded beyond the requirements listed in Section 136.065(A) and (B).~~

[Amended by Ordinances 10-10 and 11-03]

(LL) *Childcare Facilities [ORS 215.283(2)(dd)].* Child care facilities, preschool recorded programs or school-age recorded programs may be authorized, subject to compliance with Section 136.060 and the following standards:

(1) The facility must be authorized under ORS 329A.250 to 329A.450;

(2) The facility must be primarily for the children of residents and workers of the rural area in which the facility or program is located; and

(3) The facility must be collocated with a community center or a public or private school allowed under this subsection.

136.060. GENERAL REVIEW STANDARDS [OAR 660-033-0130(5)]. To ensure compatibility with farming and forestry activities, the Planning Director or hearings body shall determine that the proposed use meets the following requirements:

(B) The proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

136.070. LAND PARTITION STANDARDS [ORS 215.263(1)]. No land(s) located within the Exclusive Farm Use Zoning District shall be partitioned without the expressed approval of Polk County under the provisions of Chapter 136 and the Polk County Subdivision and Partition Ordinance. A plat shall be prepared by a registered surveyor to document the land partition. Upon final approval of the plat, the survey shall be recorded by the Polk County Clerk. Parcels resulting from a foreclosure action are exempted from the partitioning process under ORS 92.010(7)(a). A deed or instrument conveying land in lieu of foreclosure shall not constitute a foreclosure action.

In the Exclusive Farm Use Zoning District, the following standards shall apply:

(B) *Nonfarm, Nonresidential Parcels* [ORS 215.263(3) and OAR 660-033-0100(~~106~~)]. A parcel which is less than 80 acres may be created for nonfarm, nonresidential uses authorized by this Ordinance, subject to compliance with the procedural and technical requirements of ORS Chapter 92, the Polk County Subdivision and Partitioning Ordinance and the following criteria:

(1) A preliminary site plan shall be submitted that depicts the proposed lot boundaries and the location of all existing and proposed buildings, structures and related facilities, to include the on-site septic system and repair areas, water facilities, utility easements, vehicular access, circulation, parking and loading areas;

(2) The proposed parcel shall be sized to meet, but shall not exceed, the requirements of the nonfarm use and development as depicted on the preliminary site plan;

(3) Each parcel shall be provided legal access to a public road by frontage or easement;

(4) Prior to filing the partition plat, each parcel shall be evaluated for on-site septic use, or a waiver submitted from a party that has agreed to purchase the parcel, subject to approval of the land partition (Note: The owner may also waive the evaluation, subject to the filing of a restriction on the deed which precludes the placement of a dwelling on the parcel);

(5) A partition plat shall be filed within two years from the effective date of preliminary approval for each parcel (Note: One year extensions may be requested prior to expiration of the approval).

(C) *Parcel for a Nonfarm Single-Family Residence - Not High-Value* [OAR 660-033-0100(~~11~~7(b) and (c)]. A parcel for nonfarm residential use may be created, subject to compliance with the requirements of the Polk County Subdivision and Partitioning Ordinance and the following criteria:

(1) The proposed nonfarm parcel is intended for the siting of a nonfarm dwelling authorized by this Ordinance;

(2) The originating parcel is equal to or larger than the applicable minimum parcel size and the proposed parcel is not less than 20 acres in size;

(3) The parent parcel is not stocked to the requirements of ORS 527.610 to 527.770;

(4) The parent parcel is composed of at least 95 percent NRCS Class VI through VIII soils;

(5) The parcel is composed of at least 95 percent soils not capable of producing 50 cubic feet per acre per year of wood fiber; and

(6) The proposed nonfarm parcel is disqualified from special farm use tax assessment, as required under ORS 215.236.

(7) A partition plat shall be filed within two years from the effective date of preliminary approval for each parcel (Note: One year extensions may be requested prior to expiration of the approval).

(8) A subdivision or series partition, to create non-farm, residential parcels is prohibited. "Series partition" is defined as a series of partitions of land which results in the creation of four or more parcels over a period of more than one calendar year.

(D) *Nonfarm Parcel for Public Parks or Open Space [ORS 215.263(10) and 215.265]*. A parcel for public parks or open space may be created when the land partition is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels subject to the following criteria:

(1) A parcel created by the land ~~partition~~ division that contains a dwelling is large enough to support continued residential use of the parcel.

(2) A parcel created pursuant to this subsection that does not contain a dwelling:

(a) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(b) May not be considered in approving or denying an application for siting any other dwelling;

(c) May not be considered in approving a redesignation or rezoning of forestlands or farmlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

(3) A parcel created pursuant to this subsection may not be smaller than 25 acres unless the purpose of the land partition is:

(a) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

(b) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

(4) A partition plat shall be filed within two years from the effective date of preliminary approval for each parcel (Note: One year extensions may be requested prior to expiration of the approval).

(5) The owner of the parcel not containing a dwelling shall record with the County Clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

(G) *Nonfarm Parcel for a Church [ORS 215.263(11)]*. A parcel may be created to establish a church including cemeteries in conjunction with the church if they meet the following requirements:

(1) The church ~~has been approved~~ is permitted under Section ~~136.040(W)~~ 136.030(K);

(2) The newly created parcel is not larger than five acres; and

(3) The remaining parcel, not including the church, meets the minimum parcel size described in Section 136.070(A) either by itself or after it is consolidated with another parcel or lot.

(4) A partition plat shall be filed within two years from the effective date of preliminary approval for each parcel. (Note: One year extensions may be requested prior to expiration of the approval.)

(H) *Partition along an Urban Growth Boundary [ORS 215.263(2), ~~and~~ ORS 215.265, and OAR 660-033-0100(10)]*. ~~A parcel that is located partially within the Exclusive Farm Use zone and partially within an urban growth boundary and is designated for urban uses, may be partitioned may be partitioned subject to the following criteria~~ A division of a lawfully established unit of land may occur along an urban growth boundary where the parcel remaining outside the urban growth boundary is zoned for agricultural uses and is smaller than the minimum parcel size, provided that:

~~(1) The partition occurs along the urban growth boundary; and~~

(~~2~~1) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use;

(~~3~~2) If the parcel does not contain a dwelling, the parcel:

(a) Is not eligible for a dwelling, except as authorized by ORS 195.120;

(b) May not be considered in approving or denying an application for siting any other dwelling; and

(c) May not be considered in approving or redesignation or rezoning of ~~farmlands~~ agricultural lands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.

(43) The owner of the parcel not containing a dwelling shall record with the County Clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937. **[Amended by Ordinance 19-01]**

(4) A partition plat shall be filed within two years from the effective date of preliminary approval for each parcel (Note: One year extensions may be requested prior to expiration of the approval).

 ATTACHMENT B-1

POLK COUNTY

Knudson, Eric <knudson.eric@co.polk.or.us>

Comments on 7.18.2023 PC Hearing Agenda Item 3 | LEGISLATIVE AMENDMENT LA 23-02: UPDATES TO PCZO CHAPTER 136

blair@friends.org <blair@friends.org> Tue, Jul 18, 2023 at 2:46 PM
To: knudson.eric@co.polk.or.us
Cc: Andrew Mulkey <andrew@friends.org>

Dear Eric,

On behalf of 1000 Friends of Oregon, please accept these comments into the record of Legislative Amendment 23-02.

We only received notice of the optional proposed changes yesterday. The notice posted on DLCD's website had suggested only that the changes the staff report lists as mandatory were being considered. We therefore regret we do not have time to provide the detailed comments and suggestions we'd like. Following is an outline of our concerns at this time:

- 1000 Friends appreciates that in the past Polk County has opted for keeping its EFU zone stronger than required by state law. We know the county has strong support within the agricultural community for effective protection of Polk County's limited supply of agricultural land. We hope the county will continue to go above and beyond the limited requirements of state law and urge the county to reject any proposed weakening of Polk County's EFU zone.
- We support the staff recommendations to **NOT** adopt the optional changes for temporary hardship dwellings, aerial fireworks, and agri-tourism.
- We would also recommend the county **NOT** to adopt any of the other optional changes that would increase the cumulative impacts of nonfarm uses in the EFU zone.
- We also encourage the county to **further strengthen** the provisions for home occupations and commercial activities in conjunction with farm use to avoid the kind of nonfarm related businesses and large events that have been approved under these provisions in Marion, Yamhill and other Oregon counties. These approvals have led to negative impacts on area agriculture and expensive and time-consuming litigation.

If there were more time to work with staff, we would be happy to share alternative language that could incorporate some of the existing case law that interprets these provisions and provides better guidance on how to implement them at the local level.

Please let us know if you have any question, or need additional information. Thank you for the opportunity to comment.

Blair Batson

Staff Attorney

503.783.8093

ATTACHMENT B-2

POLK COUNTY

Knudson, Eric <knudson.eric@co.polk.or.us>

LA 23-02 Attn:Planning Comm.

K Phillips <westcvo4rent@gmail.com> Tue, Jul 18, 2023 at 4:18 PM
To: "Knudson, Eric" <knudson.eric@co.polk.or.us>

TO: Planning Commission &
Eric Knudson:
FROM:
Interested party representative, K.J.Phillips
*** Please enter this email & comments into the official Records of the Public Hearing on this date, for LA 23-02
*** The County Planning dept scheduled a deadline for Citizens to get their written comments placed in agenda packet and in front of the Planning Commissioniers, 11 DAYS BEFORE the Hearing, and, even BEFORE the Staff Report was published & available to Citizens, for their use to give 'sufficient specificity', information, and guidance for their comments. The 11 days is excessive, inhibits Citizens Involvement and not consistent with the spirit of State Goals to promote Citizen Involvement.
['Written comments received by 5:00 PM on July 7, 2023 will be included in the staff report to the Planning Commission. Comments received after this time, but prior to the hearing, will be provided to the Planning Commission at the hearing.']

The significant FAILURE is Not having a 'Hearing LA 23-02 Sign-ups Sheet for Interested Citizens' in Hearing room, for the Record, and, to 'make-up appeal rules' that a "decision maker has to have an opportunity to respond", OR, a Citizen can't file a LUBA appeal on 'that issue'...(from today's Hearing?) It's not good to mix Planning Hearing rules & a Recommendation, with later BOC decisions, as it's confusing, and, does not help Citizens Involvement Goals.
Good luck...K.J.Phillips
[Failure of an issue to be raised in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue. A decision may be appealed to LUBA within 21 days after the mailing of the decision. Contact LUBA or the Polk County Planning Division for LUBA appeal procedures.]

768 SW Church St. #897
Dallas, OR 97338
August 22, 2023

Polk County Board of Commissioners
c/o Polk County Community Development
850 Main St.
Dallas, OR 97338

Dear Commissioners:

As you consider amendments to the Polk County Zoning Ordinance, Chapter 136, Exclusive Farm Use (EFU) Zoning District, under proposed Legislative Amendment 23-02, please allow me to suggest a revision for your attention.

This revision is addressed to definition of non-qualifying golf course, as presented in the proposed amendments:

(~~FF~~II) *Golf Courses and accessory uses [ORS 215.283(2)(f) and OAR 660-033-0130(20)]*, subject to compliance with Sections 136.060 and 136.065. A new golf course and accessory uses may be approved on a tract of land determined not to be high-value farmland, as defined in ORS 195.300(10), or on land determined to be high-value farmland described in ORS 195.300(10)(c) if the land is not otherwise described in ORS 195.300(10), is surrounded on all sides by an approved golf course, and is west of U.S. Highway 101. ~~consistent with Section 136.060.~~ An existing golf course on all farmlands may be maintained, enhanced, or expanded, up to 36 holes on the same tract, consistent with Section 136.060 and OAR 660-033-0130(18). In addition, new golf courses or the expansion of existing golf courses within three miles of an urban growth boundary shall be subject to the standards listed in Section 136.065.

As used in this paragraph:

(1) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or 18 regulation golf course holes, or a combination 9 and 18 holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards, consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land-, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes.

(b) A regulation ~~nine~~ 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes.

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including, but not limited to, executive golf course, Par three golf courses, pitch and putt golf courses, miniature golf courses, and driving ranges.

Please consider adding to the illustrative list of non-regulation golf courses in proposed subsection (c) another item to the effect of:

"...frisbee, disc, or similar courses..."

I believe this would further the intent of the proposed section to provide clarity on what uses would be non-regulation. It also arises from an actual situation that has occurred recently near my home on Sunnyside Road. It came to the attention of myself and neighbors that a potential real estate buyer was interested in establishing a disc "golf" course on EFU-zoned land in the area. Our understanding was that this activity would include competition-style events that would draw large crowds, with attendant impacts, into a decidedly rural area with only a single-lane, unpaved road and no other facilities or amenities.

I and my neighbors were concerned about possible effects of such a development, and the county planning staff kindly advised of the LA 23-02 proceeding as possibly relevant.

It would seem that even without this suggested language, the proposed new language in subsection (c) could be read such that a frisbee, or disc, course would not meet the definition of regulation golf course. However, explicitly citing a frisbee, or disc, course would remove any ambiguity, create a more comprehensive description, and thus provide clearer communication to all.

I respectfully request that you incorporate language to this effect into your proposed draft.

Thank you for your consideration.

Sincerely yours,

Christopher H. Schmitt

August 22, 2023

Polk County Board of Commissioners
c/o Polk County Community Development
850 Main St.
Dallas, OR 97338

Dear Commissioners:

As you consider amendments to the Polk County Zoning Ordinance, Chapter 136, Exclusive Farm Use (EFU) Zoning District, under proposed Legislative Amendment 23-02, we write to suggest a clarification to the section on "Golf Courses and accessory uses." Specifically, we would like to see definitive language added to Section (1), Subsection (c) that would call out disc, frisbee or similar courses as types of non-regulation golf courses.

We believe that this clarification will leave no doubt that these types of courses are not appropriate for farmland. We were recently made aware by a neighbor that such a situation is being considered by a prospective buyer for a tract of land currently for sale on Sunnyside Road where we reside. The buyer has expressed interest in establishing a disc "golf" course with activities that would include competition events that could draw large crowds, which we believe would negatively impact our rural area, not to mention the adverse effects it would have on a single-lane, unpaved road.

While it is possible that even without this clarification, the proposed amendment changes of Subsection (c) would mean that frisbee or disc courses do not meet the definition of a regulation golf course. However, we believe adding definitive language regarding such courses will be more clear-cut and transparent.

We thank you for your consideration regarding incorporating this clarification into your proposed draft.

Sincerely,

Tomika Anne Dew
Paul W. Thimm
Oak Trace Farm
13245 Sunnyside Rd
Dallas, OR 97338

ATTACHMENT C-3

POLK COUNTY

Kr... <knudson.eric@co.polk.or.us>

Public comment

Fri, Aug 25,

Tory Boline <tory_boline@hotmail.com>
To: "knudson.eric@co.polk.or.us" <knudson.eric@co.polk.or.us>

Hey,
I would like to agree to the comment written by Christopher Schmitt on this matter.
I would like to suggest to add "frisbee golf or disc golf or similar" to the list of non-regulatory golf courses therefore not allowed.
Thanks,
Tory

NOTICE OF PUBLIC HEARING

PROPOSED AMENDMENTS TO THE POLK COUNTY ZONING ORDINANCE: The Polk County Board of Commissioners will hold a public hearing concerning potential text amendments to Polk County Zoning Ordinance (PCZO) Chapter 136, which pertains to the Exclusive Farm Use (EFU) Zoning District. The proposed text amendments are intended to bring PCZO Chapter 136 into compliance with State law, and to consider adopting optional changes for uses that could be permitted within the EFU zone.

FILE NUMBER:	LA 23-02
DATE AND TIME OF PUBLIC HEARING:	September 6, 2023 at 9:00 AM
LOCATION OF MEETING:	First Floor Hearing/Conference Room, Polk County Courthouse, 850 Main Street, Dallas, Oregon 97338
APPLICABLE REVIEW AND DECISION CRITERIA:	Polk County Zoning Ordinance Sections 111.215 (C), 115.040 and 115.060.
STAFF CONTACT:	Eric Knudson: (503) 623-9237; knudson.eric@co.polk.or.us

The location of the hearing is handicapped accessible. Please advise the Community Development Department at (503) 623-9237 if you will need any special accommodations to attend or participate in this meeting. The applicable criteria and files are available for inspection at no cost and copies may be obtained at a reasonable cost. A copy of the staff report will be available for inspection at least seven days prior to the hearing.

The Board of Commissioners will hold a public hearing to consider the Planning Commission's recommendation, receive testimony, and make a final local decision on this matter. Any person desiring to speak for or against these proposals may do so either in person or by representative at the public hearing. Written comments may be directed to the Planning Division of the Polk County Community Development Department, 850 Main Street, Polk County Courthouse, Dallas, Oregon 97338-1922. Written testimony may be submitted prior to the hearing at the Polk County Planning Division. Please include a reference to file number LA 23-02 in all correspondence. Oral and or written testimony may be rendered at the public hearing.

Written comments received by 5:00 PM on August 25, 2023 will be included in the staff report to the Board of Commissioners. Comments received after this time, but prior to the hearing, will be provided to the Board of Commissioners at the hearing.

Failure of an issue to be raised in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue. A decision may be appealed to LUBA within 21 days after the mailing of the decision. Contact LUBA or the Polk County Planning Division for LUBA appeal procedures.

Tory Boline
503-991-6783