

# **MEETING NOTICE**

**POLK COUNTY PLANNING COMMISSION  
NOVEMBER 29, 2011 AT 7:00 P.M.  
POLK COUNTY COURTHOUSE  
FIRST FLOOR CONFERENCE ROOM  
850 MAIN STREET  
DALLAS, OREGON**

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## **AGENDA**

1. CALL TO ORDER AND NOTE OF ATTENDANCE
2. COMMUNICATIONS FROM THE PUBLIC ON ITEMS NOT ON THE AGENDA
3. MINUTES OF OCTOBER 18, 2011
4. PUBLIC HEARING: LEGISLATIVE AMENDMENT 11-03
5. COMMUNICATIONS FROM THE COMMITTEE FOR CITIZEN INVOLVEMENT
6. COMMUNICATIONS FROM PLANNING COMMISSION
7. COMMUNICATIONS FROM PLANNING STAFF
8. ADJOURNMENT

**Polk County Planning Commission  
Polk County Courthouse  
First Floor Conference Room  
850 Main Street  
Dallas, Oregon  
October 18, 2011**

The following are the minutes of the Polk County Planning Commission meeting held October 18, 2011 in Dallas, Oregon:

**1. CALL TO ORDER AND NOTE OF ATTENDANCE:**

Morrison called the meeting to order at 7:00 p.m. and noted attendance.

**Present:** Jim Morrison, Wayne Simmons, Bill Farmer, Michael Schilling, and Lee Herzberg.

**Absent:** Bob Slyh

**Staff:** Austin M<sup>c</sup>Guigan, Jerry Sorte and Katie Lambert.

**2. COMMUNICATION FROM THE PUBLIC ON ITEMS NOT ON THE AGENDA:**

None.

**3. MINUTES OF April 19, 2011:**

Morrison moved to approve the minutes of April 19, 2011, seconded by Farmer. The minutes were approved by a unanimous vote.

**4. PUBLIC HEARING: LEGISLATIVE AMENDMENT 11-02:**

Sorte stated that the purpose of the public hearing is for the Planning Commission to receive testimony and consider changes to Polk County Zoning Ordinance (PCZO) 112.00, 128.500, 128.700, and 128.800, which will be considered by the Board of Commissioners at the upcoming public hearing on November 30, 2011.

Sorte gave a summary on the proposed changes, and provided a handout of additional changes proposed by staff. Sorte stated that staff have not received any comments on Legislative Amendment 11-02, and therefore recommends that the Planning Commission pass a motion recommending approval to the Board of Commissioners to approve Legislative Amendment 11-02.

Michael Schilling questioned the language in the section regarding accessory structures that states "a private garage" is permitted. Schilling stated he sees the language as an unnecessary restriction and recommended striking it from the language of the proposal. Schilling also suggested changing the language regarding permitted use of garages. The Planning Commission discussed the definition of automobile in contrast to the definition of motor vehicle. M<sup>c</sup>Guigan states that the Ordinances do not contain a definition of automobile or motor vehicle, so the term automobile is not meant to be restrictive. The Planning Commission and Planning Staff had no objections to the suggested changes, so a consensus was reached to have the language changed to "Garages and parking areas for the storage and protection of the motor vehicles of the residents of the dwelling" which would be applied to PCZO sections 128.720(G)(4), 128.720(G)(4), and 128.820(G)(4).

There was no public testimony. Morrison closed the public hearing at 7:28 pm.

Shilling moved to recommend approval of LA 11-02 and PCZO amendments presented as Attachments A and B as modified by the handout presented to the Planning Commission at start of meeting, and including the changes discussed in the public hearing. Farmer seconded the movement. The recommendation was approved by a unanimous vote.

**5. COMMUNICATIONS FROM THE COMMITTEE FOR CITIZEN INVOLVEMENT:**

None.

**6. COMMUNICATIONS FROM THE PLANNING COMMISSION:**

None.

**7. COMMUNICATIONS FROM PLANNING STAFF:**

McGuigan stated that our next project is amending winery definitions and ending administrative review for processes that could be determined by ministerial review. McGuigan and Sorte stated the next meeting may happen in early December.

**8. ADJOURNMENT:**

The meeting was adjourned at 7:34 pm.

## **MEMORANDUM**

**TO:** Polk County Planning Commission  
Committee for Citizen Involvement  
Interested Parties

**FROM:** Jerry Sorte, Planning Manager

**DATE:** November 22, 2011

**SUBJECT:** Legislative Amendment 11-03; Winery Standards Update.

### **ISSUE:**

The purpose of this public hearing is for the Planning Commission to receive public testimony and consider changes to the Polk County Zoning Ordinance (PCZO) that would implement HB 3280 (2011). HB 3280 (2011) adopted new standards for wineries in ORS 215. The proposed amendments would bring the PCZO into consistency with ORS.

The Planning Commission will conduct a public hearing on November 29, 2011 at 7:00 P.M. After holding a public hearing, the Planning Commission will make a recommendation to the Polk County Board of Commissioners on what amendments should be made to the PCZO. The Board of Commissioners will hold a public hearing on December 14, 2011 and make a final local decision.

### **RECOMMENDATION:**

Staff recommends that the Planning Commission conduct a public hearing and make a recommendation to the Board of Commissioners to adopt the amendments to PCZO included as Attachments A through E.

### **STAFF REPORT:**

#### **I. BACKGROUND**

HB 3280 (2011), included as Attachment F, created three different types of allowable wineries. The first class of winery may produce any amount of wine and may operate a limited service restaurant, which serves food that is prepared offsite. HB 3280 lists specific types of private events that may occur at those wineries. The second class of winery must be located on a tract that contains at least 80 acres. This second class of winery may operate a full service restaurant for 25 days or fewer during a calendar year and provide for private events on 25 days or fewer during a calendar year. The third class of winery created by HB 3280 is the same as the second class; however, it allows the winery to operate a full service restaurant and offer private events on more than 25 days a calendar year. The third class of winery requires review through a conditional use application process.

ORS 197.646 states that when new land use regulations are adopted in state statute and administrative rule, 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 the updated sections of ORS directly to land use applications.

There are four zones that currently permit wineries that are affected by HB 3280. Those are the Exclusive Farm Use (EFU), Farm Forest (FF), Farm Forest Overlay (FFO), and Agriculture and Forestry Ten Acre (AF-10) Zoning Districts. The regulations in the FF and FFO zones are both listed in PCZO Chapter 138 and are identical; however, the FF zone has a minimum parcel size for the creation of new parcels of 40 acres, and the FFO zone has a minimum parcel size for the creation of new parcels of 80 acres. The proposed amendments developed by staff are included as Attachments A through E, and are intended to implement HB 3280. PCZO Chapter 117 would be a new zoning chapter. Proposed additions to existing text in the PCZO are double underlined, and proposed deletions are depicted in strikethrough. Those amendments are summarized as follows:

- Creation of PCZO Chapter 117; Wineries

The standards for wineries have changed in ORS multiple times in the past several years. As a result staff recommends the creation of PCZO Chapter 117, in order to centralize winery standards in one location. This method would assist with future updates, because staff would be able to subsequently amend one chapter of the PCZO, rather than each of the zones that permit wineries. The new winery standards are also long. If the winery standards are added to each chapter that permits wineries, the EFU, FF, FFO, and AF-10 zones, the new standards would add three to four pages of length to each zoning chapter. The EFU zone is already 33 pages long and the FF/FFO zone is 45 pages long. A new chapter would help to curb the expansion of those zones.

- Removal of the Current Definition of “Winery” in PCZO Chapter 110

The PCZO currently implements some of the standards for wineries by building those standards into the definition of winery in PCZO Chapter 110. This amendment would remove the current definition of winery, and instead consolidate the winery standards in the new, PCZO Chapter 117.

- Amendments to the EFU, FF (and FFO), and AF-10 Zones to reference the new, PCZO Chapter 117.

These amendments would remove the current standards for wineries listed in those zones and make reference to PCZO Chapter 117. The AF-10 zone applies to properties that have been granted an exception to Statewide Planning Goals 3 and 4. The AF-10 zone therefore need not be subject to the standards implemented by HB 3280. The PCZO currently has a definition for “winery” which incorporates the requirements of PCZO 215.452. As a result, a winery in the AF-10 zone must currently comply with the definition of a winery and ORS 215.452 and additional requirements listed in PCZO 128.840(T)(1); which require that the winery “will not result in substantial conflicts with farm or forest practices on adjacent lands.” In this legislative amendment staff is recommending removing the definition of winery from PCZO Chapter 110. In these amendments, the County could either link the standards for wineries in the AF-10 zone to PCZO Chapter 117 or create separate standards for wineries in the AF-10 zone. The standards in proposed Chapter 117 require wineries to have 15 acres of on-site vineyard, or a contract to purchase grapes from 15 acres of vineyard on contiguous property. The AF-10 zone allows the creation of parcels that are 10 acres in size, so it may very well not be appropriate to require wineries to comply with the standards in PCZO Chapter 117. Currently, only 41 acres in Polk County is zoned AF-10. As proposed in Attachment C, wineries in the AF-10 would be required to comply with the new restrictions in proposed PCZO Chapter 117 in addition to the requirement that the winery “will not result in substantial conflicts with farm or forest practices on adjacent lands.”

#### Notice of these Proceedings

On October 26, 2011, the Board of Commissioners initiated the legislative amendment process for this project through Resolution 11-18. Forty-five day notice was sent to DLCD on September 23, 2011. On November 2, 2011, Planning Division staff provided notification of the Planning Commission public hearing and the Board of Commissioners hearing to the Dallas *Itemizer-Observer* Newspaper for publication on November 9, 2011. On November 2, 2011, Planning Staff provided notice of the Planning Commission and Board of Commissioner’s public hearings to interested parties. Notification of this legislative proceeding has been fulfilled pursuant to PCZO

Section 111.370. Pursuant to PCZO 115.040, the Planning Commission will conduct a public hearing and make a recommendation to the Board of Commissioners.

## II. COMMENTS RECEIVED

Staff received a comment via the telephone from Katherine Daniels with the Department of Land Conservation and Development (DLCD) on October 28, 2011. Ms. Daniels was supportive of the application. She requested that the County incorporated the sunset clauses from HB 3280 (2011), Section 3a into our update. She also pointed out an incorrect reference in PCZO Chapter 117, which has since been corrected.

The sunset clause in Section 3a removes the ability of new wineries that produce less than 150,000 gallons per year to offer services and the sale of incidental items in conjunction with the winery starting January 1, 2014. Proposed PCZO Chapter 117 does not include this sunset. It is staff's recommendation to not include the sunset language in PCZO Chapter 117, because adding language to have standards phase in and out of applicability may confuse citizens seeking to understand their property rights. Staff assumes that the winery standards will change before January 1, 2014, so staff would likely need to amend PCZO Chapter 117 before that time. The creation of a separate chapter for wineries makes it relatively easy to change the PCZO to reflect a sunset in the future or to add additional future changes to the winery standards enacted by the state.

No other comments were received as of the writing of this staff report.

## III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) may be approved provided that the request is based on substantive information providing a factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. Staff's analysis and findings are provided below:

- (A) 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)]**
- 1. A local government shall amend its acknowledged comprehensive plan, 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) A new statutory requirement; or**
    - (b) A new land use planning goal or rule requirement adopted by the Land Conservation and Development Commission. [ORS 197.646(1)]**
  - 2. When a local government does not adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing either plan as required by subsection (1) of this section [ORS 197.646(1)], the new statutory, land use planning goal or rule requirements apply directly to the local government's land use decisions. The failure to adopt amendments to a comprehensive plan, a regional framework plan and 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(4)]**
  - 3. House Bill 3280 (2011). Included as Attachment F.**

Findings: ORS 197.646 (1) and (4) require that when new land use regulations are adopted in ORS, counties must adopt amendments to their local code to implement the changes to state law. Until the county's local code is updated, the county must apply the ORS changes directly to land use

applications. HB 3280 (2011) was passed by the legislature and signed by the Governor on August 2, 2011. HB 3280 adopted new standards for wineries in ORS 215. The majority of the standards adopted by HB 3280 become effective upon passage currently and apply directly to winery applications that are submitted to the Planning Division. Aspects of HB 3280 phase in and phase out over time, and these are reflected in PCZO Chapter 117 proposed by staff.

The proposed amendments to the PCZO were designed to directly implement state law. The AR-10 zone, is not subject to HB 3280; however, the way that the amendments are written would require that wineries in that zone be reviewed under PCZO Chapter 117; which implements HB 3280. The Planning Commission could choose to recommend different standards for wineries in the AR-10 zone.

The proposed amendments to the PCZO would comply with and implement HB 3280 (2011). 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 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)]**

**1. 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]**

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 state statute.” The PCCP is implemented within the bounds provided by state law.

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. In light of the recent changes to state law enacted by HB 3280 (2011), Polk County’s winery standards are now out of date. The proposed amendments to the PCZO would incorporate the standards for wineries in HB 3280. This would directly implement ORS. Implementing HB 3280 (2011), and be consistent with PCCP Section 2, Element B, Policy 1.4, which states that Polk County will permit those farm and non farm uses in agricultural areas authorized by ORS Chapter 215 and OAR 660-033. The proposed amendments would allow certain types of large wineries that are not currently permitted in the PCZO, consistent with the provisions of state law.

Based on the above findings, the proposed amendments to the Polk County Zoning Ordinance would comply with this criterion.

**(C) That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]**

Findings: The purpose of this legislative amendment is to update the PCZO in order to reflect changes in state law. 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 HB 3280 (2011) directly to land use applications. This situation makes it difficult for applicants and other property owners to understand what winery regulations apply to their property. The proposed 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 Planning Commission to consider how to regulate wineries in the AF-10 zone. The Planning Commission could apply the standards for wineries proposed in PCZO Chapter 117 in the AF-10 zone, or create separate, zone-specific standards.

Staff believes that approval of the attached amendments to the PCZO would be in the public interest and of general public benefit, because it would bring the PCZO into compliance with ORS.

**(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]**

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. Those cities were notified of the Planning Commission and Board of Commissioner's public hearings on November 2, 2011. 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 amendments to the PCZO would affect the standards for wineries in the EFU, FF, FFO, and AR-10 zones. While most properties in the UGB are zoned SR, where these proposed winery standards 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. As a result, the proposed 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.

**PLANNING COMMISSION ACTION:**

After opening the public hearing and receiving testimony, the Planning Commission's options include the following:

- (1) Move to recommend that the Board of Commissioners approve Legislative Amendment 11-03, which consists of:
  - (a) Adopting the PCZO amendments presented in Attachments A through E; or
  - (b) *As further amended by the Planning Commission (state revisions).*
- (2) Continue the public hearing:
  - (a) To a time certain, or
  - (b) Indefinitely, or
- (3) Close the public hearing and take no action on the proposed amendments.

**ATTACHMENTS:**

- A --- Proposed New PCZO Chapter 117; Wineries
- B --- Proposed Amendments to PCZO Chapter 110; General Provisions and Definitions
- C --- Proposed Amendments to PCZO Chapter 128.800; Agriculture and Forestry Ten Acre Zoning District
- D --- Proposed Amendments to PCZO Chapter 136; Exclusive Farm Use Zoning District
- E --- Proposed Amendments to PCZO Chapter 138; Farm Forest Zoning District
- F --- HB 3280 (2011)



**(This chapter would be added to the Polk County Zoning Ordinance)**

**CHAPTER 117**

**WINERIES**

- 117.010. Purpose
- 117.020. Winery - Any production level
- 117.030. Winery - 150,000 gallons or more each year
- 117.040. Winery - 150,000 gallons or more each year with full-service restaurant
- 117.050. Fee Based Events at Wineries

**117.010. PURPOSE.** The purpose of the winery chapter is to provide specific requirements for wineries that are permitted by administrative review or as conditional uses in the EFU, FF, FFO, and AF-10 zones.

**117.020. WINERY – ANY PRODUCTION LEVEL [ORS 215.452].** A winery may be permitted through the administrative review process in the EFU, FF, and FFO zones and through the conditional use review process in the AF-10 zone, subject to the following requirements:

- (A) A winery that produces wine with a maximum annual production of less than 50,000 gallons shall:
  - (1) Own an on-site vineyard of at least 15 acres;
  - (2) Own a contiguous vineyard of at least 15 acres;
  - (3) Have a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
  - (4) Obtain grapes from any combination of paragraphs (1), (2) or (3) of this subsection; or
- (B) A winery that produces wine with a maximum annual production of at least 50,000 gallons shall:
  - (1) Own an on-site vineyard of at least 40 acres;
  - (2) Own a contiguous vineyard of at least 40 acres;
  - (3) Have a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
  - (4) Obtain grapes from any combination of paragraphs (1), (2) or (3) of this subsection.
- (C) A winery described in subsection (A) or (B) of this section may:
  - (1) Market and sell wine produced in conjunction with the winery, including the following activities:
    - (a) Wine tours;
    - (b) Wine tastings in a tasting room or other location at the winery;
    - (c) Wine clubs; and
    - (d) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;
  - (2) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010; and
  - (3) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
    - (a) Are directly related to the sale or promotion of wine produced in conjunction with the winery;
    - (b) Are incidental to the retail sale of wine on-site; and
    - (c) Are limited to 25 days or fewer in a calendar year.
- (D) The gross income of the winery from the sale of incidental items pursuant to subsection (C)(2) of this section and services provided pursuant to subsection (C)(3)

of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

- (E) Beginning January 1, 2013, at the request of Polk County, the winery shall submit a written statement prepared by a certified public accountant that certifies compliance with subsection (D) of this section for the previous tax year.
- (F) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
- (G) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (A) or (B) of this section have been planted or that the contract has been executed, as applicable.
- (H) Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:
  - (1) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and
  - (2) Provision of direct road access and internal circulation.
- (I) The winery shall comply with:
  - (1) Criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access, and airport safety;
  - (2) Regulations for the public health and safety; and
  - (3) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.
- (J) As used in this section, “private events” includes, but is not limited to, facility rentals and celebratory gatherings.

**117.030. WINERY – 150,000 GALLONS OR MORE EACH YEAR [ORS 215.452].** A winery may be permitted through the administrative review process in the EFU, FF, and FFO zones and through the conditional use review process in the AF-10 zone, subject to the following requirements:

- (A) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;
- (B) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in subsection (A) of this section; and
- (C) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.
- (D) A winery described in subsections (A) through (C) of this section may:
  - (1) Market and sell wine produced in conjunction with the winery, including the following activities:
    - (a) Wine tours;
    - (b) Wine tastings in a tasting room or other location at the winery;
    - (c) Wine clubs; and
    - (d) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;

- (2) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and
  - (3) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
    - (a) Are directly related to the sale or promotion of wine produced in conjunction with the winery;
    - (b) Are incidental to the retail sale of wine on-site; and
    - (c) Are limited to 25 days or fewer in a calendar year.
- (E) The gross income of the winery from the sale of incidental items pursuant to subsection (D)(2) of this section and services provided pursuant to subsection (D)(3) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.
- (F) Beginning January 1, 2013, at the request of Polk County, the winery shall submit a written statement prepared by a certified public accountant that certifies compliance with subsection (E) of this section for the previous tax year.
- (G) A winery operating under this section:
  - (1) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
  - (2) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.
- (H) The winery shall be limited to operating a restaurant that is open to the public for no more than 25 days in a calendar year and may provide for private events on no more than 25 days in a calendar year.
- (I) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section or Section 117.040.
- (J) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsections (A) and (B) of this section have been planted.
- (K) A winery operating under this section shall provide for:
  - (1) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and
  - (2) Direct road access and internal circulation.
- (L) The proposed winery shall comply with:
  - (1) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
  - (2) Regulations for the public health and safety; and
  - (3) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.
- (M) Polk County may authorize a winery described in section that is located in the EFU, FF, or FF zone, to sell or deliver items or provide services not described in subsection

(D)(2), (D)(3), or (E) of this section under the criteria for a commercial activity in conjunction with farm use.

- (N) As used in this section, “private events” includes, but is not limited to, facility rentals and celebratory gatherings.

**117.040. WINERY – 150,000 GALLONS OR MORE EACH YEAR AND A FULL-SERVICE RESTAURANT [ORS 215.452].**

A winery may be permitted as a conditional use under this section in the EFU, FF, FFO, and AF-10 zones, subject to the requirements of Section 119.070 and the following:

- (A) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;
- (B) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in subsection (A) of this section; and
- (C) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.
- (D) A winery described in subsections (A) through (C) of this section may:
  - (1) Market and sell wine produced in conjunction with the winery, including the following activities:
    - (a) Wine tours;
    - (b) Wine tastings in a tasting room or other location at the winery;
    - (c) Wine clubs; and
    - (d) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;
  - (2) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and
  - (3) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
    - (a) Are directly related to the sale or promotion of wine produced in conjunction with the winery;
    - (b) Are incidental to the retail sale of wine on-site; and
    - (c) Are limited to 25 days or fewer in a calendar year.
- (E) The gross income of the winery from the sale of incidental items pursuant to subsection (D)(2) of this section and services provided pursuant to subsection (D)(3) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.
- (F) Beginning January 1, 2013, at the request of Polk County, the winery shall submit a written statement prepared by a certified public accountant that certifies compliance with subsection (E) of this section for the previous tax year.
- (G) A winery operating under this section:
  - (1) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

- (2) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.
- (H) A winery that operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for private events occurring on more than 25 days in a calendar year shall demonstrate that the proposed restaurant and/or events:
  - (1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - (2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - (3) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and
  - (4) Does not materially alter the stability of the land use pattern in the area.
- (I) If Polk County issues a permit under subsection (H) of this section for private events, Polk County shall review the permit at least once every five years and, if appropriate, may renew the permit.
- (J) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section or Section 117.030.
- (K) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsections (A) and (B) of this section have been planted.
- (L) A winery operating under this section shall provide for:
  - (1) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and
  - (2) Direct road access and internal circulation.
- (M) The proposed winery shall comply with:
  - (1) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
  - (2) Regulations for the public health and safety; and
  - (3) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.
- (N) Polk County may authorize a winery described in section this is located in the EFU, FF, or FFO zones to sell or deliver items or provide services not described in subsection (D)(2), (D)(3), or (E) of this section under the criteria for a commercial activity in conjunction with farm use.
- (O) As used in this section, “private events” includes, but is not limited to, facility rentals and celebratory gatherings.

**117.050. FEE BASED EVENTS AT WINERIES.** [ORS 215.452]. A winery operating under Section 117.020 through 117.040 may be permitted to host outdoor concerts for which admission is charged, facility rentals or celebratory events if Polk County issued a permit to the winery operating under this section in similar circumstances before August 2, 2011.

**117.060. LEGAL, NON-CONFORMING WINERIES.** A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on August 2, 2011, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored or replaced pursuant to ORS 215.130. This does not affect the lawful continuation, alteration, restoration or replacement of the winery sited on the same tract.

Proposed additions are double underlined. Deletions are in ~~strikethrough~~.

**110.591. WATER-RELATED USE.** A use which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with a water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered.

Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and mobile home parks are not generally considered dependent on or related to water location needs. [Amended by Ordinance 219]

**110.592. WETLANDS.** Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. [Amended by Ordinance 88-17]

**110.593. WIND ENERGY SYSTEM.** A “wind energy system” consists of equipment that converts energy from the wind into usable forms of energy (such as electricity) and then stores or transfers the energy. This equipment includes any base, blade, foundation, wind generator, nacelle, rotor, wind tower, transformer, vane, wire, inverter, batteries or other component used in the system. A wind energy system may be a grid-connected or a stand-alone system. [Amended by Ordinance 09-06]

**110.594. WIND TOWER.** A “wind tower” is the monopole, freestanding, or guyed structure that supports a wind generator. [Amended by Ordinance 09-06]

**110.595. WINERY DEFINED.**

~~(A) As used in Sections 136.040 and 178.030, “winery” means a facility that produces wine with a maximum annual production of:~~

~~(1) Less than 50,000 gallons, and that:~~

~~(i) Owns an on-site vineyard of at least 15 acres;~~

~~(ii) Owns a contiguous vineyard of at least 15 acres;~~

~~(iii) Has a long-term contract for the purchase of all the grapes from at least 15 acres of a vineyard contiguous to the winery; or~~

~~(iv) Obtains grapes from any combination of subparagraphs (i), (ii) and (iii) of this paragraph.~~

~~(2) At least 50,000 gallons but no more than 100,000 gallons, and that:~~

~~(i) Owns an on-site vineyard of at least 40 acres;~~

~~(ii) Owns a contiguous vineyard of at least 40 acres;~~

~~(iii) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or~~

~~(iv) Obtains grapes from any combination of subparagraphs (i), (ii) and (iii) of this paragraph.~~

~~(B) A “winery”, as defined in this section means, a facility that produces wine and, shall allow the sale of:~~

~~(1) Wines produced in conjunction the winery; and~~

~~(2) Items directly related to wine, the sales of which are incidental to retail sale of wine on site, including those served by a limited service restaurant as defined in ORS 624.010.~~

Proposed additions are double underlined. Deletions are in ~~strikethrough~~.

~~(C) A “winery”, as defined in this section, shall allow only the bulk processing and wholesale distribution of wines produced on site. [Amended by Ordinance 89-17]~~

**110.595. [“Yard” redesignated Sec. 110.599 by Ord. 89-17, Sec. 30]**

**110.599. YARD.** A space other than a court on the same lot with a building open from the ground upward, except as otherwise provided herein. [Amended by Ordinance 89-17]

**110.600. YARD, FRONT.** A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto at the nearest point of the foundation of the main building.

**110.605. YARD, LANDSCAPED.** An open area or areas devoted primarily to the planting and maintaining of trees, grass, shrubs, and plants together with sufficient permanent irrigation installation to properly maintain all vegetation. As complimentary features, such as fountain, pools, screens, decorative lighting, sculpture, and outdoor furnishings may be placed within said area.

- (A) Location or site: The required Landscaped Yard (110.605) areas adjacent to a street shall not be used for parking or loading areas and the yards shall be the same as is required for the main building in the district in which the parking area is to be located and such yard area adjacent to a street shall be landscaped with trees, shrubs, grass or evergreen ground cover and other complementary materials and maintained in a neat and well appearing manner. The side and rear yards, other than those adjacent to a street, may be used for parking and loading areas when such areas have been developed and are maintained as required by this ordinance. [Amended by Ordinance 90-19]

**110.610. YARD, REAR.** A yard extending across the full width of the lot between the most rear main building and the rear lot line, but for determining the depth of the required rear yard, it shall be measured horizontally from the nearest point of the rear lot line; or, if the rear lot line adjoins an alley, then from the center line of the alley, toward the nearest part of the foundation of the main building.

**110.615. YARD, SIDE.** A yard between the main building and the side lot line, extending from the front yard, or front lot line where no front yard is required, to the rear yard; the width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the foundation of the main building. [Amended by Ordinance 219]

**110.620. APPLICATION OF ZONING REGULATIONS.** The regulations set by this ordinance within each zone shall be minimum regulations and shall apply uniformly to each class or kind of structure or land.

**110.630. CONFORMANCE AND PERMITS REQUIRED.** No building structure, or premise shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, moved, structurally altered, or enlarged unless in conformity with all the regulations herein specified for the zone in which it is located and then only after applying for and securing all permits and licenses required by all laws and ordinances.

**110.640. AMENDMENT OF TEXT ONLY.** Any amendment of this ordinance which amends, supplements or changes only the text hereof, shall be initiated by the Board of Commissioners or by the Planning Commission by resolution. Whenever an amendment is initiated by the Board of Commissioners, the resolution shall be referred to the Planning Commission for its recommendation.

In every case of a proposed amendment, the director shall fix a date for a public hearing before the Planning Commission and shall cause notice to be given as provided in Chapter 111. After



Proposed additions are double underlined. Deletions are in ~~striketrough~~.

## **CHAPTER 128.800**

### **AGRICULTURE AND FORESTRY-TEN ACRE (AF-10) ZONING DISTRICT**

- 128.810. Purpose
- 128.820. Use
- 128.830. Uses Permitted Subject to Review and Approval
- 128.840. Conditional Uses
- 128.850. Non-Remonstrance Deed Restriction

Proposed additions are double underlined. Deletions are in ~~strike through~~.

**128.810. PURPOSE.** It is the purpose and function of the Agriculture and Forestry – 10-acre minimum (AF-10) zone to:

- (A) Allow the designation of new Rural Lands consistent with Oregon Administrative Rule (OAR) 660-004-0040, without requiring an exception to Oregon Statewide Planning Goal 14;
- (B) Provide larger acreage homesites while at the same time providing the maximum opportunity for agriculture and forestry related operations that could result in rural employment for the residents of Polk County;
- (C) Provide for the establishment of uses consistent with the location, inherent limitations and the functional needs of the area;
- (D) Provide for the orderly growth of the rural areas so that as development occurs, the supporting community will be able to afford the increased capital investments required for services to and within the new rural area and the costs of maintenance of utility facilities, roads, protective services, and desired social services;
- (E) To promote the planning of future roads in the area; and
- (F) To provide for the above, yet not adversely affect fish and wildlife resources and habitat areas, natural areas, and scenic areas.

**128.820. USE.** Within any Agriculture and Forestry 10-acre minimum (AF-10) zone, no building, structure or premises shall be used or arranged, designed, erected, or maintained to be used except for the following purposes:

- (A) Single-family dwelling including single-family manufactured dwelling;
- (B) Farm Use (as defined in Section 110.223);
- (C) Propagation or harvesting of a forest product as permitted by the Forest Practices Act;
- (D) Public parks, playgrounds;
- (E) Public buildings such as libraries, fire stations and fire service facilities providing rural fire protection services;
- (F) Churches;
- (G) Accessory uses and structures:
  - (1) Customary residential accessory building for private use, such as pergola, greenhouse, hothouse, hobby house, summer house, patios, enclosed or covered patios, woodshed, quarters for domestic animals maintained as pets;
  - (2) Fallout shelters;
  - (3) Fences;
  - (4) Garages and parking areas for the storage and protection of the automobiles of the residents of the dwelling, including a private garage for not more than three motor vehicles for each single-family dwelling on the same lot with or within the dwelling to which it is an accessory and in which no business or industry is conducted;
  - (5) Storage for a commercial vehicle, maximum of one per dwelling;
  - (6) Sleeping quarters in a garage for domestic employees of the main building to which the garage is attached;

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- (7) Guest houses and guest quarters not in the main building are permitted if such quarters are, and remain, dependent upon the main building for either or both kitchen and bathroom facilities and the guest facilities are not used for residential purposes; and/or
- (8) Swimming pools for private use (requires building permit);
- (H) Home occupation as defined in Section 116.020;
- (I) The use of a manufactured home during construction (see Limited Uses, Section 125.010);
- (J) Schools (elementary, junior high and high);
- (K) Privately operated kindergartens or day nurseries, providing the residential character of the building is maintained.
- (L) Residential homes, as defined in Section 110.477; and
- (M) Transportation improvements.
- (N) Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation.
- (O) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities.
- (P) Uses and activities to conserve soil, air and water quality and to provide for and manage wildlife and fisheries resources.
- (Q) Temporary portable facility for the primary processing of forest products (the facility shall be removed at the conclusion of the forest operation requiring its use).
- (R) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head as defined in ORS Chapters 517 and 520.
- (S) Exploration for mineral and aggregate resources as defined in ORS Chapter 517.
- (T) Towers and fire stations for forest fire protection.
- (U) Water intake facilities, canals and distribution lines for farm irrigation and ponds.
- (V) Temporary forest labor camps, without any permanent structures, limited to the duration of the forest operation requiring the use.
- (W) Uninhabitable structures accessory to fish and wildlife enhancement.
- (X) Private fee hunting or fee fishing operations without any accommodations.
- (Y) Breeding, kenneling, and training of greyhounds for racing;
- (Z) Utility facility service lines, and 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.

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- (AA) Irrigation canals, delivery lines and those structures and accessory operation facilities associated with a district as defined in ORS 540.505.
- (BB) Wind energy systems, meteorological towers, and photovoltaic systems that are not commercial power generating facilities, but not including wind energy systems utilizing a tower and meteorological towers that require tower lighting, are located in an adopted urban growth boundary, or that would require modification to the height or type of construction standards described in Section 112.135(C)(1). Wind energy systems utilizing towers and meteorological towers are subject to standards listed in Sections 112.135 and 112.137. Roof-mounted, building-integrated, building-mounted and architectural wind energy systems that extend no more than an additional 5 feet above the highest ridge of the building's roof or 15 feet above the highest eave, whichever is higher, and do not exceed the height limitation of the zone, are subject to the standards listed in Section 112.137. Photovoltaic systems are subject to the standards described in Section 112.138. [Amended by Ordinance 09-06]

#### **128.830. USES PERMITTED SUBJECT TO REVIEW AND APPROVAL.**

- (A) **HARDSHIP TEMPORARY MANUFACTURED DWELLING.** One manufactured dwelling unit, 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 medical hardship is certified by a licensed physician;
  - (2) The hardship dwelling or recreational vehicle 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 hardship dwelling 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) Notice of Determination. Upon issuance of a temporary hardship determination by the Planning Director, determinations shall be mailed to the applicant and to interested parties based upon the provisions of Section 111.270 of the Polk County Zoning Ordinance. An appeal of the Planning Director's decision shall be processed pursuant to Section 111.280 of the Polk County Zoning Ordinance.
- (B) 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]

**128.840. CONDITIONAL USE.** All uses permitted as conditional uses shall be subject to the general provisions of Chapter 119 of this Ordinance, "Conditional Uses".

- (A) The following allied farm and forest commercial processing uses and similar activities that require close proximity to natural resources may be permitted as a separate business or enterprise.

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- (1) Confined animal feeding operations (CAFO);
  - (2) Permanent facility for the processing, manufacturing or storage of farm or forest products;
  - (3) Permanent logging equipment repair and storage;
  - (4) Log scaling and weigh stations;
  - (5) Farm or forest implement and equipment sales;
  - (6) Farm or forest related equipment, machinery or truck repair, including associated service parts facilities;
  - (7) Farm and forest supply; and
  - (8) Sand and gravel excavation and processing facilities as provided for by Chapter 120.400;
  - (9) Cement, clay, glass and stone products manufacturing facilities.
  - (10) Any other similar processing and allied farm or forest commercial activities that require close proximity to natural resources.
- (B) Private parks;
- (C) Solid waste disposal sites as provided for in Chapter 120.300;
- (D) Kennels;
- (E) Community or neighborhood club buildings, including swimming pools, and other allied facilities, when erected by a non-profit community club for the improvements of the community or social recreation of the members;
- (F) Private airfield and helipads, including associated hangar, maintenance and service facilities. 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 Aeronautics Division 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 Aeronautics Division;
- (G) Model airplane takeoff and landing sites;
- (H) Rural outdoor motor race track;
- (I) Golf courses;
- (J) Boat, camper and trailer storage area or lot (see Specific Conditional Uses, Section 119.150 (C));
- (K) Church conference and campground (see Specific Conditional Uses, Section 119.150 (F));
- (L) Communications tower as provided in Section 112.135;
- (M) Riding clubs and stables, rural outdoor rodeo grounds and similar uses;
- (N) Beauty shops, where no assistants are employed;
- (O) Use of an accessory building for conducting a home occupation;

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- (P) Conditional home-occupation (see Section 116.030);
- (Q) Utility facilities necessary for public service, including wetland waste treatment systems;
- (R) Commercial power generating facilities;
- (S) Cottage Industry Home Occupations (see Section 116.040);
- ~~(T) Winery, may be permitted subject to the requirements of PCZO Chapter 117 and findings that:~~
- ~~(U) The winery use will not result in substantial conflicts with farm or forest practices on adjacent lands; and~~
- ~~(V) Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming and forest practices on adjacent lands:~~
- ~~(W) (a) Establishment of a setback, not to exceed 100 feet, from all property lines for the winery and all public gathering places; and~~
- ~~(b)(T) Provision of direct local road access, internal circulation, and parking.~~
- (U) Composting facilities. Buildings and facilities used in conjunction with the composting operation shall only be those required for 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;
- (V) Aquaculture, including the propagation, cultivation, maintenance and harvesting of aquatic species;
- (W) Insect breeding, including the propagation, cultivation, maintenance and harvesting of insect species, subject to compliance with 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 Department of Agriculture at least 20 calendar days prior to any administrative action or initial public hearing on the application.
- (X) Operations for the Extraction and Bottling of Water;
- (Y) Firearms training facility;
- (Z) Armed Forces Reserve Center. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility;
- (AA) Private seasonal accommodations for fee hunting operations, subject to the following requirements:
  - (1) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
  - (2) Only minor incidental and accessory retail sales are permitted;
  - (3) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and
  - (4) Other conditions, as deemed appropriate.
- (BB) Private accommodations for fishing occupied on a temporary basis, subject to the

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following requirements:

- (1) Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
  - (2) Only minor incidental and accessory retail sales are permitted;
  - (3) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;
  - (4) Accommodations must be located within 1/4 mile of fish bearing Type F waters; and
  - (5) A governing body may impose other appropriate conditions.
- (CC) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations;
- (DD) Permanent forest labor housing structures to house laborers on a temporary basis for the duration of the forest operation;
- (EE) Laboratory-seed and soil testing, research facilities;
- (FF) Farm or forest products stand, designed and used for the sale of farm crops, special forest products, and livestock grown on farms or forests in the local agricultural and forestry area, including the retail sale of incidental items accounting for no more than 25 percent of the total sales of the farm or forest stand. Farm or forest products stands do not include structures designed for residential occupancy or to accommodate activities other than the sale of farm crops, special forest products, and livestock, such as structures for banquets, public gatherings or entertainment;
- (GG) Living History Museum, 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. A living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. 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 with authentic buildings of the depicted historic period or the museum administration building. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS Chapter 65; and
- (HH) Commercial activities in conjunction with farm or forest use including activities related to the processing, distribution, and retail marketing of farm or forest products a portion of which is grown on-site.
- (II) 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]

**128.850. NON-REMONSTRANCE DEED RESTRICTION.** For any conditional use approved under section 127.830, the landowner for the conditional use shall be required to sign and record a deed restriction binding the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from accepted farming or forest practices listed under ORS 30.936 to 30.937.

## **CHAPTER 136**

### **EXCLUSIVE FARM USE (EFU) ZONING DISTRICT**

- 136.010. Purpose
- 136.015. Definitions
- 136.020. Authorized Uses and Development
- 136.030. Uses Permitted by Right
- 136.040. Uses Subject to Administrative Review
- 136.050. Conditional Uses [OAR 660-033-0130]
- 136.060. General Review Standards [OAR 660-033-0130(5)]
- 136.065. Expansion and UGB Proximity Standards [OAR 660-033-0130(2)]
- 136.070. Land Partition Standards [ORS 215.780 (C)]
- 136.100. Nonconforming Uses
- 136.120. Non-Remonstrance Deed Restriction
- 136.140. Prohibited Uses
- 136.150. Development Standards
- 136.160. Period of Validity for Administrative Review Uses
- 136.170. Period of Validity for Non-farm, Lot-of-Record, and Replacement Dwellings



**136.010. PURPOSE.** The purpose and intent of the Exclusive Farm Use (EFU) Zoning District is to conserve agricultural lands, consistent with the Goals and Policies of the Polk County Comprehensive Plan. This objective is achieved by establishing clear standards for the use and development of designated agricultural lands.

The Exclusive Farm Use Zoning District will be applied to lands defined as "agricultural lands" by Oregon Administrative Rule (OAR) 660-033-0020(1). Within the Exclusive Farm Use Zoning District, the use and development of land is subject to review and authorization as provided by Polk County's land use regulations and as may further be indicated in State and federal laws.

**136.015. DEFINITIONS.** Terms related to farm land and land use found in this chapter are defined in the Oregon Revised Statutes (ORS), Chapter 215 and in the Oregon Administrative Rules (OAR), Division 33. A handout defining these terms is available from the Polk County Community Development Department.

**136.020. AUTHORIZED USES AND DEVELOPMENT.** The following uses, activities and development are authorized in the Exclusive Farm Use Zoning District, subject to review and approval under applicable regulatory standards:

Key

HV	High-Value Farm Land, defined by OAR 660-033-0020(8)
Other	Other lands, not defined as High-Value
P	Permitted outright
AR	Subject to administrative review and approval
CUP	Subject to review and approval as a conditional use
NP	Use not permitted
NA	Not applicable
PCZO	<i>Polk County Zoning Ordinance Chapter 136 subsection</i>

RESOURCE USES	HV	OTHER	PCZO
Farm Use as defined in ORS 215.203	P	P	<i>030(A)</i>
Facility for the Processing of Farm Crops	AR	AR	<i>040(Q)</i>
Use and Management of Forest Lands	P	P	<i>030(B)</i>
Farm and Forest Accessory Structures	P	P	<i>030(C)</i>
Forest Product Primary Processing Facility	CUP	CUP	<i>050(A)</i>
Wetland Creation/Restoration and Enhancement	P	P	<i>030(D)</i>
Wildlife Habitat Conservation and Management Plan	P	P	<i>030(K)</i>
Aquaculture	CUP	CUP	<i>050(B)</i>
Insect Breeding	CUP	CUP	<i>050(C)</i>
Operations for the Extraction and Bottling of Water	CUP	CUP	<i>050(D)</i>

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<b>RESIDENTIAL</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Farm Dwelling	AR	AR	<del>040(A,D,E,F)</del>
Accessory Farm Dwelling	AR	AR	<del>040(K)</del>
Family Farm Help Dwelling	AR	AR	<del>040(H)</del>
Lot of Record Dwelling - Not High Value	NA	AR	<del>040(G)</del>
Lot of Record Dwelling - High-Value	AR	NA	<del>040(C)</del>
Dwelling in Conjunction With a Commercial Dairy	AR	AR	<del>040(M)</del>
Relocated Farm Operation Dwelling	AR	AR	<del>040(N)</del>
Small-Tract Dwelling - High-Value	AR	NA	<del>040(B)</del>
Nonfarm Dwelling	NP	CUP	<del>050(E)</del>
Nonfarm Dwelling on Nonfarm Parcel	NP	CUP	<del>050(F)</del>
Replacement Dwelling	AR	AR	<del>040(I)</del>
Replacement of Historic Dwelling	AR	AR	<del>040(J)</del>
Temporary Hardship Dwelling	AR	AR	<del>040(L)</del>
Residential Home (ORS 197.660)	CUP	CUP	<del>050(G)</del>
Room and Board Arrangements	CUP	CUP	<del>050(H)</del>

<b>COMMERCIAL</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Activity In Conjunction with Farm Use	CUP	CUP	<del>050(I)</del>
Home Occupations	CUP	CUP	<del>050(J)</del>
Dog Kennels	NP	CUP	<del>050(K)</del>
Training and Stabling Horses for Profit	P	P	<del>030(A)</del>
Winery, as described in ORS 215.452	<u>AR &amp; CUP</u>	<u>AR &amp; CUP</u>	<del>040(O)</del> <u>&amp; 050(O)</u>
On-site Filming and Accessory Activities for 45 days or less	P	P	<del>030(L)</del>
On-site Filming and Accessory Activities for more than 45 days	CUP	CUP	<del>050(L)</del>
Farm Stand	AR	AR	<del>040(P)</del>
Parking of not more than seven log trucks	AR	AR	<del>040(R)</del>
Destination Resort	NP	CUP	<del>050(M)</del>
Landscape Contracting Business	CUP	CUP	<del>050(N)</del>

<b>MINERAL AND AGGREGATE</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Exploration and Production of Geothermal, (ORS 522.005) Oil and Gas (ORS 520.005)	P	P	<del>030(E)</del>
Mineral Exploration (ORS 517.750)	P	P	<del>030(F)</del>
Mining and Processing of Geothermal, (ORS 522.005) Oil and Gas (ORS 520.005)	CUP	CUP	<del>050(PΘ)</del>

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Mining and Processing of Mineral and Aggregate Materials	CUP	CUP	050( <del>PQ</del> )
Processing of Aggregate into Asphalt or Portland Cement (ORS 517.750)	CUP	CUP	050( <del>PQ</del> )
Processing of Other Mineral Resources	CUP	CUP	050( <del>PQ</del> )

<b>TRANSPORTATION</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Personal Use Airports and Helipads	CUP	CUP	050( <del>PQ</del> )
Climbing and Passing Lanes within Right-of Way existing on July 1, 1987	P	P	030( <del>G</del> )
Construction of Passing and Travel lanes, requiring acquisition of right-of-way, but not resulting in the creation of new land parcels	CUP	CUP	050( <del>RQ</del> )
Reconstruction or Modification of Public Roads, not including addition of travel lanes or removal of buildings, but not resulting in the creation of new land parcels	P	P	030( <del>H</del> )
Reconstruction or Modification of Public Roads, involving the removal of buildings, but not resulting in the creation of new land parcels	CUP	CUP	050( <del>SR</del> )
Temporary Public Road Detours	P	P	030( <del>I</del> )
Minor Improvements to Existing Road and Highway Related Facilities within right-of-way existing on July 1, 1987	P	P	030( <del>J</del> )
Improvements to Existing Road and Highway Related Facilities where additional property or right-of-way is required, but not resulting in the creation of new land parcels	CUP	CUP	050( <del>ST</del> )
Other Roads, Highways and Transportation Facilities not listed	CUP and Exception	CUP and Exception	
Transportation Improvements on Rural Lands allowed by OAR 660-012-0065	CUP	CUP	050( <del>UF</del> )

<b>UTILITIES &amp; SOLID WASTE DISPOSAL FACILITIES</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Utility Facilities Necessary for Public Service, including wetland waste treatment systems but not including commercial power generating facilities or transmission towers over 200 feet in height	AR	AR	040( <del>S</del> )
Transmission Towers over 200 feet in height	CUP	CUP	050( <del>VU</del> )
Solid Waste Disposal Site under ORS 459.245	NP	CUP	050( <del>W</del> )
Composting Facilities	AR	CUP	040( <del>U</del> ), 050( <del>XW</del> )
Commercial Power Generating Facilities	CUP	CUP	050( <del>YX</del> )
Commercial Wind Power Generating Facilities	CUP	CUP	050( <del>ZY</del> )

Proposed additions are double underlined. Deletions are in ~~strikethrough~~.

Fire service facilities providing rural fire protection services	P	P	030(M)
Irrigation canals, delivery lines and those structures and accessory operation facilities associated with a district as defined in ORS 540.505	P	P	030(N)
Utility facility service lines	P	P	030(O)
Non-commercial wind energy systems, meteorological towers and photovoltaic systems	P	P	030(P)
Non-commercial wind energy systems and meteorological towers needing a height or type of construction modification	AR	AR	040(T)
Non-commercial wind energy systems and meteorological towers in a UGB	CUP	CUP	050( <u>YX</u> )

<b>PARKS/PUBLIC/QUASI-PUBLIC FACILITIES</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Schools, public or private (K-12) that serve the residents of the rural area	NP	CUP	050( <u>HH</u> <del>GG</del> )
Churches and Associated Cemeteries	NP	AR	040(W)
Parks, private, including playgrounds, hunting/fishing preserves and campgrounds	NP	CUP	050( <u>CC</u> <del>BB</del> )
Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120	CUP	CUP	050( <u>BB</u> <del>AA</del> )
Model Aircraft Takeoff and Landing Sites	AR	AR	040(V)
Expansion of Existing County Fairgrounds	CUP	CUP	050( <u>DD</u> <del>CC</del> )
Golf Courses	NP	CUP	050( <u>EE</u> <del>DD</del> )
Community centers owned by a governmental agency or a nonprofit organization	CUP	CUP	050( <u>FF</u> <del>EE</del> )
Firearms training facility as provided in ORS 197.770	AR	AR	040(X)
Living history museum	CUP	CUP	050( <u>GG</u> <del>FF</del> )

**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:

- (A) Farm use, as defined in ORS 215.203.
- (B) Propagation or Harvesting of a Forest Product.
- (C) Accessory Buildings and Structures related to the use and management of farm and forest lands.
- (D) Creation, Restoration and Enhancement of Wetlands.

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- (E) Exploration for and Production of Geothermal, Oil and Gas, 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.
- (F) Mineral Exploration, as defined in ORS 517.750.
- (G) Climbing and Passing Lanes within the right-of-way existing as of July 1, 1987.
- (H) Reconstruction or Modification of Public Roads and Highways, not including the addition of travel lanes, removal or displacement of buildings or creation of new parcels.
- (I) Temporary Public Road or Highway Detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- (J) Minor Betterment of Existing Public Road and Highway Related Facilities such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
- (K) Wildlife Habitat Conservation and Management Plan pursuant to ORS 215.800 to 215.808.
- (L) On-site Filming and Activities Accessory to On-site Filming, for 45 days or less as provided for in ORS 215.306.
- (M) Fire service facilities providing rural fire protection services.
- (N) Irrigation canals, delivery lines and those structures and accessory operation facilities associated with a district as defined in ORS 540.505.
- (O) Utility facility service lines [OAR 660-033-0130(32)], and 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.
- (P) Wind energy systems, meteorological towers, and photovoltaic systems that are not commercial power generating facilities, but not including wind energy systems utilizing a tower and meteorological towers that require tower lighting, are located in an adopted urban growth boundary, or that would require modification to the height or type of construction standards described in Section 112.135(C)(1). Wind energy systems utilizing towers and meteorological towers are subject to standards listed in Sections 112.135 and 112.137. Roof-mounted, building-integrated, building-mounted and architectural wind energy systems that extend no more than an additional 5 feet above the highest ridge of the building's roof or 15 feet above the highest eave, whichever is higher, and do not exceed the height limitation of the zone, are subject to the standards listed in Section 112.137. Photovoltaic systems are subject to the standards described in Section 112.138. [Amended by Ordinance 09-06]

**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**

Proposed additions are double underlined. Deletions are in ~~striketrough~~.

- (A) *Dwelling for the Farm Operator on High-Value Farmland* [OAR 660-033-0135(4) and (9)]. 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 farm use and has produced at least \$80,000 gross annual income from the sale of farm products, each of the last 2 years or 3 out of the past 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 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 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;
  - (2) The tract is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing on lands designated for exclusive farm owned by the farm operator or on the farm operation); and
  - (3) The dwelling will be occupied by a person or persons who produced the commodities which provided 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 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) for the properties subject to the application that precludes:
    - (a) All future rights to the establishment of a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215;
    - (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.
- (B) *Small Tract Dwelling on High-Value Farmland* [OAR 660-033-0130(3)(d)]. 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);
  - (3) If 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;

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- (4) The dwelling meets all other 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) 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;
- (6) The tract where the dwelling would 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
  - (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”. 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, 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 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);
    - (c) If 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 dwelling meets 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) 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.
  - (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;



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- (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.
- (3) Notice of the public hearing shall be provided to the State 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 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, 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 authorized on a tract of land not classified as high value, 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 farm use;
  - (3) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and
  - (4) The subject tract is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing).
- (E) *Dwelling for the Farm Operator on Other Farmland - Income Standard* [OAR 660-033-0135(3), (5) and (6)]. A farm dwelling may be authorized on a tract of land, not classified as high value, 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. 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 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

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- (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 lawfully established seasonal farm worker housing); 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.
  - (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) for the subject properties that precludes:
    - (a) All future rights to the establishment of a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215;
    - (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;
- (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) 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;
  - (3) Currently employed for farm use 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, such as planting, harvesting, marketing, or caring for livestock at a commercial scale;
  - (5) At least 10 acres in size; and

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- (6) Currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing).
- (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 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 dwelling meets 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
  - (5) 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.
  - (6) 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.
  - (7) Upon approval, the Planning Director shall notify the County Assessor that the governing body intends to allow the dwelling.

- 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, 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) 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
    - (c) 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

- (d) Submits a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subparagraph (A) of this paragraph and finds the analysis in the report to be soundly and scientifically based. [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, 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. 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.
- (I) *Replacement Dwelling [ORS 215.283(1)(p) and OAR 660-033-0130(8)]*. A replacement dwelling may be authorized, where the lawfully established single-family dwelling being replaced has:
  - (1) Intact exterior walls and roof structure;
  - (2) Interior plumbing, including kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
  - (3) Interior wiring for interior lights;
  - (4) A heating system; and
  - (5) The dwelling to be replaced shall be:
    - (a) Removed, demolished or converted to an approved nonresidential use, within 3 months of the completion of the replacement dwelling. The replacement dwelling may be placed on any part of the same lot or parcel as the existing dwelling and shall comply with all applicable siting standards. These standards shall not be applied in such a manner as to prohibit the siting of the replacement dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use and the replacement dwelling would be located on the portion of the lot or parcel zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record a deed restriction prohibiting siting of a dwelling on the portion of the lot or parcel not zoned for exclusive farm use. This deed restriction shall be irrevocable unless a statement of release is recorded in the County deed records. The release shall be signed by a representative of the County and shall state that the provisions of this section have been changed to allow the siting of another dwelling. The Planning Director shall maintain a record of the lots or parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and
    - (b) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is

not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant. [Amended by Ordinance 11-03]

- (6) An accessory farm dwelling authorized pursuant to Section 136.040(K)(2)(c), may only be replaced by a manufactured dwelling. [Amended by Ordinance 11-03]

Note: Executing and recording such a deed restriction may affect substantial future property rights. Please consult with Planning Division staff prior to submitting an application.

- (J) Replacement of Historic Dwelling [ORS 215.283(1)(l)]. A dwelling listed on the Polk County Historic Inventory and on the National Register of Historic Places 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 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 a 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; 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) or (7), 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 and produced in each of the last two years or three of the last five years, the lower of the following:
    - (i) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products (Note: 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: 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 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. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;
  - (c) On land defined as a commercial dairy pursuant to OAR 660-033-0135(11) 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.

Note: "Accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code.

- (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) Dwelling in conjunction with a commercial dairy [OAR 660-033-0135(7)]. A dwelling may be considered customarily provided in conjunction with a dairy farm as defined in OAR 660-033-0135(11) if:
- (1) The subject tract will be employed as a commercial dairy 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
  - (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);
  - (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:

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- (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) 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 farm or ranch operation that earned the gross farm income in 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); 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) Winery [OAR 660-033-0120ORS 215.452], subject to the requirements of PCZO Chapter 117. ~~A winery, as described in Section 110.595, may be permitted subject to findings that:~~
- ~~(1) The related vineyards, as described in Section 110.595, have been planted or that the contract has been executed, as applicable;~~
  - ~~(2) The winery use will not result in substantial conflicts with farm or forest practices on adjacent lands; and~~
  - ~~(3) The winery use complies with Comprehensive Plan Goal and Policies and other applicable criteria in the Polk County Zoning Ordinance.~~
  - ~~(4) Pursuant to ORS 215.452, standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming and forest practices on adjacent lands:~~
    - ~~(a) Establishment of a setback, not to exceed 100 feet, from all property lines for the winery and all public gathering places; and~~
    - ~~(b) Provision of direct local road access, internal circulation, and parking.~~
- (P) Farm Stand [OAR 660-033-0130(23)], A farm stand may be approved if:



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- (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.  
[Amended by Ordinance 11-03]
- (Q) 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]
- (R) 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.

## UTILITIES AND SOLID WASTE DISPOSAL FACILITIES

- (S) Utility Facilities Necessary for Public Service [OAR 660-033-0130(16)], including 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 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

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- 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 health and safety; and
  - (f) Other requirements of state and federal agencies.
- (2) Costs associated with any of the factors listed in subsection (S)(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 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 (S)(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 (S)(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]
  - (T) 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]
  - (U) 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

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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 may be expanded on the same tract, subject to other requirements of law. [Amended by Ordinance 11-03]

## **PARKS/PUBLIC/QUASI-PUBLIC FACILITIES**

- (V) Model Airplane Takeoff and Landing Sites [OAR 660-033-0130(26)], including such buildings or facilities as may reasonably be necessary. 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.
- (W) Churches and Associated Cemeteries consistent with ORS 215.441 [ORS 215.283(1)(a)]. New churches and associated cemeteries are not authorized on lands classified as high-value. New churches and associated cemeteries on not high-value farmland, or the expansion of existing churches and associated cemeteries on all farmlands, shall be subject to the standards listed in Section 136.065. [Amended by Ordinance 11-03]
- (X) 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 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 order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or tract 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, subject to compliance with Section 136.060.

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- (1) Notice of the application shall be provided to the State Department of Agriculture at least 20 calendar days prior to any administrative action 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 Department of Agriculture at least 20 calendar days prior to any administrative action or initial public hearing on the application.
- (D) *Operations for the Extraction and Bottling of Water [ORS 215.283(2)(v)]*, subject to compliance with Section 136.060.

### **SINGLE FAMILY RESIDENCES**

- (E) *Nonfarm Dwelling - Not High-Value Farmland, (except as noted) [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 will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use;
  - (2) The dwelling will not significantly increase the cost of farm or forest practices on surrounding lands devoted to farm and forest use;
  - (3) The dwelling will be placed on a lot or parcel created before January 1, 1993;
  - (4) The dwelling will be located on a 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(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. 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 together with existing nonfarm dwellings on other lots or parcels in the area when determining whether the proposed nonfarm dwelling will alter the stability of the land use pattern in the area.

- (7) 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* [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 will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use;
- (2) The dwelling will not significantly increase the cost of farm or forest practices on surrounding 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. 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 together with existing nonfarm dwellings on other lots or parcels in the area when determining whether the proposed nonfarm dwelling will alter the stability of the land use pattern in the area.
- (5) 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.

#### **OTHER RESIDENTIAL USES**

- (G) Residential Home [ORS 215.283(2)(o)], as defined in ORS 197.660, in existing dwellings subject to compliance with Section 136.060.
- (H) 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) Commercial Activity 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) or Section 136.040(Q) and activities related to the processing, distribution and marketing of farm products, a portion of which are produced by the subject farming operation, but not including the processing of farm crops as described in Section 136.040(Q), subject to compliance with Section 136.060. [Amended by Ordinance 11-03]

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- (J) Home Occupations [OAR 660-033-0130(14)], subject to the general review standards under Section 136.060 and the following standards and conditions from ORS 215.448:
- (1) The home occupation is operated by a resident of the property on which the business is located;
  - (2) No more than five full or part-time persons are employed by the business;
  - (3) The business is conducted within the dwelling or other building(s) normally associated with uses permitted within this zone; and
  - (4) The business will not interfere with existing uses on nearby land or with other permitted uses.
- (K) Dog kennels [ORS 215.283(2)(n)], 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.)
- (L) 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.
- (M) 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.)
- (N) Landscape Contracting Business [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]
- (O) Winery [ORS 215.452], subject to the requirements of PCZO Chapter 117.

## MINERAL AND AGGREGATE OPERATIONS

- (PΘ) 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; [ORS 215.283(2)(b)(A)]
  - (2) 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 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)-(X), 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. [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 a planted vineyard, at least 40 acres in size, planted as of the date the application for batching and blending is filed; and [ORS 215.283(2)(b)(C)]
- (5) Processing of other mineral resources and other subsurface resources. [ORS 215.283(2)(b)(D)]

## TRANSPORTATION

- (~~Q~~P) Personal Use Airports and Helipads [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.
- (~~R~~Q) 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 parcels, subject to compliance with Section 136.060.
- (~~S~~R) Reconstruction or Modification of Public Roads [ORS 215.283(2)(r)], involving the removal or displacement of buildings, but not resulting in the creation of new parcels, subject to compliance with Section 136.060.
- (~~T~~S) 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 parcels, subject to compliance with Section 136.060.
- (~~U~~F) 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:



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- (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

~~(V)~~ (W) *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;

~~(XW)~~ (W) *Solid Waste Disposal Site under ORS 459.245 [ORS 215.283(2)(k)]*, subject to compliance with Section 136.060. New solid waste disposal sites are not authorized on lands classified as high-value.

~~(XW)~~ (W) *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]

- (~~YX~~) Commercial Power Generating Facilities [OAR 660-033-0130(17) and (22)], not including commercial wind power generation facilities listed in Section 136.050(~~ZY~~), subject to compliance with Section 136.060. 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 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 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]
- (~~ZY~~) Commercial Wind Power Generation Facilities [OAR 660-033-0130(37)], wind power generation facilities that are commercial utility facilities 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. [Amended by Ordinance 11-03]
- (~~AAZ~~) 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**

- (~~BBAA~~) 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.
- (~~CCBB~~) Private Parks, Playgrounds, Hunting and Fishing Preserves and Campgrounds [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]

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.
- (~~DDCC~~) 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.
- (~~EEDE~~) Golf Courses and accessory uses [OAR 660-033-0130(20)]. 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, 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 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) 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 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. Accessory food and beverage service facilities shall not be designated for or include structures for banquets, public gatherings or public entertainment. [Amended by Ordinances 10-10 and 11-03]

~~(FFEE)~~ Community Centers [ORS 215.283(2)(e)], 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]

~~(GGFF)~~ Living History Museum [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 with 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.

~~(HHGG)~~ Schools [ORS 215.283(2)(aa)]. New schools and the expansion of existing schools are subject to Section 136.060 and the following standards:

- (1) New public or private schools, 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) Existing schools that were lawfully established 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 non-conforming uses and subject to the

standards of Chapter 114. 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).

- (3) Existing schools, not including those listed in subsection (2) of this section, may be 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]

**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:

- (A) The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- (B) The proposed use will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

**136.065. EXPANSION AND UGB PROXIMITY STANDARDS [OAR 660-033-0130(2)].**

- (A) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.
- (B) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.
- (C) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule. [Amended by Ordinance 11-03]

**136.070. LAND PARTITION STANDARDS [ORS 215.780 (C)].** 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:

- (A) Except as provided in Sections 136.070(B), (C), (D), (E) and (F), the minimum parcel size is 80 acres.
- (B) Nonfarm, Nonresidential Parcels [OAR 660-033-0100(10)]. 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:

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- (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)]. 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)]. 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 that contains a dwelling is large enough to support continued residential use of the parcel.

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- (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).
- (E) Nonfarm Parcel for Historic Property [ORS 215.263(9)(b)]. A parcel for historic property may be created if the historic property would contain a dwelling listed on the Polk County Historic Inventory and on the National Register of Historic Places.
  - (1) 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).
- (F) Nonfarm Parcel for a Residential Home [ORS 215.263(9)(a)]. A parcel for a residential home as defined in ORS 197.660(2) may be created for a residential home approved under Section 136.050(G) if the dwelling has been approved under Sections 136.050(E) or 136.050(F).
  - (1) 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).
- (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 under Section 136.040(W);
  - (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.)

**136.100. NONCONFORMING USES.** The lawful use of any building, structure or land at the time of the enactment of this ordinance may be continued. Alteration of any such use shall be permitted when necessary to comply with local, state or federal regulations pertaining to the use

and development of land and the buildings and structures thereon. A nonconforming use is transferable, however, any significant change in, or replacement of, the nonconforming use may require permits under current building and land development codes. Restoration or replacement shall be commenced within one year from the occurrence of any fire, casualty, or natural disaster.

**136.120. NON-REMONSTRANCE DEED RESTRICTION.** Pursuant to OAR 660-033-0130(30), for any dwelling or residential facility approved under sections 136.040 and 136.050, the landowner for the dwelling shall be required to sign and record a deed restriction binding the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937.

**136.140. PROHIBITED USES.** It is unlawful to erect, alter or establish in the Exclusive Farm Use Zoning District any building, structure or use not authorized and approved under the standards and procedures in this Ordinance.

**136.150. DEVELOPMENT STANDARDS.** All uses that occur in this zone are subject to development standards adopted by Polk County.

**136.160. PERIOD OF VALIDITY FOR ADMINISTRATIVE REVIEW USES [OAR 660-033-0140(1) through (4)].**

- (A) A land use application authorizing a use pursuant to the provisions of Polk County Zoning Ordinance Section 136.040 shall be valid two (2) years from the effective date of the land use decision, except as provided in Section 136.170. An extension shall extend the validity period for one (1) additional year, if:
  - (1) The applicant makes a written request for an extension of the development approval validity period;
  - (2) The written request is submitted to the Polk County Planning Division, on the form provided by the Planning Division, prior to the expiration of the approval period;
  - (3) The applicant states the reasons that prevented the applicant from beginning or continuing development with the approval period;
  - (4) The applicant states the reasons that prevented the applicant from beginning or continuing development during the approval period for reasons for which the applicant was not responsible.
- (B) The Planning Director may authorize additional one-year extensions where the applicable criteria for the decision have not changed. Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

**136.170. PERIOD OF VALIDITY FOR NON-FARM, LOT-OF-RECORD, AND REPLACEMENT DWELLING USES [OAR 660-033-0140(5)].**

- (A) A land use application authorizing a dwelling pursuant to the provisions of Polk County Zoning Ordinance Sections 136.040(B), (C), (G), (I) and 136.050(E) and (F) shall be valid for four (4) years from the effective date of the land use decision.
- (B) A one time two (2) year extension of the validity period shall be granted upon submission of a written request for an extension prior to the expiration of the approval period. Authorization of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.



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## **CHAPTER 138**

### **FARM/FOREST (FF) ZONING DISTRICT**

138.010	Purpose
138.015	Definitions
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**138.010 PURPOSE** The Farm/Forest (F/F) Zone is designed to provide for the full range of agricultural and forest uses for such lands, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral, wildlife habitat, etc.) and conformity with the Farm/Forest objectives and policies of the Polk County Comprehensive Plan.

Upon periodic revision of the Polk County Comprehensive Plan, the lands within the F/F designation shall be reviewed by the County Commissioners as to their continued appropriateness in such a designation or, alternatively rezoning to a more appropriate category.

As with other natural resource zones, there are isolated lands within the F/F Zone which have no actual or potential use for agricultural or forest purposes. In those cases, other non-natural resource uses may be permitted only as provided in this Chapter and in the Polk County Comprehensive Plan. Such uses must not be adverse to accepted agricultural or forest practices. Further, consistent with the diverse character of this zone and recognizing that the actual and potential land use conditions vary from intensive to extensive cultivation and use, the Board of County Commissioners has adopted this zone to deal with myriad potential uses, while recognizing the primary orientation of this zone towards farm and forest uses.

### **138.015 DEFINITIONS**

**For the purposes of this Chapter, the following definitions shall apply:**

- (A) Auxiliary: As used in Section 138.040, "auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- (B) Definitions contained in ORS 197.015 and the Statewide Planning Goals.
- (C) Cubic Foot Per Acre Per Year [OAR 660-006-0005(3)] means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey. [Amended by Ordinance 11-03]
- (D) Cubic Foot Per Tract Per Year [OAR 660-006-0005(4)] means the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey. [Amended by Ordinance 11-03]
- (E) Date of Creation and Existence: When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.
- (F) Forest Operation means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620(6).
- (G) Relative means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin as defined in ORS 215.283(1)(e)(A).
- (H) Tract means one or more contiguous lots or parcels in the same ownership.

**138.020 FARM/FOREST OVERLAY ZONE** The uses allowed for a tract subject to the Farm/Forest Overlay Zone shall be the same uses as those permitted in the Farm/Forest Zoning District. Land division standards for a tract subject to the Farm/Forest Overlay Zone are those described in Section 138.130 of the Polk County Zoning Ordinance.

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**138.030 AUTHORIZED USES AND DEVELOPMENT** The following uses, activities and development are authorized in the Farm/Forest Zoning District, subject to review and approval under applicable regulatory standards:

KEY

HV	High-Value Farm Land, defined by OAR 660-033-0020(8)
Other	Other lands, not defined as High-Value
P	Permitted outright
AR	Subject to administrative review and approval
CUP	Subject to review and approval as a conditional use
NP	Use not permitted
NA	Not applicable
**	Use requires a determination of soil classes

RESOURCE USES	AUTHORIZATION	PCZO
Farm Use as defined in ORS 215.203	P	040(A)
Use and Management of Forest Lands	P	040(B)
Farm and Forest Accessory Structures	P	040(C)
Temporary Portable Facilities for Primary Processing of Forest Products	P	040(D)
Temporary on-site structures auxiliary to a particular forest operation; including forest labor camps – no permanent structures.	P	040(E)
Fire Service facilities providing rural fire protection services including Fire Towers and Fire Stations	P	040(F)
Creation, Restoration, and Enhancement of wetlands, fisheries and wildlife habitat	P	040(G)
Soil, Air and Water Conservation Activities	P	040(H)
Irrigation canals, delivery lines and those structures and accessory operation facilities associated with a district as defined in ORS 540.505	P	040(I)
Physical Alterations to the Land Auxiliary to Forest Practices	P	040(J)
Wildlife Habitat Conservation and Management Plan	P	040(K)
Processing Facility for Farm Crops	AR	050(A)
Permanent Facility for Primary Processing of Forest Products	CUP	060(A)
Permanent Logging Equipment Repair and Storage Facility	CUP	060(B)

Proposed additions are double underlined. Deletions are in ~~strikethrough~~.

Log Scaling and Weigh Stations	CUP	060(C)
Forest Management Research and Experimentation Facilities	CUP	060(D)
Aquaculture	CUP	060(E)
Insect Breeding	CUP	060(F)
Operations for the Extraction and Bottling of Water	CUP	060(G)

COMMERCIAL	AUTHORIZATION	PCZO
On-site Filming and Accessory Activities for 45-days or less (ORS 215.306).	P	040(L)
Winery, as described in ORS 215.452	AR & <u>CUP</u>	050(B) & <u>060(M)</u>
Farm Stand	AR	050(C)
Commercial Activity In Conjunction with Farm Use	CUP	060(H)
Home Occupations	CUP	060(I)
On-site Filming and Accessory Activities for more than 45-days (ORS 215.306).	CUP	060(J)
Dog Kennels**	CUP	060(K)
Landscape Contracting Business	CUP	060(L)

MINERAL AND AGGREGATE OPERATIONS	AUTHORIZATION	PCZO
Exploration and Production of Geothermal, gas, oil, and other associated hydrocarbons, (ORS 517.750)	P	040(M)
Exploration for Mineral and Aggregate as defined by ORS 517.750	P	040(N)
Mining and Processing of Geothermal, (ORS 522.005) Oil and Gas (ORS 520.005) including Mineral and Aggregate Materials, Processing of Aggregate into Asphalt or Portland Cement (ORS 517.750) and Processing of Other Mineral Resources	CUP	060( <u>NM</u> )

TRANSPORTATION	AUTHORIZATION	PCZO
Reconstruction or Modification of Public Roads, not including addition of travel lanes, removal of buildings or creation of new parcels.	P	040(O)
Climbing and Passing Lanes within Right-of Way existing on July 1, 1987.	P	040(P)
Temporary Public Road Detours	P	040(Q)

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Minor Betterment to Existing Road and Highway Related Facilities, including climbing and passing lanes within right-of-way existing on July 1, 1987.	P	040(R)
Widening of Roads within existing right-of-way	P	040(S)
Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.	CUP	060( <del>ON</del> )
Expansion of Existing Airport.	CUP	060( <del>P</del> <u>Θ</u> )
Construction of Additional Passing and Travel lanes requiring acquisition of right-of-way, but not resulting in the creation of new parcels.	CUP	060( <del>Q</del> <u>P</u> )
Personal Use Airports and Helipads	CUP	060( <del>R</del> <u>Q</u> )
Reconstruction or Modification of Public Roads, involving the removal of buildings, but not the creation of new parcels.	CUP	060( <del>S</del> <u>R</u> )
Improvements to Existing Road and Highway Related Facilities where additional property right-of-way is required.	CUP	060( <del>T</del> <u>S</u> )
Transportation Facilities: Roads and Highways; including aids to Navigation and Aviation	CUP	060( <del>U</del> <u>T</u> )

<b>UTILITIES AND SOLID WASTE DISPOSAL FACILITIES</b>	<b>AUTHORIZATION</b>	<b>PCZO</b>
Utility Facility Service Lines	P	040(T)
Non-Commercial Wind Energy Systems, Meteorological Towers and Photovoltaic Systems	P	040(U)
Utility Facilities Necessary for Public Service, excepting commercial power generating facilities, transmission towers over 200 feet in height, and a communications tower over 200 feet in height	AR	050(D)
Non-Commercial Wind Energy Systems and Meteorological Towers that Require a Height or Type of Construction Modification	AR	050(E)
Solid Waste Disposal Site under ORS 459.245	CUP	060( <del>V</del> <u>U</u> )
Composting Facilities**	CUP	050(F) 060( <del>W</del> <u>V</u> )
Communication and Broadcast Towers over 200 fee in height	CUP	060( <del>X</del> <u>W</u> )
Commercial Power Generating Facilities	CUP	060( <del>Y</del> <u>X</u> )
Commercial Wind Power Generating Facilities	CUP	060( <del>Z</del> <u>Y</u> )
New Electric Transmission Lines with right of way widths of up to 100 feet as specified in ORS 772.210 and Distribution Lines with right-of-way widths of up to 50 feet.	CUP	060( <del>AA</del> <u>Z</u> )
Drinking Water Facilities (Intake, Treatment, pumping stations, etc.)	CUP	060( <del>BB</del> <u>AA</u> )

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Reservoirs and Water Impoundments	CUP	060( <del>CCBB</del> )
Non-Commercial Wind Energy Systems and Meteorological Towers in a UGB	CUP	060( <del>DDCC</del> )

<b>PARKS/PUBLIC/QUASI-PUBLIC FACILITIES</b>	<b>AUTHORIZATION</b>	<b>PCZO</b>
Uninhabitable Structures Accessory to Fish and Wildlife Enhancement	P	040(V)
Private Fee Hunting Operations without any accommodations.	P	040(W)
Caretaker Residence for Parks and Hatcheries	P	040(X)
Firearms Training Facility (ORS 197.770)	P	040(Y)
Model Aircraft Takeoff and Landing Sites	AR	050(G)
Churches and Associated Cemeteries**	AR	050(H)
Destination Resorts pursuant to ORS 197.435 to 197.465 and Statewide Planning Goal 8**	AR	050(H)
Parks, Private, including Playgrounds, Hunting/Fishing Preserves and Campgrounds**	CUP	060( <del>EEDD</del> )
Parks, Public or Nonprofit, including Playgrounds or Community Centers**	CUP	060( <del>FFEE</del> )
Private Seasonal Accommodations for Fee Hunting Operations	CUP	060( <del>GGFF</del> )
Private Seasonal Accommodations for Fee Fishing Operations	CUP	060( <del>HHGG</del> )
Expansion of an Existing County Fairgrounds	CUP	060( <del>IHHH</del> )
Golf Courses and accessory uses**	CUP	060( <del>JJII</del> )
Cemeteries	CUP	060( <del>KKJJ</del> )
Community Centers	CUP	060( <del>LLKK</del> )
Living History Museum	CUP	060( <del>MMLL</del> )
Schools, Public or Private (K-12) that serve the residents of the rural area**	CUP	060( <del>NNMM</del> )

<b>RESIDENTIAL USES</b>	<b>AUTHORIZATION</b>	<b>PCZO</b>
Replacement Dwelling	AR	050(J)
Replacement of Historic Dwelling	AR	050(K)
Temporary Hardship Dwelling	AR	050(L)
Residential Home (ORS 197.660)	CUP	060( <del>OO NN</del> )

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		)
Room and Board Arrangements	CUP	060( <u>PP</u> <del>00</del> )

<b>USES ON TRACTS PREDOMINATELY USED FOR FARM USE AS DEFINED IN 138.070</b>	<b>AUTHORIZATION</b>	<b>PCZO</b>
Farm Dwelling	AR	080(A)(1-5)
Lot of Record Dwelling – Not High Value	AR	080(A)(6)
Lot of Record Dwelling – High Value	AR	080(A)(7)
Family Farm Help Dwelling	AR	080(A)(8)
Accessory Farm Dwelling	AR	080(A)(9)
Dwelling in Conjunction with a Commercial Dairy	AR	080(A)(10)
Relocated Farm Operation Dwelling	AR	080(A)(11)
Nonfarm Dwelling	CUP	090(A)(1)
Nonfarm Dwelling on Nonfarm Parcel	CUP	090(A)(2)

<b>USES ON TRACTS PREDOMINATELY USED FOR FORESTRY AS DEFINED IN 138.070</b>	<b>AUTHORIZATION</b>	<b>PCZO</b>
Small Tract, Forest Land “Lot of Record” Dwelling	AR	080(B)(1)
Large Tract Forest Land Dwelling	AR	080(B)(2)
“Template” Forest Land Dwelling	AR	080(B)(3-4)
Youth Camp	CUP	090(B)(1)

\*\* Use requires a determination of soil classes

**138.040 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:

#### **RESOURCE USES**

- (A) Farm Use, as defined in ORS 215.203.
- (B) Use and Management of Forest Lands.
- (C) Farm and Forest Accessory Structures related to the use and management of farm and forest lands.
- (D) Temporary Portable Facilities for Primary Processing of Forest Products.
- (E) Temporary On-Site Structures, auxiliary to a particular forest operation; including forest labor camps, without any permanent structures and limited to the duration of the forest operation requiring the use.

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- (F) Fire Service Facilities Providing Rural Fire Protection Services including fire towers and fire stations.
- (G) Wetland Creation, Restoration and Enhancement.
- (H) Soil, Air and Water Conservation Activities.
- (I) Irrigation Canals, delivery lines and those structures and accessory operation facilities associated with a district as defined in ORS 540.505.
- (J) Physical Alterations to the Land Auxiliary to Forest Practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities.
- (K) Wildlife Habitat Conservation and Management Plan pursuant to ORS 215.800 to 215.808.

## COMMERCIAL

- (L) On-Site Filming and Accessory Activities for 45 days or less pursuant to ORS 215.306.

## MINERAL AND AGGREGATE OPERATIONS

- (M) Exploration and Production of Geothermal, Gas, Oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head as defined in ORS Chapters 517 and 520.
- (N) Exploration for Mineral and Aggregate Resources as defined by ORS Chapter 517.570.

## TRANSPORTATION

- (O) Reconstruction or Modification of Public Roads and Highways, not including the addition of travel lanes, removal or displacement of buildings or creation of new parcels.
- (P) Climbing and Passing Lanes within the Right-Of-Way existing as of July 1, 1987.
- (Q) Temporary Public Road or Highway Detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- (R) Minor Betterment of Existing Public Road and Highway Related Facilities such as maintenance yards, weigh stations, and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.
- (S) Widening of Roads within existing rights-of-way in conformance with the transportation element of acknowledged comprehensive plans including public road and highway projects as described in ORS 215.213(1)(m) through (p) and ORS 215.283(1)(k) through (n).

## UTILITIES AND SOLID WASTE DISPOSAL FACILITIES

- (T) Utility Facility Service Lines [OAR 660-033-0130(32)], and 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:



Proposed additions are double underlined. Deletions are in ~~striketrough~~.

- (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.
- (U) Wind Energy Systems, Meteorological Towers, and Photovoltaic Systems That are not Commercial Power Generating Facilities, but not including wind energy systems utilizing a tower and meteorological towers that require tower lighting, are located in an adopted urban growth boundary, or that would require modification to the height or type of construction standards described in Section 112.135(C)(1). Wind energy systems utilizing towers and meteorological towers are subject to standards listed in Sections 112.135 and 112.137. Roof-mounted, building-integrated, building-mounted and architectural wind energy systems that extend no more than an additional 5 feet above the highest ridge of the building's roof or 15 feet above the highest eave, whichever is higher, and do not exceed the height limitation of the zone, are subject to the standards listed in Section 112.137. Photovoltaic systems are subject to the standards described in Section 112.138. [Amended by Ordinance 09-06]

## **PARKS/PUBLIC/QUASI-PUBLIC FACILITIES**

- (V) Uninhabitable Structures Accessory to Fish and Wildlife Enhancement.
- (W) Private Fee Hunting Operations without any accommodations.
- (X) Caretaker Residence for a Public Park or Public Fish Hatchery.
- (Y) Firearms Training Facility pursuant to ORS 197.770.

**138.050 USES SUBJECT TO ADMINISTRATIVE REVIEW** The following uses are permitted, subject to review and approval under the prescriptive standards specified herein, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, and as may otherwise be indicated by federal, state and local permits or regulations. [Amended by Ordinance 11-03]

## **RESOURCE USES**

- (A) Processing Facility for Farm Crops [(OAR 660-033-0130(28))], or the production of bio-fuel 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.

## **COMMERCIAL**

~~(C)(B)~~ Winery [OAR 660-033-0120 ORS 215.452], subject to the requirements of PCZO Chapter 117. A winery, as described in Section 110.595, may be permitted subject to findings that:

- ~~(1) The related vineyards, as described in Section 110.595, have been planted or that the contract has been executed, as applicable;~~

Proposed additions are double underlined. Deletions are in ~~strikethrough~~.

- ~~(2) The winery use will not result in substantial conflicts with farm or forest practices on adjacent lands; and~~
- ~~(3) The winery use complies with Comprehensive Plan Goal and Policies and other applicable criteria in the Polk County Zoning Ordinance.~~
- (4) Pursuant to ORS 215.452, standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming and forest practices on adjacent lands:
  - ~~(a) Establishment of a setback, not to exceed 100 feet, from all property lines for the winery and all public gathering places; and~~
  - ~~(b) Provision of direct local road access, internal circulation, and parking.~~

(C) Farm Stand [OAR 660-033-0130(23)]. A farm stand 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 [Amended by Ordinance 11-03]
- (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. [Amended by Ordinance 11-03]

## UTILITIES AND SOLID WASTE DISPOSAL FACILITIES

(D) Utility Facilities Necessary for Public Service [OAR 660-033-0130(16)], including 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 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 non-resource lands;
  - (d) Availability of existing rights of way;
  - (e) Public health and safety; and
  - (f) Other requirements of state and federal agencies.

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- (2) Costs associated with any of the factors listed in subsection (D)(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 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) Utility facilities 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 (D)(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 (D)(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]
- (E) 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]
- (F) Composting Facilities on 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 may be expanded on the same tract, subject to other requirements of law. [Amended by Ordinance 11-03]

## **PARKS/PUBLIC/QUASI-PUBLIC FACILITIES**

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- (G) *Model Airplane Takeoff and Landing Sites [OAR 660-033-0130(26)]*, including such buildings or facilities as may reasonably be necessary. 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 pre-existed 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.

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. [Amended by Ordinance 10-10]
- (H) *Churches and Associated Cemeteries consistent with ORS 215.441 [ORS 215.283(1)(a)]*. New churches and associated cemeteries are not authorized on lands classified as high-value. New churches and associated cemeteries on not high-value farmland, or the expansion of existing churches and associated cemeteries on all farmlands, shall be subject to the standards listed in Section 138.105. [Amended by Ordinance 11-03]
- (I) *Destination Resort [ORS 215.283(2)(t)]*, subject to compliance with the requirements of Oregon Statewide Planning Goal 8. (Note: destination resorts are not authorized on lands classified as high-value.)

## RESIDENTIAL USES

- (J) *Replacement Dwelling [ORS 215.283(1)(p) and OAR 660-033-0130(8)]*. A replacement dwelling may be authorized, where the lawfully established single-family dwelling being replaced has:
- (1) Intact exterior walls and roof structure;
  - (2) Interior plumbing, including kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
  - (3) Interior wiring for interior lights;
  - (4) A heating system;
  - (5) The dwelling to be replaced shall be:
    - (a) Removed, demolished or converted to an approved nonresidential use, within 3 months of the completion of the replacement dwelling. The replacement dwelling may be placed on any part of the same lot or parcel as the existing dwelling and shall comply with all applicable siting standards. These standards shall not be applied in such a manner as to prohibit the siting of the replacement dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use and the replacement dwelling would be located on the portion of the lot or parcel zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record a deed restriction prohibiting siting of a dwelling on the portion of the lot or parcel not zoned for exclusive farm use. This deed restriction shall be irrevocable unless a statement of release is recorded in the County deed records. The release shall be signed by a representative of the County and shall state that the provisions of this section have been changed to allow the siting of another dwelling. The Planning Director shall maintain a record of the lots or parcels that do not qualify for the siting of a new dwelling under the

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provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and [Amended by Ordinance 11-03]

- (b) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.
- (6) An accessory farm dwelling authorized pursuant to Section 138.080(A)(9)(b)(iii), may only be replaced by a manufactured dwelling.
- (K) Replacement of Historic Dwelling [ORS 215.283(1)(o)]. A dwelling listed on the Polk County Historic Inventory and on the National Register of Historic Places 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.
- (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 138.050(J).

**138.060 CONDITIONAL USES** The following conditional uses may be approved, subject to compliance with the procedures and criteria under Chapter 119, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, applicable state and federal regulations, and other specific criteria as may be indicated: [Amended by Ordinance 11-03]

## RESOURCE-RELATED USES

Proposed additions are double underlined. Deletions are in ~~strikethrough~~.

- (A) Permanent Facility for the Primary Processing of Forest Products [OAR 660-006-0025(4)(a)], subject to compliance with Sections 138.100(A) and (B). [Amended by Ordinance 11-03]
- (B) Permanent Logging Equipment Repair and Storage [OAR 660-006-0025(4)(b)], subject to compliance with Sections 138.100(A) and (B).
- (C) Log Scaling and Weigh Stations [OAR 660-006-0025(4)(c)], subject to compliance with Sections 138.100(A) and (B).
- (D) Forest Management Research and Experimentation Facilities [OAR 660-006-0025(4)(x)] as defined by ORS 526.215 or where accessory to forest operations, and subject to compliance with Sections 138.100(A) and (B).
- (E) Aquaculture [ORS 215.283(2)(p) and OAR 660-033-0130(27)], including the propagation, cultivation, maintenance and harvesting of aquatic species, subject to compliance with Section 138.100(A). Notice of the application shall be provided to the State Department of Agriculture at least 20 calendar days prior to any administrative action or initial public hearing on the application.
- (F) Insect Breeding [OAR 660-033-0130(27)], including the propagation, cultivation, maintenance and harvesting of insect species, subject to compliance with Section 138.100(A) 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 Department of Agriculture at least 20 calendar days prior to any administrative action or initial public hearing on the application.
- (G) Operations for the Extraction and Bottling of Water [ORS 215.283(2)(v)], subject to compliance with Section 138.100(A).

## COMMERCIAL ACTIVITIES

- (H) Commercial Activity in Conjunction with Farm Use [ORS 215.283(2)(a)], including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or Section 138.050(A) and activities related to the processing, distribution and marketing of farm products, a portion of which are produced by the subject farming operation, but not including the processing of farm crops as described in Section 138.050(A), subject to compliance with Section 138.100(A). [Amended by Ordinance 11-03]
- (I) Home Occupations [OAR 660-033-0130(14)], subject to the general review standards under Section 138.100(A) and the following standards and conditions from ORS 215.448:
  - (1) The home occupation is operated by a resident of the property on which the business is located;
  - (2) No more than five full or part-time persons are employed by the business;
  - (3) The business is conducted within the dwelling or other building(s) normally associated with uses permitted within this zone; and
  - (4) The business will not interfere with existing uses on nearby land or with other permitted uses.

Proposed additions are double underlined. Deletions are in ~~strikethrough~~.

- (J) *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 138.100(A).
- (K) *Dog Kennels* [ORS 215.283(2)(n)], as defined in Section 110.301, may be authorized on land not classified as high-value farmland, subject to compliance with Section 138.100(A). Existing facilities on high-value farmland may be maintained, enhanced, or expanded on the same tract subject to other requirements of law.
- (L) *Landscape Contracting Business* [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 138.100(A). [Amended by Ordinance 11-03]
- (M) *Winery* [ORS 215.452], subject to the requirements of PCZO Chapter 117

## **MINERAL AND AGGREGATE OPERATIONS**

~~(H)~~(N) The following operations are permitted subject to compliance with ORS 215.298, which describes mining activities in exclusive farm use zones, and with Section 138.100(A):

- (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; [ORS 215.283(2)(b)(A)]
- (2) 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 more, subject to PCZO 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 PCZO 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 138.040, 138.050(A)(C-I) and (K-L), 138.080(A), 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. [OAR 660-023-0180(4) and (6)]

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- (4) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement more than two miles from a planted vineyard, at least 40 acres in size, planted as of the date the application for batching and blending is filed; and [ORS 215.283(2)(b)(C)]
- (5) Processing of other mineral resources and other subsurface resources. [ORS 215.283(2)(b)(D)]

## TRANSPORTATION

~~(1)(O)~~ Temporary Asphalt and Concrete Batch Plants [OAR 660-006-0025(4)(r)] as accessory uses to specific highway projects, subject to compliance with Sections 138.100(A) and (B).

~~(2)(P)~~ Expansion of Existing Airports [OAR 660-006-0025(4)(u)], subject to compliance with Section 138.100(A).

~~(3)(Q)~~ 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 parcels, subject to compliance with Section 138.100(A).

~~(4)(R)~~ Personal Use Airports and Helipads [OAR 660-033-0130(7)], including associated hangar, maintenance and service facilities, subject to compliance with Section 138.100(A). 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.

~~(5)(S)~~ Reconstruction or Modification of Public Roads [ORS 215.283(2)(r)], involving the removal or displacement of buildings, but not resulting in the creation of new parcels, subject to compliance with Section 138.100(A).

~~(6)(T)~~ 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 parcels, subject to compliance with Section 138.100(A).

~~(7)(U)~~ 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 138.100(A):

- (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;



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- (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]

Note: Other Roads, Highways and other Transportation Facilities and Improvements [ORS 215.283(3)] not allowed under this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

- (A) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or
- (B) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

## UTILITIES AND SOLID WASTE DISPOSAL FACILITIES

~~(U)~~(V) Solid Waste Disposal Site under ORS 459.245 [ORS 215.283(2)(k)], subject to compliance with Section 138.100(A). New solid waste disposal sites are not authorized on lands classified as high-value.

~~(W)~~(W) Composting Facilities on Not High-Value Farmland [OAR 660-033-0130(29)(b)], subject to compliance with Section 138.100(A). 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]

~~(W)~~(X) Communication and Broadcast Towers over 200 feet in Height [ORS 215.283(2)(m)], subject to compliance with Section 138.100(A), Section 112.135, and the following criteria:

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- (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)(Y)~~ Commercial Power Generating Facilities [OAR 660-033-0130(17) and (22)], not including commercial wind power generation facilities listed in subsection (Y) of this section, subject to compliance with Section 138.100(A). 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 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 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]

~~(Y)(Z)~~ Commercial Wind Power Generation Facilities [OAR 660-033-0130(37)], wind power generation facilities that are commercial utility facilities for the purpose of generating power for public use by sale as described in OAR 660-033-0130(37), subject to compliance with Section 138.100(A). [Amended by Ordinance 11-03]

~~(Z)(AA)~~ Transmission and Distribution Lines [OAR 660-006-0025(4)(q)], subject to compliance with Sections 138.100(A) and (B). New Electric Transmission Lines with right-of-way widths of up to 100 feet as specified in ORS 722.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width.

~~(AA)(BB)~~ Drinking Water Facilities [OAR 660-006-0025(4)(l)], subject to compliance with Sections 138.100(A) and (B). Water intake facilities, related treatment facilities, pumping stations, and distribution lines

~~(BB)(CC)~~ Reservoirs and Water Impoundments [OAR 660-006-0025(4)(m)], subject to compliance with Sections 138.100(A), (B), and (C).

~~(CC)(DD)~~ 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**

~~(DD)(EE)~~ Private Parks, Playgrounds, Hunting and Fishing Preserves and Campgrounds [OAR 660-033-0130(19)], subject to compliance with Section 138.100(A). 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 138.105(A) and (B). Existing facilities on all farmlands may be maintained, enhanced, or expanded subject to Section 138.105. 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]

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)~~(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 138.100(A) and 138.105. A public park may be established consistent with the provisions of ORS 195.120. [Amended by Ordinance 11-03]

~~(FF)~~(GG) Private Seasonal Accommodations for Fee Hunting Operations [OAR 660-006-0025(4)(P), 600-006-0029 and 660-006-0035], subject to compliance with Sections 138.100(A) and (B), and the following requirements:

- (1) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
- (2) Only minor incidental and accessory retail sales are permitted;
- (3) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and
- (4) Other conditions, as deemed appropriate.

~~(GG)~~(HH) Private Seasonal Accommodations for Fee Fishing Operations [OAR 660-006-0025(4)(W), 600-060-0029 and 660-006-0035], subject to compliance with Sections 138.100(A), (B), and (C), and the following requirements:

- (1) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
- (2) Only minor incidental and accessory retail sales are permitted;
- (3) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;
- (4) Accommodations must be located within 1/4 mile of fish bearing Class I waters; and
- (5) A governing body may impose other appropriate conditions

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~~(HH)~~(II) 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 138.100(A).

~~(H)~~(JJ) Golf Courses and accessory uses [OAR 660-033-0130(20)]. 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, consistent with Section 138.100. An existing golf course on all farmlands may be maintained, enhanced, or expanded, up to 36 holes on the same tract, consistent with Section 138.100(A) and OAR 660-033-130(18). In addition, new golf courses or the expansion of existing golf courses that are located within three miles of an urban growth boundary shall be subject to the standards listed in Section 138.105.

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 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) 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 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. Accessory food and beverage service facilities shall not be designated for or include structures for banquets, public gatherings or public entertainment.

[Amended by Ordinance s10-10 and 11-03]

~~(JJ)~~(KK) Cemeteries [OAR 660-006-0025(4)(o)], subject to compliance with Sections 138.100(A) and (B).

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~~(KK)~~(LL) Community Centers [ORS 215.283(2)(e)], 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 138.100(A) and 138.105. 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]

~~(LL)~~(MM) Living History Museum [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 138.100(A) and 138.105. 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 with 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.

~~(MM)~~(NN) Schools [ORS 215.283(2)(aa)]. New schools and the expansion of existing schools are subject to compliance with Section 138.100(A) and the following standards:

- (1) New public or private schools, 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 138.105(A) and (B).
- (2) Existing schools that were lawfully established 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 non-conforming uses and subject to the standards of Chapter 114. 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 138.105(A) and (B).
- (3) Existing schools, not including those listed in subsection (2) of this section, may be 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 138.105(A) and (B). [Amended by Ordinances 10-10 and 11-03]

## OTHER

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~~(NN)(OO)~~ Residential Home [ORS 215.283(2)(o)], as defined in ORS 197.660, in existing dwellings subject to compliance with Section 138.100(A).

~~(OO)(PP)~~ Room and Board Arrangements [ORS 215.283(2)(u)], for a maximum of five unrelated persons in existing residences subject to compliance with Section 138.100(A).

**138.070     PREDOMINANT USE TEST [(OAR 660-006-0050(2))]** The siting of dwellings and certain other land uses within the Farm/Forest Zoning District are based on a determination of the predominant use of a tract as either farm or forest land. A "tract" is defined as one (1) or more contiguous lots or parcel(s) under the same ownership.

Predominant use is defined as more than 50 percent of the area of the tract. Polk County will review tax assessor records, aerial photos, soils capability data, and existing uses to determine on a case-by-case basis whether a tract was predominantly used for farm or forest purposes as of January 1, 1993.

**138.080     USES SUBJECT TO ADMINISTRATIVE REVIEW AND BASED ON THE DETERMINATION OF PREDOMINATE USE OF TRACT IN ACCORDANCE WITH SECTION 138.070** The following uses are permitted, subject to review and approval under the prescriptive standards specified herein, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, and as may otherwise be indicated by federal, state and local permits or regulations. [Amended by Ordinance 11-03]

(A) **FARM LAND TRACT** - Uses subject to administrative review on a tract where the predominate use has been determined to be farm use:

## **DWELLINGS**

- (1) Dwelling for the Farm Operator on High-Value Farmland [OAR 660-033-0135(4) and (9)]. A Farm Dwelling may be authorized on a tract of land classified as high-value, where the tract meets the following criteria:
  - (a) The subject tract is currently in farm use and has produced at least \$80,000 gross annual income from the sale of farm products, each of the last 2 years or 3 out of the past 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 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 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;
  - (b) The tract is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing on lands designated for exclusive farm owned by the farm operator or on the farm operation); and
  - (c) The dwelling will be occupied by a person or persons who produced the commodities which provided the income under subsection 1 above.
  - (d) 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

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

- (e) 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) for the properties subject to the application that precludes:
  - (i) All future rights to the establishment of a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215;
  - (ii) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.
- (2) Small Tract Dwelling on High-Value Farmland [OAR 660-033-0130(3)(d)]. A dwelling may be authorized on a tract of land classified as high-value, where the tract meets the following requirements:
  - (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 parcel since prior to January 1, 1985);
  - (b) The tract is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing);
  - (c) If 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;
  - (d) The dwelling meets all other 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
  - (e) 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;
  - (f) The tract where the dwelling would be sited is:
    - (i) 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);
    - (ii) Composed predominately of high-value (NRCS) Class III and IV soils identified in OAR 660-033-0020(8)(c) or (d); or
    - (iii) Composed predominantly of a combination of high-value NRCS Class III and IV soils identified in OAR 660-033-0020(8)(c) or (d) and prime, unique, NRCS Class I or II soils identified in OAR 660-033-0020(8)(a) or (b);
    - (iv) Twenty-one (21) acres or less in size; and
    - (v) 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,
    - (vi) 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,

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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

- (vii) 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”. 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. [OAR 660-033-0130(3)(d)(D)]

Note:

(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, 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 138.190 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)]

- (3) *Dwelling for the Farm Operator on Other Farmland - Acreage Standard [OAR 660-033-0135(1)]*. A farm dwelling may be authorized on a tract of land not classified as high value, subject to the following standards:
  - (a) The parcel on which the dwelling is to be located is at least 160 acres in size;
  - (b) The subject tract is currently in farm use;
  - (c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and
  - (d) The subject tract is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing).
- (4) *Dwelling for the Farm Operator on Other Farmland - Income Standard [OAR 660-033-0135(3), (5) and (6)]*. A farm dwelling may be authorized on a tract of land, not classified as high value, subject to the following standards:
  - (a) 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. 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



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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 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

- (b) 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;
  - (c) The subject tract, and all parcels subject to the application are currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing); and
  - (d) 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.
  - (e) 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.
  - (f) 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) for the subject properties that precludes:
  - (g) All future rights to the establishment of a dwelling, except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215;
  - (h) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling;
- (5) *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:
- (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;
  - (b) 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;
  - (c) Currently employed for farm use 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);

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- (d) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock at a commercial scale;
  - (e) At least 10 acres in size; and
  - (f) Currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing).
- (6) *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:
- (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: 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 parcel since prior to January 1, 1985);
  - (b) The tract on which the dwelling will be sited does not include a dwelling (excepting lawfully established seasonal farm worker housing);
  - (c) 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;
  - (d) The dwelling meets 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) 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.
  - (f) An authorization to establish a dwelling pursuant to this subsection is valid for the duration specified in Section 138.190 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)]
  - (g) Upon approval, the Planning Director shall notify the County Assessor that the governing body intends to allow the dwelling. [660-033-0130(3)(h)]

- Note:
- (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, 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) 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 138.080(A)(8), 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

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- (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 and finds the analysis in the report to be soundly and scientifically based. [ORS 215.710(5)]
- (7) 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:
  - (a) The Polk County Hearings Officer shall determine whether the subject parcel is a lot-of-record, based on the following criteria:
    - (i) 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 prior to January 1, 1985);
    - (ii) The tract on which the dwelling will be sited is currently vacant (no dwellings, excepting lawfully established seasonal farm worker housing);
    - (iii) If 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;
    - (iv) The dwelling meets 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
    - (v) 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.
  - (b) The Hearings Officer shall determine that:
    - (i) 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;
    - (ii) The dwelling will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use;
    - (iii) The dwelling will not significantly increase the cost of farm or forest practices on surrounding lands devoted to farm and forest use; and

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- (iv) 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.
- (v) Notice of the public hearing shall be provided to the State 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)]
- (vi) 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 138.190 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)]

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, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or a business entity owned by any one or a combination of these family members.

- (8) *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, 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. 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’ spouse, 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.
- (9) *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:
  - (a) Each dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose 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. (Note: 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);
  - (b) The accessory dwelling will be located:
    - (i) On the same lot or parcel as the primary farm dwelling; or
    - (ii) 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
    - (iii) 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

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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

- (iv) On a 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; or
- (v) 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) or (7), whichever is applicable, and
- (c) 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
- (d) The primary farm dwelling, to which the proposed dwelling would be accessory, meets one of the following:
  - (i) 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 and produced in each of the last two years or three of the last five years, the lower of the following:
    - (A) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; 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. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
  - (ii) 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 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. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;
  - (iii) On land defined as a commercial dairy pursuant to OAR 660-033-0135(11) and the following:
    - (A) 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
    - (B) 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

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- (C) The Oregon Department of Agriculture has approved a permit for a Producer License for the sale of dairy products under ORS 621.072.
- (e) 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 138.080(A-E). A parcel may be created consistent with the minimum parcel size for the zone.
- (f) 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.

Note: “Accessory farm dwellings” include all types of residential structures allowed by the applicable state building code.

- (10) *Dwelling in Conjunction with a Commercial Dairy [OAR 660-033-0135(7)]*. A dwelling may be considered customarily provided in conjunction with a dairy farm as defined in OAR 660-033-0135(11) if:
  - (a) The subject tract will be employed as a commercial dairy that owns a sufficient number of producing dairy animals capable of earning the gross annual income from the sale of fluid milk required by:
    - (i) Section 138.080(A) if located on high-value farmland; or
    - (ii) Section 138.080(E) if located on non-high-value farmland, whichever is applicable; and
  - (b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and
  - (c) The subject tract is vacant (no dwellings, excepting lawfully established seasonal farm worker housing,);
  - (d) 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
  - (e) 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
  - (f) The Oregon Department of Agriculture has approved the following:
    - (i) A permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and
    - (ii) A producer license for the sale of dairy products under ORS 621.072.
- (11) *Relocated Farm Operation Dwelling [OAR 660-033-0135(9)]*. A dwelling may be considered customarily provided in conjunction with farm use if:
  - (a) Within the last two years, the applicant owned and operated a farm or ranch operation that earned the gross farm income in the last five years or four of the last seven years as required by Section 138.080(A) or (E), whichever is applicable;
  - (b) The subject lot or parcel on which the dwelling will be located is:
    - (i) 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 138.080(A) or (E), whichever is applicable; and
    - (ii) At least the size of the applicable minimum parcel size; and

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- (c) The subject tract is vacant (no dwellings, excepting lawfully established seasonal farm worker housing); and
  - (d) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this section;
  - (e) In determining the gross income required by subsections (a) and (b)(i), of this section:
    - (i) The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and
    - (ii) Only gross income from land owned, not leased or rented, shall be counted.
- (B) **FOREST** - Uses subject to administrative review on a tract where the predominate use has been determined to be forest use.

## DWELLINGS

- ~~(4)~~(1) *Small Tract, Lot-of-Record Dwelling* [OAR 660-006-0027(1)(a)(f)(g)]. A dwelling may be authorized on a lot-of-record. To qualify as a lot-of-record, the parcel must meet the following criteria:
- (a) The parcel was lawfully created and was acquired and owned continuously by the present owner since prior to January 1, 1985. The 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.
  - (b) Based on soil types, the tract is not capable of annually producing 5,000 cu. ft. of commercial tree species, as recognized under rules adopted under ORS 527.715 for commercial production.
  - (c) The tract is currently vacant;
  - (d) If 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;
  - (e) The tract is located within 1,500 feet of a public road, as defined by ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock. The road shall not be a Bureau of Land Management road. The road shall not be a U.S. Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the U.S. Forest Service and landowners adjacent to the road, Polk County, or a state agency;
  - (f) The dwelling complies with limitations on density imposed by the Deer and Elk Winter Range; and
  - (g) Where the dwelling is sited on a portion of a tract, the remaining portions under common ownership are consolidated into a single unit of land.
  - (h) Authorization to establish 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 decision.
  - (i) Parcels 10 acres or less in size shall not be required to submit a stocking report prior to receiving a permit for the dwelling as authorized by this subsection.

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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, 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)~~(2) Large Tract Forest Land Dwelling [OAR 660-006-0027(2) and (7)]. A dwelling may be authorized on a tract that meets the following criteria:

- (a) The tract is at least 160 acres in size; or,
- (b) The tract is part of one ownership, at least 200 acres in size that may be composed of separate vacant tracts of designated forest land in Polk County or its adjacent counties. A deed restriction shall be filed for all tracts that are used to meet the acreage requirements of this subsection, pursuant to the following provisions:
  - (i) The applicant shall provide evidence that the covenants, conditions and restrictions form adopted as Exhibit "A" to OAR 660-006 has been recorded with the County Clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located.
  - (ii) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.
  - (iii) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located.
  - (iv) Failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of the property which is subject to the covenants, conditions and restrictions required by this section.
  - (v) The Planning Director shall maintain a copy of the covenants, conditions and restrictions filed in the County deed records pursuant to this section and a map or other record depicting tracts which do not qualify for a siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this section shall be readily available to the public in the Planning Division office.

~~(2)~~(3) SSmall Tract "Template" Dwelling [OAR 660-006-0027(3)]. A dwelling may be authorized on a tract that meets the following criteria:

- (a) The tract is less than 60 acres in size;
- (b) The tract meets one of the following:
  - (i) The tract is composed of soils that are capable of annually producing more than 85 cu. ft. per acre of wood fiber if:
    - (A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract. If the tract abuts a road that existed as of January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road to the maximum extent possible; and



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- (B) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or
  - (c) The tract is composed of soils that are capable of annually producing 50 to 85 cu. ft. per acre of wood fiber if:
    - (i) All or part of at least seven (7) other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract. If the tract abuts a road that existed as of January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road to the maximum extent possible; and
    - (ii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or
  - (d) The tract is composed of soils that are capable of annually producing 0 to 49 cu. ft. per acre of wood fiber if:
    - (i) All or part of at least three (3) other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract. If the tract abuts a road that existed as of January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road to the maximum extent possible; and
    - (ii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.
  - (e) The tract contains no dwellings on other lots or parcels that make up the tract.
  - (f) The tract is not subject to deed restrictions established under OAR 660-006-0027(6) and Section 138.080(B)(2)(b) of this Ordinance.
  - (g) Parcels 10 acres or less in size shall not be required to submit a stocking report prior to receiving a permit for the dwelling as authorized by this subsection.
  - (h) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under subsections 138.080(B)(4).
- (4) Large Tract "Template" Dwelling [OAR 660-006-0027(5)]. A dwelling may be authorized on a tract that meets the following criteria:
- (a) The tract is 60 acres or larger in size;
  - (b) The tract meets one of the following:
    - (i) The tract is composed of soils that are capable of annually producing more than 85 cu. ft. per acre of wood fiber if:
    - (ii) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract. However, if the tract abuts a road or perennial stream, the measurement shall be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road or stream to the maximum extent possible; and
    - (iii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or
  - (c) The tract is composed of soils that are capable of annually producing 50 to 85 cu. ft. per acre of wood fiber if:

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- (i) All or part of at least seven (7) other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract. However, if the tract abuts a road or perennial stream, the measurement shall be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road or stream to the maximum extent possible; and
- (ii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or
- (d) The tract is composed of soils that are capable of annually producing 0 to 49 cu. ft. per acre of wood fiber if:
  - (i) All or part of at least three (3) other lots or parcels that existed on January 1, 1993, are within a 160 acre centered on the center of the subject tract. However, if the tract abuts a road or perennial stream, the measurement shall be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road or stream to the maximum extent possible; and
  - (ii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; and,
- (e) If the tract is situated such that the road or stream crosses the tract, at least one (1) of the three (3) required dwellings shall be on the same side of the road or stream as the proposed dwelling, and within the 160-acre rectangle or within 1/4 mile from the edge of the tract where the dwelling will be located, but not outside the length of the rectangle.
- (f) The tract contains no dwellings on other lots or parcels that make up the tract.
- (g) The tract is not subject to deed restrictions established under OAR 660-006-0027(6) and Section 138.080(B)(2)(b) of this Ordinance.
- (h) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under subsections 138.080(B)(4).

**138.090 CONDITIONAL USES BASED ON THE DETERMINATION OF PREDOMINANT USE OF TRACT IN ACCORDANCE WITH SECTION 138.070**, the following conditional uses may be approved, subject to compliance with the procedures and criteria under Chapter 119, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, applicable state and federal regulations, and other specific criteria as may be indicated: [Amended by Ordinance 11-03]

- (A) **FARM LAND TRACT** - Uses permitted as conditional uses on a tract where the predominate use has been determined to be farm use:

## **DWELLINGS**

- (1) Nonfarm Dwelling - Not High-Value Farmland, (except as noted) [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:
  - (a) The dwelling will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use;
  - (b) The dwelling will not significantly increase the cost of farm or forest practices on surrounding lands devoted to farm and forest use;

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- (c) The dwelling will be placed on a lot or parcel created before January 1, 1993;
- (d) The dwelling will be located on a 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(c));
- (e) The applicant shall demonstrate that the proposed nonfarm dwelling will not materially alter the stability of the overall land use pattern of the area. To address this standard, the applicant shall prepare a cumulative impact study that:
  - (i) 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 non-resource uses shall be identified but not be included in the study area;
  - (ii) The cumulative impacts study shall identify the broad types of farm uses (irrigated or non-irrigated 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 Subsections 138.080(A)(8) and (10) and 138.090(A)(1). 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 138.090(A)(2) and Section 138.140(A)(2)(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;
  - (iii) Describes whether the proposed dwelling in conjunction with the dwellings identified in (ii) 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).
- (f) The county shall consider the cumulative impact of possible new nonfarm and lot-of-record dwellings together with existing nonfarm dwellings on other lots or parcels in the area when determining whether the proposed nonfarm dwelling will alter the stability of the land use pattern in the area.
- (g) 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.

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- (2) *Nonfarm Dwelling on a Nonfarm Parcel - Not High-Value Farmland* [OAR 660-033-0130(4)(b)]. A nonfarm dwelling may be authorized on a nonfarm parcel created under Section 138.130(A)(2)(c), subject to the following criteria:
- (a) The dwelling will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm and forest use;
  - (b) The dwelling will not significantly increase the cost of farm or forest practices on surrounding lands devoted to farm and forest use;
  - (c) The applicant shall demonstrate that the proposed nonfarm dwelling will not materially alter the stability of the overall land use pattern of the area. To address this standard, the applicant shall prepare a cumulative impact study that:
    - (i) 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 non-resource uses shall be identified, but not included in the study area;
    - (ii) The cumulative impacts study shall identify the broad types of farm uses (irrigated or non-irrigated 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 Subsections 138.080(A)(8) and (10) and 138.090(A)(1). 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 138.090(A)(2) and Section 138.140(A)(2)(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;
    - (iii) Describes whether the proposed dwelling in conjunction with the dwellings identified in (ii) 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).
  - (d) The county shall consider the cumulative impact of possible new nonfarm and lot-of-record dwellings together with existing nonfarm dwellings on other lots or parcels in the area when determining whether the proposed nonfarm dwelling will alter the stability of the land use pattern in the area.
  - (e) 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.

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- (B) **FOREST LAND TRACT** - Uses permitted as conditional uses on a tract where the predominate use has been determined to be forest use.

## **PARKS/PUBLIC/QUASI-PUBLIC FACILITIES**

- (1) Youth Camp A youth camp may be established pursuant to the standards and limitations in OAR 660-006-0031. Changes to or expansions of youth camps established prior to June 14, 2000 shall be subject to the provisions of ORS 215.130.

[Amended by Ordinances 01-10 and 11-03]

**138.100 GENERAL REVIEW STANDARDS** [OAR 660-033-0130(5) and OAR 660-006-0025(5)]. To ensure compatibility with farming and forest activities, the Planning Director or hearings body shall determine that the proposed use meets the following requirements:

- (A) The use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.
- (B) The use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;
- (C) A written statement recorded with the deed or written contract with the county or its equivalent shall be obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules. [Amended by Ordinance 11-03]

**138.105 EXPANSION AND UGB PROXIMITY STANDARDS** [OAR 660-033-0130(2)].

- (A) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.
- (B) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.
- (C) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule. [Amended by Ordinance 11-03]

**138.110 GENERAL SITING STANDARDS FOR DWELLINGS AND STRUCTURES** [OAR 660-006-0029]. The following standards apply to all new dwellings and structures: [Amended by Ordinance 11-03]

- (A) All new dwellings and structures authorized under Sections 138.080(B) and 138.090(B)(1) are subject to the siting standards in this Section. Relevant physical and locational factors including, but not limited to, topography, prevailing winds, access, surrounding land use and source of domestic water shall be used to identify a the building site which:
  - (1) Has the least impact on nearby or adjacent lands zoned for forest or agricultural use;
  - (2) Ensures that forest operations and accepted farming practices will not be curtailed or impeded;
  - (3) Minimizes the amount of forest lands used for the building sites, road access and service corridors; and

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- (4) Consistent with the provisions of Section 138.120 minimizes the risk associated with wildfire.
- (5) Is consistent with other requirements contained in the Comprehensive Plan or implementing ordinances, 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.
- (B) The applicant shall provide evidence consistent with OAR 660-006-0029(A), that the domestic water supply, if any, is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class F stream as defined in the Forest Practices Rule (OAR 629-24-101(3)). If the water supply is unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.
- (C) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.
- (D) Approval of a dwelling on a parcel or tract which is larger than 10 acres in size shall be subject to the following requirements:
  - (1) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in the Department of Forestry administrative rules.
  - (2) The Planning Department shall notify the Polk County Assessor of the above condition at the time the dwelling is approved.
  - (3) The property owner shall submit a stocking survey report to the Polk County Assessor and the Assessor shall verify that the minimum stocking requirements have been met by the time required by the Department of Forestry Rules. The Assessor shall inform the Department of Forestry in cases where the property owner has not submitted a stocking survey or where the survey report indicates that minimum stocking requirements have not been met.
  - (4) Upon notification by the Assessor, the Department of Forestry shall determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department determines that the tract does not meet those requirements, the department shall notify the owner and the Assessor that the land is not being managed as forest land. The Assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose additional tax pursuant to ORS 321.372.

**138.120 FIRE SITING STANDARDS FOR DWELLINGS AND STRUCTURES [OAR 660-006-0035].** The following standards apply to all new dwellings and structures: [Amended by Ordinance 11-03]

- (A) If a water supply is available and suitable for fire protection, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.
- (B) Road access to the structure shall meet the County road design standards.

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- (C) A primary fuel break shall be constructed on land surrounding the dwelling that is owned and controlled by the owner, no less than 30 feet wide. The primary fuel break could include a lawn, ornamental shrubbery or individual or groups of trees separated by a distance equal to the diameter of the crowns adjacent to each other, or 15 feet, whichever is greater. All trees shall be pruned to at least eight feet in height. Dead fuels shall also be removed.
- (D) A secondary fuel break shall also be constructed, on land surrounding the dwelling that is owned or controlled by the owner, of not less than 50 feet outside the primary fuel break. Dead fuels shall be removed from the fuel break area. It may be advisable to increase the secondary fuel break if the dwelling is located on a slope.
- (E) No portion of a tree or any other vegetation shall extend to within 15 feet of the outlet of a stovepipe or chimney.
- (F) The applicant shall obtain an address from the County, and shall display that number in a location on the property that is clearly visible from the road used as the basis for numbering. The numbers shall not be less than three inches in height, in a contrasting or visible color and shall comply with all other applicable standards for signs.
- (G) The dwelling shall meet the following requirements:
  - (1) The dwelling has a fire retardant roof.
  - (2) The dwelling will not be sited on a slope of greater than 40 percent.
  - (3) Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class F stream as designated by the State Board of Forestry.
  - (4) The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract.
  - (5) If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district.
  - (6) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.
- (H) If meeting the requirements of Section 138.120 (G) would be impracticable, alternative means for protecting the dwelling from fire hazards may be considered. The means selected may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions.

**138.130 LAND DIVISION REQUIREMENTS** [OAR 660-006-055, OAR 660-006-0026, and OAR 660-033-0100]. No land(s) located within the Farm/Forest Zoning District shall be divided without the expressed approval of Polk County under the provisions of Chapter 138 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. A deed or instrument conveying land in lieu of foreclosure shall not constitute a foreclosure action.

- (A) Except as provided in Section 138.130(B-J), the minimum parcel size within the Farm/Forest Zoning District shall be 40 acres, and the minimum parcel size within the Farm/Forest Overlay Zone shall be 80 acres; or
- (B) Nonfarm, Nonresidential Parcels [OAR 660-033-0100(10)]. A parcel for nonfarm, nonresidential uses authorized by this Ordinance may be created, 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

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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. The minimum frontage or easement width shall be 50 feet;
- (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. 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 (2) 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)]*. 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 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 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)]*. 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 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



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- (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).
- (E) Nonfarm Parcel for Historic Property [ORS 215.263(9)(b)]. A parcel for historic property may be created if the historic property would contain a dwelling listed on the Polk County Historic Inventory and on the National Register of Historic Places.
  - (1) 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).
- (F) Nonfarm Parcel for a Residential Home [ORS 215.263(9)(a)]. A parcel for a residential home as defined in ORS 197.660(2) may be created for a residential home approved under Section 138.060(I) if the dwelling has been approved under Section 138.090(A)(1), or Section 138.090(A)(2). 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).
- (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 under Section 138.050(I);
  - (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 138.130(A)(1) OR 138.130(F)(1) 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) Land Divisions Creating Parcels Less Than the Minimum Parcel Size of the Zone, listed in Section 138.130(A) or (B), may only be approved for uses listed in Sections 138.040 (F), (N), (V) and (Z), 138.050(H), 138.060 (A-C), (L), (S), (T), (V), (W), (Y), (Z-BB) and (GG), provided that those uses have been approved pursuant to Section 138.100 of this Ordinance. Such divisions shall create a parcel that is the minimum size necessary for the use. Required building setbacks for these parcels will be determined on a case-by-case basis through the conditional use process and may vary from those required under Section 138.060, 138.090 and Chapter 112 based upon the specific use authorized by the land use decision. The landowner of a parcel created under this subsection shall provide evidence that a restrictive covenant has been recorded with the County Clerk's Office for the subject property. The restrictive covenant shall prohibit the landowner and the landowner's successor's in interest from further dividing the parcel. The restrictive covenant shall be irrevocable unless a statement of release is signed by the Polk County Planning Director indicating that the comprehensive plan designation is no longer applicable to the parcel and

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that the property is no longer subject to Oregon Statewide Planning Goal 4 (Forest Lands). The restrictive covenant shall also be irrevocable unless the land division is subsequently authorized by law or by change in Goal 4. The property owner shall also record a deed restriction in the office of the Polk County Clerk as required by Section 138.140.

(I) *A Land Division Creating a Parcel for an Existing Dwelling* subject to the following requirements:

- (1) The parcel shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall not be larger than ten acres;
- (2) The dwelling existed prior to June 1, 1995;
- (3) The remaining parcel, not containing the dwelling, meets the minimum land division standards of the zone, or when consolidated with another parcel, meets the minimum land division standards of the zone;
- (4) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal; and
- (5) The tract shall be predominantly in forest use and that portion in forest use qualified for special assessment under a program under ORS chapter 321.
- (6) The landowner of a parcel created under this subsection shall provide evidence that a restrictive covenant has been recorded with the County Clerk's Office for the subject property. The restrictive covenant shall prohibit the landowner and the landowner's successors in interest from further dividing the parcel. The restrictive covenant shall be irrevocable unless a statement of release is signed by the Polk County Planning Director indicating that the comprehensive plan designation is no longer applicable to the parcel and that the property is no longer subject to Oregon Statewide Planning Goal 4 (Forest Lands). The restrictive covenant shall also be irrevocable unless the land division is subsequently authorized by law or by change in Goal 4. The property owner shall also record a deed restriction in the office of the Polk County Clerk as required by Section 138.140.
- (7) The landowner of a parcel created under this subsection section shall provide evidence that a restrictive covenant on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under subsection (2) of this section.
- (8) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and 215.283 that are not allowed on forestland.

(J) *A Land Division to Facilitate a Forest Practice*, as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirement of subsection 138.130(A)(1). The applicant shall provide evidence to demonstrate that there are unique property specific characteristics present in the proposed parcel that require an amount of land smaller than the minimum parcel size for the zone in order to conduct the forest practice. Parcels created pursuant to this subsection:

- (1) Shall not be eligible for siting a new dwelling;
- (2) Shall not serve as the justification for the siting of a future dwelling on other parcels;
- (3) Shall not result in a parcel of less than 35 acres, except:
  - (a) Where the purpose of the land division is to facilitate an exchange of lands involving a governmental agency, or

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- (b) Where the purpose of the land division is to allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland in Oregon; and
- (4) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum parcel size of the zone.
- (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.)

(K) *A Division of a Lot or Parcel that Contains Two or More Dwellings* if:

- (1) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
- (2) Each dwelling complies with the criteria for a replacement dwelling under Section 138.050(I);
- (3) Except for one lot or parcel, each lot or parcel created under this section is between two and five acres in size;
- (4) At least one dwelling is located on each lot or parcel created under this section; and
- (5) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the Polk County Clerk. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the Planning Director indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to Oregon Statewide Planning Goal 4 (Forest Lands). The restrictive covenant shall also be irrevocable unless the land division is subsequently authorized by law or by change in Goal 4. The property owner shall also record a deed restriction in the office of the Polk County Clerk as required by Section 177.120. [Amended by Ordinance 11-03]
- (6) A lot or parcel may not be divided under this section if an existing dwelling on the lot or parcel was approved under:
  - (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or
  - (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under Goal 4 (Forest Lands). [Amended by Ordinance 11-03]

**138.140 NON-REMONSTRANCE DEED RESTRICTION** Pursuant to OAR 660-006-0029 (4)(e), for any dwelling, residential facility, private park, reservoir or water impoundment, home occupation, or private fishing or hunting accommodations approved under sections 138.050, 138.060, 138.080 and 138.090, and partitions approved under subsections 138.130(D) and (H) through (K), the landowner for the property shall be required to sign and record a deed restriction binding the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937. [Amended by Ordinance 11-03]

**138.150 NONCONFORMING USES** The lawful use of any building, structure or land at the time of the enactment of this ordinance may be continued. Alteration of any such use shall be permitted when necessary to comply with local, state or federal regulations pertaining to the use and development of land and the buildings and structures thereon. A nonconforming use is transferable,

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however, any significant change in, or replacement of, the nonconforming use may require permits under current building and land development codes.

**138.160 PROHIBITED USES** It is unlawful to erect, alter or establish in the Farm/Forest Zoning District any building, structure or use not authorized and approved under the standards and procedures in this Ordinance.

**138.170 DEVELOPMENT STANDARDS** All uses that occur in this zone are subject to development standards adopted by Polk County.

**138.180 PERIOD OF VALIDITY FOR ADMINISTRATIVE REVIEW USES** [OAR 660-033-0140(1) through (4)]

- (A) A land use application authorizing a use subject to administrative review, except for a land division and those residential uses specified in Section 138.190, shall be valid for two (2) years from the effective date of the land use decision. The land use approval authorizing such use shall be void at the end of the validity period if development action is not initiated in that period. The Planning Director may grant an extension to the validity period for an additional year if:
- (1) The applicant makes a written request for an extension of the development approval period;
  - (2) The written request is submitted to the Planning Division, on the form provided by the Planning Division, prior to the expiration of the approval period;
  - (3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
  - (4) The Planning Director determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
- (B) The Planning Director may authorize additional one-year extensions where the applicable criteria for the decision have not changed.
- (C) Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. [Amended by Ordinance 11-03]

Note: A land use decision granted herein does not vest (guarantee) the right of the property owner to use the property as authorized in the land use decision in perpetuity. The property owner is responsible for completing required conditions and establishing and continuing the use in order to retain a vested right. The property owner is advised to consult with an attorney to determine the appropriate actions necessary to obtain and retain rights of use authorized by a land use decision.

**138.190 PERIOD OF VALIDITY FOR SPECIFIC RESIDENTIAL USES.** [OAR 660-033-0140(5) and (6)]

- (A) A land use application authorizing a dwelling, outside of an urban growth boundary pursuant to the provisions of Sections 138.040(X); 138.050(I); 138.080(A)(2), (6), and (7); 138.080(B)(1) through (4); and 138.090(A)(1) and (2), shall be valid for four (4) years from the effective date of the land use decision. The land use approval authorizing such use shall be void at the end of the validity period if development action is not initiated in that period.
- (B) The Planning Director may grant an extension for two additional years if the applicant makes a written request for an extension of the development approval period. The extension

Proposed additions are double underlined. Deletions are in ~~striketrough~~.

request shall be submitted on the form provided by the Planning Division and shall be submitted to the Planning Division prior to the expiration of the approval period.

- (C) Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. [Amended by Ordinance 11-03]

Note: A land use decision granted herein does not vest (guarantee) the right of the property owner to use the property as authorized in the land use decision in perpetuity. The property owner is responsible for completing required conditions and establishing and continuing the use in order to retain a vested right. The property owner is advised to consult with an attorney to determine the appropriate actions necessary to obtain and retain rights of use authorized by a land use decision.

## Enrolled House Bill 3280

Sponsored by Representative HOLVEY, Senator PROZANSKI; Representative BARNHART

CHAPTER .....

### AN ACT

Relating to wineries in exclusive farm use zones; creating new provisions; amending ORS 215.213, 215.283, 215.452, 215.455 and 308A.053; repealing section 3, chapter 97, Oregon Laws 2010; and declaring an emergency.

#### Be It Enacted by the People of the State of Oregon:

**SECTION 1. Section 3, chapter 97, Oregon Laws 2010, is repealed.**

**SECTION 2.** ORS 215.452, as amended by sections 1 and 2, chapter 97, Oregon Laws 2010, is amended to read:

215.452. (1) A winery may be established as *[an outright]* a permitted use **under ORS 215.213 (1)(p) and 215.283 (1)(n)** in an area zoned for exclusive farm use *[under ORS 215.213 (1)(p) and 215.283 (1)(n)]* if the winery produces wine with a maximum annual production of:

(a) Less than 50,000 gallons and *[that]*:

(A) Owns an on-site vineyard of at least 15 acres;

(B) Owns a contiguous vineyard of at least 15 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or

(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

(b) At least 50,000 gallons and *[no more than 100,000 gallons and that]* **the winery:**

(A) Owns an on-site vineyard of at least 40 acres;

(B) Owns a contiguous vineyard of at least 40 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or

(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph.

(2) A winery described in subsection (1) of this section may *[sell only]*:

(a) *[Wines produced in conjunction with the winery; and]* **Market and sell wine produced in conjunction with the winery, including the following activities:**

(A) **Wine tours;**

(B) **Wine tastings in a tasting room or other location at the winery;**

(C) **Wine clubs; and**

(D) **Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;**

(b) **Market and sell** items directly related to the sale *[and]* **or** promotion of wine produced in conjunction with the winery, the **marketing and** sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010[.]; **and**

(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:

(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;

(B) Are incidental to the retail sale of wine on-site; and

(C) Are limited to 25 days or fewer in a calendar year.

(3) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

(4) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

[(3)] (5) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted or that the contract has been executed, as applicable.

[(4)] (6) A local government shall adopt findings for each of the standards described in [paragraphs (a) and (b) of] this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:

(a) Establishment of a setback[, *not to exceed*] of at least 100 feet[,] from all property lines for the winery and all public gathering places; and

(b) Provision of direct road access[,] and internal circulation [*and parking*].

[(5)] (7) A local government shall [*also*] apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access[,] and airport safety [*or other*];

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(8)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(9) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**SECTION 3.** ORS 215.452, as amended by sections 1 and 2, chapter 97, Oregon Laws 2010, and section 2 of this 2011 Act, is amended to read:

215.452. (1) A winery may be established as a permitted use under ORS 215.213 (1)(p) and 215.283 (1)(n) in an area zoned for exclusive farm use if the winery produces wine with a maximum annual production of:

(a) Less than 50,000 gallons and:

(A) Owns an on-site vineyard of at least 15 acres;

(B) Owns a contiguous vineyard of at least 15 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or

(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

(b) At least 50,000 gallons and the winery:

(A) Owns an on-site vineyard of at least 40 acres;

(B) Owns a contiguous vineyard of at least 40 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or

(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph.

(2) A winery described in subsection (1) of this section may:

(a) Market and sell wine produced in conjunction with the winery, including the following activities:

(A) Wine tours;

(B) Wine tastings in a tasting room or other location at the winery;

(C) Wine clubs; and

(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;

(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010; and

(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:

(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;

(B) Are incidental to the retail sale of wine on-site; and

(C) Are limited to 25 days or fewer in a calendar year.

(3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

**(b) At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.**

(4) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

(5) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted or that the contract has been executed, as applicable.

(6) A local government shall adopt findings for each of the standards described in this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:

(a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and

(b) Provision of direct road access and internal circulation.

(7) A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(8)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local



government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(9) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**SECTION 3a.** ORS 215.452, as amended by sections 1 and 2, chapter 97, Oregon Laws 2010, and sections 2 and 3 of this 2011 Act, is amended to read:

215.452. (1) A winery may be established as a permitted use under ORS 215.213 (1)(p) and 215.283 (1)(n) in an area zoned for exclusive farm use if the winery produces wine with a maximum annual production of:

(a) Less than 50,000 gallons and:

(A) Owns an on-site vineyard of at least 15 acres;

(B) Owns a contiguous vineyard of at least 15 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or

(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

(b) At least 50,000 gallons and the winery:

(A) Owns an on-site vineyard of at least 40 acres;

(B) Owns a contiguous vineyard of at least 40 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or

(D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph.

(2) A winery described in subsection (1) of this section may:

(a) Market and sell wine produced in conjunction with the winery, including the following activities:

(A) Wine tours;

(B) Wine tastings in a tasting room or other location at the winery;

(C) Wine clubs; and

(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery; **and**

(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010.[]; and]

*[(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:]*

*[(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;]*

*[(B) Are incidental to the retail sale of wine on-site; and]*

*[(C) Are limited to 25 days or fewer in a calendar year.]*

*[(3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.]*

*[(b) At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.]*

*[(4)]* (3) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

*[(5)]* (4) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted or that the contract has been executed, as applicable.

[(6)] **(5)** A local government shall adopt findings for each of the standards described in this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:

(a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and

(b) Provision of direct road access and internal circulation.

[(7)] **(6)** A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

[(8)(a)] **(7)(a)** A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

[(9) *As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.*]

**SECTION 4.** Section 5 of this 2011 Act is added to and made a part of ORS chapter 215.

**SECTION 5.** (1) A winery may be established as a permitted use under ORS 215.213 (1)(p) or 215.283 (1)(n) in an area zoned for exclusive farm use if:

(a) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;

(b) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in paragraph (a) of this subsection; and

(c) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.

(2) A winery described in subsection (1) of this section may:

(a) Market and sell wine produced in conjunction with the winery, including the following activities:

(A) Wine tours;

(B) Wine tastings in a tasting room or other location at the winery;

(C) Wine clubs; and

(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;

(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and

(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:

(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;

(B) Are incidental to the retail sale of wine on-site; and

(C) Are limited to 25 days or fewer in a calendar year.

(3) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

(4) A winery operating under this section:

(a) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

(b) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.

(5)(a) A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for private events occurring on more than 25 days in a calendar year.

(b) In addition to any other requirements, a local government may approve a permit application under this subsection if the local government finds that the authorized activity:

(A) Complies with the standards described in ORS 215.296;

(B) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and

(C) Does not materially alter the stability of the land use pattern in the area.

(c) If the local government issues a permit under this subsection for private events, the local government shall review the permit at least once every five years and, if appropriate, may renew the permit.

(6) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section.

(7) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted.

(8) A local government shall require a winery operating under this section to provide for:

(a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and

(b) Direct road access and internal circulation.

(9) A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(10) The local government may authorize a winery described in subsection (1) of this section to sell or deliver items or provide services not described in subsection (2)(b) or (c) or (3) of this section under the criteria for a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a).

(11)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(12) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**SECTION 5a.** Section 5 of this 2011 Act is amended to read:

**Sec. 5.** (1) A winery may be established as a permitted use under ORS 215.213 (1)(p) or 215.283 (1)(n) in an area zoned for exclusive farm use if:

(a) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;

(b) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in paragraph (a) of this subsection; and

(c) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.

(2) A winery described in subsection (1) of this section may:

(a) Market and sell wine produced in conjunction with the winery, including the following activities:

(A) Wine tours;

(B) Wine tastings in a tasting room or other location at the winery;

(C) Wine clubs; and

(D) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;

(b) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and

(c) Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:

(A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;

(B) Are incidental to the retail sale of wine on-site; and

(C) Are limited to 25 days or fewer in a calendar year.

(3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

**(b) At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.**

(4) A winery operating under this section:

(a) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

(b) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.

(5)(a) A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for private events occurring on more than 25 days in a calendar year.

(b) In addition to any other requirements, a local government may approve a permit application under this subsection if the local government finds that the authorized activity:

(A) Complies with the standards described in ORS 215.296;

(B) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and

(C) Does not materially alter the stability of the land use pattern in the area.

(c) If the local government issues a permit under this subsection for private events, the local government shall review the permit at least once every five years and, if appropriate, may renew the permit.

(6) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section.

(7) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted.

(8) A local government shall require a winery operating under this section to provide for:

(a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and

(b) Direct road access and internal circulation.

(9) A local government shall apply:

(a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;

(b) Regulations for the public health and safety; and

(c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

(10) The local government may authorize a winery described in subsection (1) of this section to sell or deliver items or provide services not described in subsection (2)(b) or (c) or (3) of this section under the criteria for a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a).

(11)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before the effective date of this 2011 Act.

(12) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**SECTION 6. (1) A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on the effective date of this 2011 Act, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored or replaced pursuant to ORS 215.130.**

**(2) Subsection (1) of this section does not affect the lawful continuation, alteration, restoration or replacement of the winery sited on the same tract.**

**SECTION 7.** ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph 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 defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Nonresidential buildings customarily provided in conjunction with farm use.

(f) Primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by 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).

(h) Operations for the exploration for minerals as defined by 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).

(i) One manufactured dwelling or 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 a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (q) of this subsection.

(j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(k) 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, where no removal or displacement of buildings would occur, or no new land parcels result.

(L) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(m) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(n) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 **or section 5 of this 2011 Act.**

(q) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement

dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, 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 sale of 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

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

(s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. 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 preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. 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. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of 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.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

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

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

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(u) of this section.

(d) Operations conducted for:

(A) 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 subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. 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 Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip re-



stricted, 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.

(i) A facility for the primary processing of forest products, 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 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 contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k) Dog kennels.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) 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. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities 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.

(s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with 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 the metropolitan urban growth boundary. As used in this paragraph:

(A) "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; and

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

- (v) Operations for the extraction and bottling of water.
  - (w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.
  - (x) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
  - (y) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.
- (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:
- (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.
  - (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.
  - (c) Complies with such other conditions as the governing body or its designee considers necessary.
- (4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:
- (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;
  - (b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and
  - (c) The dwelling complies with other conditions considered necessary by the governing body or its designee.
- (5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:
- (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and
  - (b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.
- (6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

**SECTION 8.** ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph 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 defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(f) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by 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).

(g) Operations for the exploration for minerals as defined by 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) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(i) 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, where no removal or displacement of buildings would occur, or no new land parcels result.

(j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(m) Creation, restoration or enhancement of wetlands.

(n) A winery, as described in ORS 215.452 **or section 5 of this 2011 Act.**

(o) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, 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 sale of 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

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

(p) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

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

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to

siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. 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 preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. 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. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(r) A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of 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.

(s) Fire service facilities providing rural fire protection services.

(t) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(u) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

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

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

(v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(r) of this section.

(b) Operations conducted for:

(A) 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 subsection (1)(f) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. 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 Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph 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.

(f) Golf courses on land determined not to be high-value farmland, as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. 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.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, 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 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 contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or 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 a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(p) of this section.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) 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. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, 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.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with 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. As used in this paragraph:

(A) "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; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(aa) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

**SECTION 9.** ORS 215.455 is amended to read:

215.455. Any winery approved under ORS 215.213, 215.283, 215.284 and 215.452 **and section 5 of this 2011 Act** is not a basis for an exception under ORS 197.732 (2)(a) or (b).

**SECTION 10.** ORS 308A.053 is amended to read:  
308A.053. As used in ORS 308A.050 to 308A.128:

(1) "Exclusive farm use zone" means a zoning district established by a county or a city under the authority granted by ORS chapter 215 or 227 that is consistent with the farm use zone provisions set forth in ORS 215.203 to 215.311, 215.438, 215.448, 215.452, 215.455 or 215.700 to 215.780 **or section 5 of this 2011 Act.**

(2) "Exclusive farm use zone farmland" means land that qualifies for special assessment under ORS 308A.062.

(3) "Homesite" means the land, including all tangible improvements to the land under and adjacent to a dwelling and other structures, if any, that are customarily provided in conjunction with a dwelling.

(4) "Nonexclusive farm use zone farmland" means land that is not within an exclusive farm use zone but that qualifies for farm use special assessment under ORS 308A.068.

(5) "Remediation plan" means a plan certified by an extension agent of the Oregon State University Extension Service to remediate or mitigate severe adverse conditions on farmland.

(6) "Severe adverse conditions on farmland" means conditions that render impracticable continued farm use and that are not due to an intentional or negligent act or omission by the owner, tenant or lessee of the farmland or the applicant for certification of a remediation plan.

**SECTION 11. (1) The amendments to ORS 215.452 by section 3 of this 2011 Act become operative January 1, 2013.**

**(2) The amendments to section 5 of this 2011 Act by section 5a of this 2011 Act become operative January 1, 2013.**

**(3) The amendments to ORS 215.452 by section 3a of this 2011 Act become operative January 1, 2014.**

**SECTION 12. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.**

Passed by House April 29, 2011

Repassed by House June 27, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate June 8, 2011

Repassed by Senate June 27, 2011

.....  
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....  
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....  
Kate Brown, Secretary of State