

TITLE 6
ZONING

CHAPTER 1
PURPOSE AND DEFINITIONS

SECTION:

6-1-1: Title

6-1-2: Purpose

6-1-3: Definitions

6-1-3: DEFINITIONS:

For the purpose of this title, all words in the present tense shall include the future; all words in the singular shall include the plural; the masculine shall include the feminine and neuter; and the word "shall" is mandatory and not discretionary. The following words and terms are construed and defined as follows:

~~—ACCEPTED RESOURCE PRACTICE: The mode of operation that is in conformance with state and federal regulations, common to farms or ranches of a similar nature and necessary for the operation of such farm or ranch operation to obtain a profit in money and customarily utilized in conjunction with farm use.~~

ACCESS: The place, means or way by which pedestrians, vehicles or utilities shall have safe ingress or egress to a property, use or parking space.

ACCESSORY USE OR STRUCTURE: A use or structure incidental and subordinate to the main use of the property and located on the same lot as the main use (e.g., a garage or storage building).

ACCESSWAY: A walkway that provides pedestrian and bicycle passage either between streets or from a street to a building or other destination such as school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway and additional land on either side of the walkway, often in the form of an easement or right of way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees, and lighting. Where accessways cross driveways, they are generally raised, paved, or marked in a manner that provides convenient access for pedestrians.

AFFECTED AREA: Property within the area of a subject property. Specifically, that area within two hundred fifty feet (250'), excluding streets and alleys.

AGRICULTURAL BUILDING: A structure located on a farm or forest operation and used for: storage, maintenance or repair of farm or forestry machinery and equipment; the raising, harvesting and selling of crops or forest products; the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees; dairying and the sale of dairy products; or agricultural, forestry, or horticultural use or animal husbandry, or any combination thereof, including the preparation and storage of the produce raised on the farm for human use and animal use, the preparation and storage of forest products and the disposal, by marketing or otherwise, of farm produce or forest products. "Agricultural building" does not mean a dwelling, a structure used for a purpose other than growing plants in which ten (10) or more persons are present at any one time, a structure regulated by the State Fire Marshal pursuant to ORS chapter 476, a structure used by the public, or a structure subject to sections 4001 to 4127, title 42, United States Code (the National Flood Insurance Act of 1968) as amended, and regulations promulgated thereunder.

ANCILLARY FACILITIES: All buildings, interior and exterior enclosures, and equipment associated with a wireless telecommunication facility.

ANTENNA(S): An electrical conductor or group of electrical conductors that radiate or receive radio waves.

ASSOCIATED TRANSMISSION LINES: New transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

BUILDING: Any temporary or permanent structure built and maintained for the support, shelter or enclosure of people, motor vehicles, animals or personal or real property of any kind.

BUSINESS OFFICE: An office that provides nonretail services such as insurance, real estate, finance or travel, or any office of similar nature and impact.

CLEAR VISION AREA: An area next to a driveway, street, road or highway where low signs, other structures and vegetation are required to be kept not greater in height than a stated maximum number of inches. The purpose of a clear vision area is to protect the view necessary to assist pedestrians, bicyclists and motor vehicle operators to see one another in time to avoid or reduce damage from an accident. Clear vision areas are most commonly triangular areas at the corner of intersecting travelways.

COLLOCATION: The practice of locating multiple wireless communications facilities on a single, specific purpose structure, or locating the telecommunication facilities on alternate purpose structures.

COMMERCIAL AGRICULTURAL ENTERPRISE: Farm operations that will contribute in a substantial way to the area's existing agricultural economy and help maintain agricultural processors and establish farm markets. When determining whether a farm is part of the

commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered.

COMMERCIAL RESOURCE (FARM, RANCH UNIT): A parcel of land large enough that crops harvested from it meet mortgage costs, crop or raising and harvesting expenses and provide substantial household income. In addition, it shall contribute in a substantial way to the area's existing agricultural economy, and help maintain agricultural processors and established markets. Consideration shall be given not only to what is produced but how much is produced. Method of marketing is also a consideration.

COMPOST: The controlled biological decomposition of organic material or the product resulting from such a process.

COMPREHENSIVE PLAN: The Malheur County comprehensive plan.

CONDOMINIUM: Generally a dwelling unit or other structure, the interior portion of which may be owned by an individual. The individual owning a condominium also holds ownership in common of the total development in which the subject condominium belongs. For a more precise definition refer to ORS 94.

CONTIGUOUS: Connected in such a manner as to form a single block of land.

~~—CONTIGUOUS LOTS: Two (2) or more parcels or units of land including water under a single ownership which are not separated by an intervening parcel of land under separate ownership.~~

~~—CURRENT EMPLOYMENT OF LAND FOR FARM USES:~~

~~—A. Farmland, the operation or use of which is subject to any farm-related government program.~~

~~—B. Land lying fallow for one year as a normal and regular requirement for good agricultural husbandry.~~

~~—C. Land planted in orchards or other perennials other than land specified in subsection D of this definition, prior to maturity.~~

~~—D. Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three (3) years.~~

~~—E. Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use.~~

~~—F. Land under buildings supporting accepted farm practices.~~

~~—G. Water impoundments lying in or adjacent to and in common ownership with farm use land.~~

~~—H. Any land constituting a wood lot, not to exceed twenty (20) acres, contiguous to and owned by the owner of land specially valued at true cash value for farm use even if the land constituting the wood lot is not utilized in conjunction with farm use.~~

~~—I. Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this subsection I, illness includes injury or infirmity whether or not such illness results in death.~~

~~—J. Any land described under ORS 321.267(1)(e) or 321.415(5).~~

DAYCARE CENTER: An establishment that is certified to care for thirteen (13) or more children, or an establishment certified to care for less than thirteen (13) children that is not located in a residential dwelling or accessory building to the residence that the provider resides in.

DE NOVO: In a de novo review, all uses of law and fact are heard anew, and no issue of law or fact decided by the lower level review authority is binding on the parties in the de novo hearing. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony. The record of the initial proceeding shall be a part of the record of the appeal. The record of the initial proceeding may consist of: the Comprehensive Plan, all of which is automatically incorporated into the record; the application or legislative proposal that initiated the proceeding; all testimony, argument, evidence and exhibits submitted prior to the close the record of any previous proceeding; any staff report submitted prior to the close of the record of the previous proceeding; minutes, if any, of the hearing or public meeting(s) conducted in reaching the decision that is being appealed; and the written decision.

DWELLING: A detached building containing one dwelling unit.

DWELLING, DUPLEX OR TWO-FAMILY: A detached building containing two (2) dwelling units.

DWELLING, MULTI-FAMILY: A building or portion thereof, containing three (3) or more dwelling units.

DWELLING, SINGLE-FAMILY: A detached building containing one dwelling unit and designed for occupancy by one family only.

DWELLING UNIT: A habitable area enclosed by walls, windows and doors which provides shelter for a person, family or persons living as a family sharing kitchen and bathroom facilities.

EVALUATION REPORT: A statement in writing from the local contract agent or regional department of environmental quality representative stating that at least one septic system drainfield site with replacement area has been found on each lot or parcel that meets the criteria outlined by the Oregon department of environmental quality.

FAMILY: An individual or any number of persons related by blood, marriage, adoption or legal guardianship living together in a dwelling in which meals or lodging may also be

provided for not more than four (4) additional persons. Also six (6) or less unrelated persons living as a family sharing a single kitchen and dining facility.

~~—FARM OR RANCH: The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or any animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species. Also as further defined in ORS 215.203.~~

FARM USE: The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267(3) or 321.824(3).

A. As used in this subsection, "current employment" of land for farm use includes:

1. Farmland, the operation or use of which is subject to any farm-related government program;

2. Land lying fallow for one (1) year as a normal and regular requirement of good agricultural husbandry;

3. Land planted in orchards or other perennials, other than land specified in subsection (4) below, prior to maturity;

4. Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three (3) years;

5. Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

6. Except for land under a single-unit dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.255 and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213(2)(c) and 215.283(2)(a);

7. Water impoundments lying in or adjacent to and in common ownership with farm use land;

8. Any land constituting a woodlot, not to exceed twenty (20) acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

9. Land lying idle for no more than one (1) year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this section, illness includes injury or infirmity whether or not such illness results in death;

10. Any land described under ORS 321.267(3) or 321.824(3); and

11. Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

a. Only the crops of the landowner are being processed;

b. The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

c. The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

B. As used in this subsection, "accepted farm practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

C. As used in this subsection, "cultured Christmas trees" means trees:

1. Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

2. Of a marketable species;

3. Managed to meet U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

4. Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation or irrigation.

~~FARMING OR RANCHING PRACTICE: A mode of operation that is common to farms or ranches of a similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with farm use.~~

FEEDLOT: An area in which livestock are confined for concentrated feeding for fattening or dairying as part of a commercial operation and in which no vegetation intended for animal food is growing. The term does not include temporary wintering operation for livestock (a "feed yard").

FENCE, SIGHT OBSCURING: A fence or evergreen planting arranged in such a way as to obstruct vision.

~~FOREST USE: The propagation or harvesting of a forest product.~~

FOREST OPERATION: Any commercial activity relating to the growing or harvesting or any forest tree species as defined in ORS 527.620(6).

GARAGE OR YARD SALE: A sale held at a residence or a combination of residences where items to be sold constitute used or handcrafted items generated from participating individual neighborhood households. Garage sales shall not be used as wholesale or retail outlets for new or manufactured goods, other than home generated, handcrafted items. Garage sales may not be conducted in any one residence more than three (3) times during any calendar year. No single garage or yard sale may last for more than three (3) consecutive days. A garage sale as hereinabove defined is an authorized accessory use to a residence in all zones.

GARAGE, RESIDENTIAL: A structure used for the parking of automobiles and recreational vehicles.

HIGH-VALUE FARMLAND: See MCC Section 6-3A-3-1.

IRRIGATED: Watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. An area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.

JUNKYARD: Any establishment or place of business that is maintained, operated or used for storing, keeping, buying or selling old or scrap copper, brass, rope, iron, steel, rags, batteries, paper, trash, rubber, debris or other old or scrap ferrous or nonferrous materials, metal and nonmetal materials and junked, dismantled, wrecked, scrapped or ruined motor vehicles or motor vehicle parts. This term includes auto wrecking yards and scrap metal processing, sorting and storage facilities.

KENNEL: A lot or building in which four (4) or more dogs, cats or other animals at least four (4) months of age are kept commercially for board, breeding, training or sale.

LANE: A driveway or private road providing access from property to a public right of way.

LAWFULLY ESTABLISHED UNIT OF LAND: Does not include a unit of land created solely to establish a separate tax account, but does include a unit of land created:

A. As a lot or parcel pursuant to ORS 92.010 to 92.192;

B. In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

C. By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

LEGISLATIVE CHANGES: Involves broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plans, zoning ordinances or the land development ordinance and changes in zoning maps not directly affecting individual property owners.

LIVESTOCK: Domestic animals or types customarily raised or kept on farms for profit or other purposes.

LOCATIONALLY DEPENDENT: If the wireless telecommunication facility must be located on land in one or more areas zoned for exclusive farm or exclusive range use in order to achieve reasonably satisfactory results or to meet unique needs that cannot be satisfied on other lands.

LOT: A single unit of land that is created by a subdivision of land.

LOT AREA: The total horizontal area within the lot lines of a lot including streets and easements of access to other property, laterals and canals.

LOT COVERAGE: The percentage of lot area that may be covered by buildings or structures.

LOT DEPTH: The average horizontal distance between the front and back lot lines.

LOT LINE: The property line bounding a lot.

LOT WIDTH: The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

MALHEUR COUNTY TRANSPORTATION SYSTEM PLAN: The Malheur County transportation system plan (TSP) adopted by ordinance into the Malheur County comprehensive plan.

MANUFACTURED DWELLING: A structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, and that is being used for residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards (HUD standards) and regulations in effect at the time of construction. Manufactured dwelling does not include any building or structure constructed to conform to the state of Oregon structural specialty code or the one- and two-family dwelling code adopted pursuant to ORS 455.100 and 455.450 and 455.610 to 455.630 or any "recreational vehicle" defined in this section.

MANUFACTURED DWELLING PARK: Any place where three (3) or more manufactured dwellings are parked within five hundred feet (500') of one another on a lot, tract or parcel

of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid, or to be paid for the rental or use of facilities, or to offer space free in connection with securing the trade or patronage of such person.

MINING: Includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off site borrow pits except those constructed for use as access roads. Mining does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner's or tenant's property for the primary purpose of the reconstruction or maintenance of access roads and excavations or grading operations conducted in the process of farming or cemetery operations, on site road construction or other on-site construction or non-surface impacts of underground mines. A land use authorization is required for mining one-thousand (1,000) cubic yards or more of material or for excavation preparatory to mining of one (1) acre or more of surface area.

MINOR HOME OCCUPATION, HOME OCCUPATION AND HOME BUSINESS: An occupation or business activity which results in a product or service; is conducted in whole or in part in a dwelling and/or an accessory structure to the dwelling; is conducted by at least one family member occupying the dwelling; and is clearly subordinate to the dwelling use of the subject property. Home occupations or businesses do not include garage or yard sales, holiday bazaars or home parties which are held for the purpose of the sale or distribution of goods or services if the service is provided three (3) or fewer times per calendar year.

MOBILE HOME: A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

MOTEL: A building or group of buildings on the same lot containing guest units with separate entrances from the building exterior and consisting of individual sleeping quarters, with or without cooking facilities for rental to transients.

NONCONFORMING STRUCTURE OR USE: A lawful structure or use existing at the time this title or any amendment hereto becomes effective and which does not conform to the requirements of the zone in which it is located.

OVERLAY ZONE: A zone that establishes special requirements and provisions in addition to those of the primary zone.

OWNER: The party or parties having a fee interest in land except, that where land is subject to a real estate sales contract, "owner" shall mean the contract vendee.

PARCEL: A single ~~includes a~~ unit of land that is created by a partitioning of land.

PARENT PARCEL: All property that is owned by the owner of the property for which the application has been made and is contiguous to the property for which the application has been made.

PARTITION: The act of partitioning land or an area or tract of land partitioned.

PARTITION LAND: To divide an area or tract of land into two (2) or three (3) parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the time of the first partitioning. "Partition land" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size unless better field management or irrigation control will result. "Partition land" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner. "Partition land" does not include division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots. "Partition land" does not include a sale or grant by a person to a public agency or public body for state highway, county road, city street or other right of way purposes; ~~provided, that such road or right of way complies with the comprehensive plan and subsections 6-3A-2A6 through A9 and subsection 6-3A-3S through U of this title.~~ However, any property divided by the sale or grant of property for state highway, county road, city street or other fee title right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.

PARTY: The applicant and all persons or group of persons who appeared before a hearings body set forth in this title orally or in writing.

PERSON: Includes natural person, firm, association, partnership, company, corporation, estate, branch of government or any group or combination acting as a unit.

PLANNING COMMISSION: The Malheur County ~~p~~lanning ~~e~~Commission-1.

PLAT: A final map, diagram, drawing or other document containing all descriptions, locations, specifications and dedications concerning a subdivision.

PRELIMINARY PLAT OR MAP: A preliminary drawing, diagram or document illustrating the proposed layout of a proposed subdivision or partition to be submitted to the planning department or planning commission for their consideration.

PRIMARY ZONE: The zone that establishes the basic requirements and provisions of the use of the land in a particular area.

PROPERTY LINE: Synonymous with "lot line".

QUASI-JUDICIAL: Zone changes or plan amendments generally refer to a plan amendment or zone change directly affecting individual property owners and that involves the application of existing policy to a specific factual setting. (The distinction between

legislative and quasi-judicial actions must ultimately be made on a case by case basis with reference to case law on the subject.)

RECREATIONAL STRUCTURE: A campground structure with or without plumbing, heating or cooking facilities intended to be used by any particular occupant on a limited-time basis for recreational, seasonal, emergency or transitional housing purposes and may include yurts, cabins, fabric structures or similar structures as further defined, by rule, by the Director of the Department of Consumer and Business Services.

~~RECREATIONAL VEHICLE: A mobile unit which is designed for temporary human occupancy and licensed as a motor home, recreational trailer or camper (stand-alone or when it is on the back of a pick-up or truck) by the motor vehicles division, or similar units licensed by another state or any unit identified as a recreational vehicle by the manufacturer. Recreational vehicle includes non-motorized vehicles designed for human occupancy such as vacation trailers, tents and fifth-wheel trailers. It also includes vehicles designed for off-road use, such as off-road vehicles, dune buggies and recreation boats. A vehicle with or without motive power that is designed for use as temporary living quarters and as further defined by rule by the Director of Transportation.~~

RECREATIONAL VEHICLE PARK: For the purpose of this zoning ordinance, a "recreational vehicle park" is a plot of land that provides for two (2) or more recreational vehicle sites and such sites are established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters, i.e., overnight camping.

~~RESIDENTIAL FACILITY: A facility licensed by or under the authority of the department of human resources residential care or residential training facility, as those terms are defined in ORS 443.400, which provides residential care alone or in conjunction with treatment or training, or a combination thereof, for six (6) to fifteen (15) individuals who need not be related. Staff persons required to meet department of human resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other, or to any resident of the residential facility.~~

RESIDENTIAL HOME. A residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five (5) or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

RESIDENTIAL TRAILER: A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed before January 1, 1962, with a minimum size of at least eight feet by thirty two feet (8' x 32').

~~RESOURCE: A term which in appropriate context means commercial farming, ranching or forestry.~~

RIGHT OF WAY: A strip of land which has been dedicated to the public by a warranty or other suitable deed depending upon the history of the right of way, or by a statement of dedication upon an approved and recorded subdivision plat. Roads created by public use and recognized as a public road in the records of the county court are also rights of way for public use.

ROAD OR STREET: A travel way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

ROADWAY: That portion of a road or street designed and ordinarily used for vehicular traffic.

SEASONAL FARM HOUSING: Housing limited to the occupancy by seasonal farm workers and their immediate families which is occupied no more than nine (9) months a year.

SEASONAL FARM WORKER: Any person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in production of farm products or planting, cultivation or harvesting of seasonal agricultural crops or in forestation or reforestation of lands, including, but not limited to, the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

SETBACK: The distance between the nearest point of the building or structure and the right of way or easement border line or property line; setbacks are measured horizontally at right angles from the right of way or easement border line or property line to the nearest point of the building or structure excluding roof eaves and small decorative projections such as cornices, gargoyles, etc.

SIGN: An identification, description, illustration or device that is affixed to or represented, directly or indirectly, upon a building, structure or land, and that directs attention to a product, place, activity, person, institution or business.

SITE PLAN: A drawing done to scale illustrating the layout of a proposed land development or changes to an existing property improvement submitted to the planning department or planning commission for their consideration.

SITE REVIEW: A procedure wherein plats of proposed uses in specific zones are reviewed by the planning director or planning commission to ensure compatibility with adjoining land uses and compliance with applicable ordinance provisions. The planning director's action may be referred to or appealed to the planning commission.

STRUCTURAL ALTERATION: Any change to the supporting members of a structure including foundations, bearing walls or partitions, columns, beams, girders or any structural change in the roof or in the exterior walls.

STRUCTURE: Any object constructed or installed by man, including, but not limited to, buildings, towers, smokestacks and overhead transmission lines.

SUBDIVIDE LAND: To divide an area or tract of land into four (4) or more lots within a thirty six (36) month period when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of the first division.

SUBDIVISION: An act of subdividing land or an area or tract of land that has been subdivided.

TRACT-~~OF-LAND~~: One or more contiguous lots or parcels under the same ownership.

USE: The purpose for which land or a structure is designed, arranged or supports an activity.

UTILITY FACILITIES: Any major structure or facility owned or operated by a public, private or cooperative electric, fuel, communication, sewage or water company for the generation, transmission, distribution or processing of its product or for the disposal of cooling water, waste or byproducts, and including power transmission lines, wireless telecommunication facilities, ancillary facilities, transmission tower, major trunk pipelines, power substations, dams, wind and water towers, sewage lagoons, sanitary landfills and similar facilities, but excluding sewer, water, gas, local telephone and power distribution lines and similar minor facilities.

UTILITY FACILITY SERVICE LINES: 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 public rights-of-way, land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained, or the property to be served by the utility.

VISUALLY SUBORDINATE: The relative visibility of a transmission tower or wireless telecommunication facility where that facility does not noticeably contrast with the surrounding landscape.

WIRELESS TELECOMMUNICATION FACILITIES: An unstaffed facility for the transmission or reception of radio frequency (RF) signals usually consisting of an equipment shelter, cabinet or other enclosed structure containing electronic equipment, a storage structure such as a self-supporting monopole or lattice tower, transmission tower, antenna(s), microwave dishes or other transmission and reception devices. This definition includes a personal wireless service facility as defined under the telecommunications act of 1996.

YARD: An open space on a lot that is unobstructed from the ground upward except by vegetation or as otherwise provided in this title.

ZONING MAPS: The Malheur County zoning maps, incorporated herein and made a part of this title 2 . (Ord. 86, 12-7-1993; amd. Ord., 11-8-1994; Ord. 125, 6-20-2000; Ord. 146, 4-14-2004; Ord. 147, 4-14-2004; Ord. 148, 4-14-2004; Ord. 184, 10-21-2009; Ord. 220, 7-3-2019)

Notes

- 1 1. See section 6-9-1 of this title.
- 2 1. See section 6-3-3 of this title.

**CHAPTER 3
ZONING DISTRICTS AND MAPS**

SECTION:

- 6-3-1: Establishment Of Zones**
- 6-3-2: Zone Location**
- 6-3-3: Zoning Maps**
- 6-3-4: Interpretation Of Zoning Boundaries**

ARTICLE A. RESOURCE LANDS, EFU EXCLUSIVE FARM USE ZONE, ERU EXCLUSIVE RANGE USE ZONE, EFFU EXCLUSIVE FARM-FOREST USE ZONE

SECTION:

- 6-3A-1: Purpose**
- 6-3A-2: Permitted Uses**
- 6-3A-3: Conditional Uses Standards Applicable To Resource Lands**
 - 6-3A-3-1: High-Value And Non-High-Value Farmland Determination Standard**
 - 6-3A-3-2: Compatibility Evaluation Standard**
 - 6-3A-3-3: EFFU Zone Siting Standard**
 - 6-3A-3-4: Deed Restriction Standard**
 - 6-3A-3-5: UGB Proximity Standard**
 - 6-3A-3-6: Authorization Validity Period And Extensions**
- 6-3A-4: Approval Of Farm Or Ranch Dwellings Residential Use Of Resource Lands**
 - 6-3A-4-1: Single-Unit Temporary Hardship Dwellings**
 - 6-3A-4-2: Replacement Dwellings**
 - 6-3A-4-3: Single-Unit Dwellings Not Provided In Conjunction With Farm Use**
 - 6-3A-4-4: Single-Unit Dwellings Provided In Conjunction With Farm Use / Farm Dwellings**
 - 6-3A-4-5: Single-Unit Accessory Farm Dwellings**

6-3A-4-6: Other Residential Uses

6-3A-5: Resource Land Divisions Of Land

6-3A-6: Dimensional Standards

6-3A-7: Creation Of Mortgage Lots

6-3A-8: Non-Residential Use Of Resource Lands

6-3A-8-1: Farm, Forest, And Natural Resource Uses

6-3A-8-2: Mineral, Aggregate, Oil, And Gas Uses

6-3A-8-3: Transportation Uses

6-3A-8-4: Utility/Solid Waste Disposal Facility Uses

6-3A-8-5: Parks/Public/Quasi-Public Uses

6-3A-8-6: Commercial Uses

6-3A-1: PURPOSE:

The purpose of the Exclusive Farm Use (EFU) Zone and Exclusive Range Use (ERU) Zone is to protect and maintain agricultural lands for farm use. The purpose of the Exclusive Farm-Forest Zone (EFFU) is to protect and maintain both agricultural lands and forest lands in equal measure. Additionally, these resource land zones are intended to allow other uses that are compatible with agricultural and forest activities, scenic resources, fish and wildlife habitat, and to maintain and improve the quality of air, water, and land resources of the County.

The provisions of the EFU and ERU zone implement applicable Goal 3 requirements described in the Comprehensive Plan, Oregon Administrative Rule (OAR), and Oregon Revised Statutes (ORS). The provisions of the EFFU zone implement Goal 3 and Goal 4 requirements together. Resource lands consist of the exclusive farm, ranch and farm-forest use zones and appropriate overlay zones such as for destination resorts and secondary lands. The purpose of the EFU, ERU and EFFU zones is to maintain the resource-based economy of Malheur County by permitting the establishment of only those uses that are compatible with agricultural activities. The intent is to ensure that areas classified EFU, ERU or EFFU are preserved and protected from conflicting nonresource uses. (Ord. 86, 12-7-1993)

6-3A-2: PERMITTED USES:

This section describes the uses permitted in the Exclusive Farm Use (EFU), Exclusive Range Use (ERU), and Exclusive Farm-Forest Use (EFFU) zones. This section applies to all new uses, expansions of existing uses, and changes of use when not otherwise authorized pursuant to Section 6-6-9. *Nonconforming Uses*. All uses are subject to the general

provisions, special conditions, additional restrictions, and exceptions set forth in this ordinance.

As used in this section:

A. “A” within a zone column means the use is allowed outright.

B. “B” within a zone column means the use is subject to review and approval as a ministerial or administrative use.

C. “C” within a zone column means the use is subject to review and approval as a conditional use.

D. “PA” within a zone column means the use is subject to Comprehensive Plan Amendment review and approval.

E. The “Review Procedure” column identifies the land use review procedure applicable to the use.

1. “1” means review of the use will be processed in accordance with Section 6-12-2 Type One Procedure, unless elevated pursuant to Section 6-12-1 Planning Director Action on Land Use Applications.

2. “2” means review of the use will be processed in accordance with Section 6-12-3 Type Two Procedure, unless elevated pursuant to Section 6-12-1 Planning Director Action on Land Use Applications.

3. “3” means review of the use will be subject to hearing by the Planning Commission, as described in Chapters 9 and 11 of this Title.

4. “N/A” means the use is not subject to land use review.

F. The “Subject To” column identifies criteria applicable to the use. The criteria listed are from this code unless otherwise identified as Oregon Revised Statute (ORS) or Oregon Administrative Rule (OAR).

The uses permitted within the EFU, ERU, and EFFU zones are as follows:

<u>FARM, FOREST, AND NATURAL USES</u>	<u>EFU/ ERU/ EFFU</u>	<u>Review Procedure</u>	<u>Subject To</u>
<u>Activities carried out pursuant to the Oregon Forest Practices Act.</u>	<u>A</u>	<u>N/A</u>	
<u>Farm use.</u>	<u>A</u>	<u>N/A</u>	
<u>Propagation or harvesting of a forest product.</u>	<u>A</u>	<u>N/A</u>	
<u>Agricultural buildings customarily provided in conjunction with resource use.</u>	<u>B</u>	<u>1</u>	<u>ORS 215.760</u>

<u>Facilities for the processing of farm products.</u>	<u>B</u>	<u>2</u>	<u>6-3A-8-1(A)</u>
<u>Facilities for the primary processing of forest products.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-1(B)</u>
<u>Creation of, restoration of, or enhancement of wetlands.</u>	<u>A</u>	<u>N/A</u>	
<u>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.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-1(C)</u>
<u>MINERAL, AGGREGATE, OIL, AND GAS USES</u>	<u>EFU/ ERU/ EFFU</u>	<u>Review Procedure</u>	<u>Subject To</u>
<u>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. [ORS 215.283(1)(f), OAR 660-006-0025(3)(m)]</u>	<u>A</u>	<u>N/A</u>	
<u>Operations for the exploration for minerals as defined by ORS 517.750. [ORS 215.283(1)(g), OAR 660-006-0025(3)(e)]</u>	<u>A</u>	<u>N/A</u>	
<u>Operations conducted for 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 215.283(1)(f). [ORS 215.283(2)(b)(A), OAR 660-006-0025(4)(g)]</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-2(A)</u> <u>6-3N</u> <u>ORS 215.298</u>
<u>Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298. [ORS 215.283(2)(b)(B), OAR 660-006-0025(4)(g)]</u>	<u>PA</u>	<u>3</u>	<u>6-3A-8-2(B)</u> <u>ORS 215.298</u> <u>ORS 215.425</u> <u>OAR 660-023-0180</u>
<u>Operations conducted for processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement. [ORS 215.283(2)(b)(C), OAR 660-006-0025(4)(g)]</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>ORS 215.301</u>
<u>Operations conducted for processing of other mineral resources and other subsurface resources. [ORS 215.283(2)(b)(D), OAR 660-006-0025(4)(g)]</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u>

<u>TRANSPORTATION USES</u>	<u>EFU/ ERU/ EFFU</u>	<u>Review Procedure</u>	<u>Subject To</u>
<u>Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-3(A)</u>
<u>Climbing and passing lanes within the right of way existing as of July 1, 1987.</u>	<u>A</u>	<u>N/A</u>	
<u>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.</u>	<u>A</u>	<u>N/A</u>	
<u>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 resulting in the creation of new land parcels.</u>	<u>A</u>	<u>N/A</u>	
<u>Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.</u>	<u>A</u>	<u>N/A</u>	
<u>Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u>
<u>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.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u>
<u>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.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u>
<u>Transportation improvements not otherwise listed.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-3(B)</u>
<u>UTILITY/SOLID WASTE DISPOSAL FACILITIES USES</u>	<u>EFU/ ERU/ EFFU</u>	<u>Review Procedure</u>	<u>Subject To</u>

<u>Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.</u>	<u>A</u>	<u>N/A</u>	
<u>Utility facilities necessary for public service, including associated transmission lines and 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 two hundred (200) feet high.</u>	<u>B</u>	<u>3</u>	<u>6-3A-3-1(A)(2)</u> <u>6-3A-8-4(D)</u>
<u>Expansion, colocation, or modification of an existing telecommunication facility.</u>	<u>B</u>	<u>1</u>	<u>6-6-8-8</u>
<u>Commercial utility facilities for the purpose of generating power for public use by sale.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-4(F)</u>
<u>Transmission towers over two hundred (200) feet in height.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(2)</u> <u>6-3A-3-2</u> <u>6-3A-8-4(E)</u>
<u>Utility facility service lines.</u>	<u>A</u>	<u>N/A</u>	
<u>Land application of reclaimed water, agricultural or industrial process water or biosolids.</u>	<u>B</u>	<u>3</u>	<u>6-3A-8-4(A)</u>
<u>Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245, OAR 340-093-0050, and OAR 340-096-0060.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-2</u> <u>6-3A-8-4(B)</u> <u>ORS 215.401</u>
<u>Disposal sites for 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 DEQ together with equipment, facilities or buildings necessary for its operation.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-2</u> <u>6-3A-8-4(C)</u>
<u>PARKS/PUBLIC/QUASI-PUBLIC USES</u>	<u>EFU/ ERU/ EFFU</u>	<u>Review Procedure</u>	<u>Subject To</u>
<u>Private parks, playgrounds, hunting and fishing preserves, and campgrounds.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-2</u> <u>6-3A-3-5</u> <u>ORS 215.218</u>

			<u>OAR 660-006-0025(4)(E, Q, X)</u> <u>OAR 660-033-0130(19, 43)</u>
<u>Youth camps.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-2</u> <u>6-3A-3-5</u> <u>ORS 215.459</u> <u>OAR 660-006-0031</u> <u>OAR 660-033-0130(40)</u>
<u>Public parks and playgrounds.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-2</u> <u>6-3A-3-5</u> <u>6-3A-8-5(C)</u>
<u>Golf courses.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(2)</u> <u>6-3A-3-2</u> <u>6-3A-3-5</u> <u>6-3A-8-5(D)</u>
<u>Sites for the takeoff and landing of model aircraft.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-5(A)</u>
<u>Public or private schools for kindergarten through grade twelve (12), including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-2</u> <u>6-3A-3-5</u> <u>6-3A-8-5(E)</u>
<u>Churches and cemeteries in conjunction with churches.</u>	<u>B</u>	<u>3</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-5</u> <u>6-3A-8-5(B)</u>
<u>Living history museums.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-3-5</u> <u>6-3A-8-5(F)</u>
<u>Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-3-5</u> <u>6-3A-8-5(G)</u>

<u>County law enforcement facilities.</u>	<u>B</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-5(H)</u>
<u>Firearms training facilities.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-3-5</u> <u>6-3A-8-5(I)</u>
<u>Fire service facilities for fire protection, including towers and stations.</u>	<u>B</u>	<u>3</u>	<u>6-3A-3-2(A)</u>
<u>Mobile medical clinics up to one hundred eighty (180) days.</u>	<u>A</u>	<u>N/A</u>	
<u>Equine and equine-affiliated therapeutic and counseling activities.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-5(J)</u>
<u>COMMERCIAL USES</u>	<u>EFU/ ERU/ EFFU</u>	<u>Review Procedure</u>	<u>Subject To</u>
<u>Limited dog training classes or testing trials.</u>	<u>B</u>	<u>2</u>	<u>6-3A-8-6(A)</u>
<u>Commercial dog boarding kennels or other dog training classes or testing trials that cannot be established under Section 6-3A-8-6(A).</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u>
<u>Limited agri-tourism and other commercial events or activities.</u>	<u>B</u>	<u>2</u>	<u>6-3A-8-6(B)</u>
<u>Agri-tourism and other commercial events or activities that cannot be established under Section 6-3A-8-6(B).</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-6(C)</u>
<u>Home occupation.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-6(F)</u>
<u>Farm stands.</u>	<u>B</u>	<u>3</u>	<u>6-3A-8-6(D)</u>
<u>Farm stores.</u>	<u>B</u>	<u>3</u>	<u>6-3A-8-6(I)</u>
<u>Farm breweries.</u>	<u>B</u>	<u>3</u>	<u>ORS 215.449</u>
<u>Cideries.</u>	<u>B</u>	<u>3</u>	<u>ORS 215.451</u>
<u>Wineries.</u>	<u>B</u>	<u>3</u>	<u>ORS 215.452</u> <u>ORS 215.454</u>
<u>Large wineries.</u>	<u>C</u>	<u>3</u>	<u>ORS 215.454</u>

<u>Commercial activities in conjunction with farm use.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-6(E)</u>
<u>Onsite filming and activities accessory to onsite filming for forty-five (45) days or less as provided for in ORS 215.306(3)(a).</u>	<u>A</u>	<u>N/A</u>	<u>ORS 215.306(3)(a)</u>
<u>Onsite filming and activities accessory to onsite filming for more than forty-five (45) days.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-6(I)</u>
<u>Operations for the extraction and bottling of water.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u>
<u>Parking for up to seven (7) log trucks.</u>	<u>B</u>	<u>3</u>	<u>6-3A-8-6(G)</u>
<u>Aerial fireworks display businesses that have been in continuous operation at their current location since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-8-6(H)</u>
<u>Landscape contracting businesses, as defined in ORS 671.520, or businesses providing landscape architecture services, as described in ORS 671.318, if the businesses are pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u>
<u>Guest ranches.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-2</u> <u>6-3A-8-6(K)</u>
<u>RESIDENTIAL USES</u>	<u>EFU/ ERU/ EFFU</u>	<u>Review Procedure</u>	<u>Subject To</u>
<u>Single-unit temporary hardship dwellings.</u>	<u>C</u>	<u>2</u>	<u>6-3A-3-2</u> <u>6-3A-3-4</u> <u>6-3A-4-1</u>
<u>Replacement dwellings.</u>	<u>B</u>	<u>2</u>	<u>6-3A-3-4</u> <u>6-3A-4-2</u>
<u>Replacement of damaged/destroyed dwelling in any zone.</u>	<u>B</u>	<u>1</u>	<u>6-4-9</u>
<u>Single-unit dwellings not provided in conjunction with farm use.</u>	<u>B</u>	<u>2</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-4</u>

			<u>6-3A-4-3</u>
<u>Single-unit dwellings provided in conjunction with farm use / farm dwellings.</u>	<u>B</u>	<u>2</u>	<u>6-3A-3-1(A)(1)</u> <u>6-3A-3-4</u> <u>6-3A-4-4</u>
<u>Single-unit accessory farm dwellings.</u>	<u>B</u>	<u>2</u>	<u>6-3A-3-4</u> <u>6-3A-4-5</u>
<u>Child care facilities, preschool recorded programs or school-age recorded programs.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-4-6(A)</u>
<u>Residential homes and facilities in existing dwellings.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-3-4</u>
<u>Room and board arrangements for a maximum of five unrelated persons in existing residences.</u>	<u>C</u>	<u>3</u>	<u>6-3A-3-2</u> <u>6-3A-3-4</u>

~~—A. The following uses may be permitted outright by ministerial permit in each of the three (3) resource zones except as specifically added or excluded:~~

~~—1. Farm uses as defined in ORS 215.203(2), including the propagation, cultivation, maintenance and harvesting of aquatic species, excluding feedlots.~~

~~—2. The propagation or harvesting of a forest product.~~

~~—3. The dwellings and other buildings customarily provided in conjunction with farm or ranch use, subject to section 6-3A-4 of this article.~~

~~—4. Subject to section 6-3A-4 of this article, an additional dwelling on real property used for farm or ranch use if the dwelling is:~~

~~— a. Located on the same lot or parcel as the dwelling of the resource operator; and is~~

~~— b. Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm or ranch operator or operator's spouse, whose assistance in the management of the resource use is or will be required by the operator.~~

~~—5. Well drilling is a permitted activity, provided permits are obtained as required by state statute and this code. Development of the well for production usage shall be for agricultural or forest purposes only unless additional approval has been granted under section 6-3A-3 of this article.~~

~~—6. Climbing and passing lanes within the right of way existing as of July 1, 1987.~~

~~—7. Reconstruction or modification of public roads and highways, not including the addition of travel lanes where no removal or displacement of buildings would occur, or no new land parcels result.~~

~~—8. Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.~~

~~—9. Minor betterment of existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, within rights 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.~~

~~—10. 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.~~

~~—11. Exploration only for geothermal, gravel and mineral deposits.~~

~~—12. Breeding, boarding and training horses for profit.~~

~~—13. Seasonal farm worker housing.~~

~~—14. 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 two hundred feet (200') in height. A utility facility necessary for public service may be established as provided in ORS 215.275 and section 6-6-8-8, "Wireless Telecommunication Facilities" of this title. (Ord. 86, 12-7-1993; amd. Ord. 146, 4-14-2004)~~

6-3A-3: STANDARDS APPLICABLE TO RESOURCE LANDS: CONDITIONAL USES:

~~The following conditional uses and their accessory uses may be established when authorized in accordance with chapter 6 of this title:~~

~~—A. Public or private schools.~~

~~—B. Churches.~~

~~—C. Commercial utility facilities for the purpose of generating power for public use by sale.~~

~~—D. 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.~~

~~—E. Operations conducted for:~~

~~—1. Exploration for and production of oil and gas as defined by ORS 520.005, including the placement of operation compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.~~

~~—2. Mining and processing of geothermal resources as defined by ORS 522.005.~~

- ~~—3. Mining of aggregate and other mineral resources or other subsurface resources subject to section 6-4-7 of this title.~~
- ~~—4. Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement.~~
- ~~—5. Processing of other mineral resources and other subsurface resources.~~
- ~~—F. Private parks, playgrounds, hunting and fishing preserves and campgrounds.~~
- ~~—G. Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.~~
- ~~—H. Golf courses.~~
- ~~—I. Personal use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A "personal use airport" 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 resource management operations.~~
- ~~—J. Commercial activities that are in conjunction with farm or ranch use.~~
- ~~—K. The boarding of horses for profit.~~
- ~~—L. Home occupations or home businesses as provided in section 6-6-8-6 of this title and ORS 215.448.~~
- ~~—M. 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.~~
- ~~—N. Residential homes as defined in ORS 197.660, in existing dwellings.~~
- ~~—O. Feedlots.~~
- ~~—P. Single family residential dwellings not provided in conjunction with the respective resource use, except dwellings on parcels partitioned pursuant to section 6-4-4 of this title, which shall be established as authorized in accordance with that section.~~
- ~~—Q. The temporary use of a manufactured dwelling during a family hardship condition, where such condition is related to the aged, the infirm, or to persons otherwise incapable of maintaining a completely separate residence apart from their family for health reasons. The zoning permit for such use shall note that it is temporary and subject to renewal annually without additional fee. In the event the hardship no longer exists, the removal of the temporary use shall be required. If the temporary manufactured dwelling is to be~~

~~connected to an existing sewage system, compliance with applicable rules of the department of environmental quality will be required. Application for a temporary manufactured dwelling shall consist of a letter describing the nature of the hardship and any form required by the planning department.~~

~~—R. Nonresource land uses and land partitions are restricted and regulated by sections 6-6-8-1 and 6-6-8-2 of this title.~~

~~—S. Construction of additional passing travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.~~

~~—T. 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.~~

~~—U. Improvement of public roads 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.~~

~~—V. Cemeteries in conjunction with churches.~~

~~—W. Dog kennels.~~

~~—X. Transmission towers over two hundred feet (200') in height.~~

(Ord. 86, 12-7-1993; amd. Ord. 101, 4-25-1996; Ord. 146, 4-14-2004; Ord. 147, 4-14-2004; Ord. 184, 10-21-2009)

6-3A-3-1: HIGH-VALUE AND NON-HIGH-VALUE FARMLAND DETERMINATION STANDARD [ORS 197.300(10), ORS 215.710, OAR 660-033-0020(8)]:

A. As used in this code, “High-Value Farmland” shall have one (1) of the following meanings:

1. “High-Value Farmland” means land in a tract composed predominantly of soils that are classified prime, unique, Class 1 or Class II. High-value farmland includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this subsection, “specified perennials” means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa. 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.

2. “High-Value Farmland” means:

a. EFU, ERU, or EFFU zoned land in a tract composed predominantly of soils that are classified prime, unique, Class I or Class II.

b. Tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to December 6, 2007. For purposes of this subsection, "specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa.

c. EFU, ERU, or EFFU zoned land that on June 28, 2007, is:

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

ii. Within the boundaries of a district, as defined in ORS 540.505; or

iii. Within the boundaries of a diking district formed under ORS chapter 551.

d. Land that contains not less than five (5) acres planted in wine grapes.

e. EFU, ERU, or EFFU zoned land that is no more than three thousand feet (3,000') above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero (0%) and fifteen (15%) percent, and that is located within the portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.

f. As used in subsection (A)(2) of this section, soil classes, soil ratings, or other soil designations used in farmland determination are those of the Soil Conservation Service in its most recent publication for that class, rating or designation before December 6, 2007.

B. Any EFU, ERU, or EFFU zoned land which does not meet the applicable definition of high-value farmland will be considered non-high-value farmland.

C. Unless otherwise stated, the applicant shall have the burden of proof to demonstrate the high-value and non-high-value designation of the land subject to review.

D. As may be applicable, ORS 215.710(5), OAR 660-033-0030, and OAR 660-033-0045 describe the requirements for designating or re-designating high-value farmland and for changing the soil class, soil rating, or other soil designation of a specific lot or parcel.

6-3A-3-2: COMPATIBILITY EVALUATION STANDARD:

A. All proposal subject to this section shall only be approved if the County finds that the proposal would not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

B. A determination of compliance with subsection (A) requires:

1. Identification and description of the surrounding lands, the farm and forest operations on those lands, and the accepted farm practices on each farm operation and the accepted forest practices on each forest operation;

2. An assessment of the individual impacts to each farm and forest practice, and whether the proposed use is likely to have an important influence or effect on any of those practices; and

3. An assessment of whether all identified impacts of the proposed use when considered together could have a significant impact to any farm or forest operation in the surrounding area in a manner that is likely to have an important influence or effect on that operation.

4. For purposes of this section, examples of potential impacts for consideration may include but are not limited to traffic, water availability and delivery, introduction of weeds or pests, damage to crops or livestock, litter, trespass, reduction in crop yields, or flooding.

5. For purposes of subsections (A) and (B), potential impacts to farm and forest practices or the cost of farm and forest practices, impacts relating to the construction or installation of the proposed use shall be deemed part of the use itself.

C. Compliance through conditions of approval.

1. An applicant may demonstrate that the standards for approval set forth in subsections (A) and (B) above will be satisfied through conditions of approval. Any conditions so imposed shall be clear and objective. Such conditions shall not be imposed on the owner of the affected farm or forest land or on such land itself, nor compel said owner to accept payment to compensate for the significant changes or significant increases in costs.

2. Complaints submitted by persons engaged in farm or forest practices on lands devoted to farm or forest alleging violation of conditions imposed pursuant to subsection (C)(1) of this section will be processed in accordance with ORS 215.296.

D. In addition to all other requirements of this section, proposals within the EFFU zone may only be approved if the County finds that:

1. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

2. A written statement recorded with the deed or written contract with the County or its equivalent is 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 for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of OAR 660-006-0025.

E. If a use subject to this section is initiated without prior approval, the County will notify the user that prior approval is required, direct the user to apply for approval within

twenty-one (21) days, and warn the user against the commission of further violations. If the user does not apply for approval within twenty-one (21) days, the County shall order the suspension of the use until the user applies for and receives approval. If following the receipt of a complaint pursuant to subsection (C)(2) there is a determination that a further violation occurred after approval was granted, then that violation shall be deemed a second violation and the County will, at a minimum, assess a fine against the violator.

6-3A-3-3: EFFU ZONE SITING STANDARD:

All permanent dwellings or structures proposed to be established within the EFFU zone shall be subject to review for compliance with OAR 660-006-0029, OAR 660-006-0035, and OAR 660-006-0040, even when the use is otherwise allowed outright.

6-3A-3-4: DEED RESTRICTION STANDARD:

Proposals for the establishment of a dwelling or youth camp within the EFU, ERU, and EFFU zones shall comply with this standard. Other uses may be subject to compliance with this standard where stated. This standard requires that, prior to establishment of the approval, the landowner shall sign and record in the County deed records a document 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 or 30.937.

6-3A-3-5: UGB PROXIMITY STANDARD [OAR 660-033-0130(2)]:

For all proposals subject to this standard:

A. No enclosed structure with a design capacity greater than one hundred (100) people, or group of structures with a total design capacity of greater than one hundred (100) people, shall be approved in connection with the use within three (3) 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 (0.5) 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 (3) miles of an urban growth boundary may not be expanded beyond the requirements of this section.

6-3A-3-6: AUTHORIZATION VALIDITY PERIOD AND EXTENSIONS:

A. Except as provided for in subsection (C) and for land division authorizations, an authorization for proposed development on resource land outside an urban growth boundary is void two (2) years after the effective date of the final decision if the development action is not initiated in that period. The County may grant one (1) extension of up to twelve (12) months if:

1. An applicant makes a written request for an extension of the validity period;
2. The request is submitted to the County prior to the expiration of the validity period;
3. The applicant states reasons that prevented the applicant from beginning or continuing development within the validity period; and
4. The County determines that the applicant was unable to begin or continue development during the validity period for reasons for which the applicant was not responsible.

B. Except as provided for in subsection (C), additional one (1) year extensions may be authorized where applicable criteria for the authorization have not changed.

C. An authorization for replacement dwellings or for single-unit dwellings not provided in conjunction with farm use, as provided for in Sections 6-3A-4-2 and 6-3A-4-3, on resource land outside an urban growth boundary shall be valid for four (4) years from the effective date of the final decision. The first extension is valid for two (2) years. The County may approve no more than five (5) additional one (1) year extensions of an authorization if:

1. The applicant makes a written request for the additional extension prior to the expiration of the extension;
2. The applicable statutes have not been amended following the approval of the dwelling; and
3. An applicable rule or land use regulation has not been amended following the issuance of the dwelling authorization, unless allowed by the County, which may require that the applicant to comply with the amended rule or land use regulation.

D. Approval of an extension granted pursuant to this section is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

6-3A-4: RESIDENTIAL USE OF RESOURCE LANDS: APPROVAL OF FARM OR RANCH DWELLINGS:

The resource dwellings identified in subsections 6-3A-2A of this article may be approved subject to a determination that the dwellings are in conjunction with the respective commercial farm or ranch use based on subsection A of this section and subsection 6-3A-

~~5A of this article and that the property and improvements constitute a commercial resource operation based on subsection C of this section.~~

~~—A. Primary Resource Dwelling Determination: When determining whether a proposed primary dwelling to be permanently located on the property is "customarily provided in conjunction" with the farm or ranch use, the following factors shall be considered:~~

~~The size of the entire resource unit including all contiguous land in the same ownership; the types of farm crops and acreage for each type; operational requirements for the particular farm activity; the number of other permanent or temporary dwellings on or serving the entire farm or ranch unit (permanent and seasonal); the extent and nature of the work to be performed by occupants of the proposed dwelling.~~

~~—B. Farm Hand Or Secondary Resource Dwelling: When determining whether a proposed farm hand or secondary dwelling may be provided, the following criteria shall apply:~~

~~An affidavit by the farm owner or operator making it clear the occupant will be an employee shall be signed and submitted.~~

~~—C. Commercial Resource Determination: When determining whether an existing or proposed parcel is a commercial farm or ranch unit, the standards of subsection A shall be met and the following factors shall be considered:~~

~~—1. Soil productivity; drainage; terrain; special soil or land conditions; availability of water; type and acreage of crops grown; crop yields; number and type of livestock; processing and marketing practices; and the amount of land needed to constitute a commercial farm or ranch unit.~~

~~—2. ORS 215.213(1)(g) and 215.283(1)(f) authorize a farm dwelling in an EFU zone only where it is shown that the dwelling will be situated on a parcel currently employed for farm use as defined in ORS 215.203. Land is not in farm use unless the day to day activities on the subject land are principally directed to the farm use of the land. Where land would be principally used for residential purposes rather than for farm use, a proposed dwelling would not be "customarily provided in conjunction with farm use" and could only be approved according to ORS 215.213(3) or 215.283(3).~~

~~—D. Notice Of Proposed Ministerial Approval: Notice of the proposed ministerial approval of a dwelling in conjunction with farm use shall be mailed to adjoining property owners. Within ten (10) days following notice to adjoining property owners, the application shall be considered for approval by the planning director. An objection by an adjoining property owner shall require any further action to be conducted by the planning commission as a conditional use permit.~~

In addition to other applicable requirements, dwellings and other residential uses may only be authorized on EFU, ERU, and EFFU zoned land in accordance with the standards of this section. All new dwellings are subject to Section 6-3A-3-4 Deed Restriction Standard. (Ord. 86, 12-7-1993)

6-3A-4-1: SINGLE-UNIT TEMPORARY HARDSHIP DWELLINGS:

A. Definitions. As used in this section:

1. "Hardship" means a medical hardship described in writing by a licensed medical care provider.

2. "Relative" means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin.

B. For a medical hardship, the temporary residence may include a manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building. A manufactured dwelling shall use the same well and subsurface sewage disposal system used by the existing dwelling. The County will review the permit authorizing such manufactured homes every two (2) years. Within three (3) 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. Department of Environmental Quality review and removal requirements also apply.

C. A temporary residence approved under this section is not eligible for replacement under Section 6-3A-4-2 *Replacement Dwellings*.

6-3A-4-2: REPLACEMENT DWELLINGS:

A. Notwithstanding Section 6-4-9 *Replacement of Damaged/Destroyed Dwellings In Any Zone* or Section 6-6-9 *Nonconforming Uses*, a lawfully established dwelling may be altered, restored or replaced if, when an application for a permit is submitted, the County finds to its satisfaction, based on substantial evidence that:

1. The dwelling to be altered, restored or replaced has, or formerly had:

a. Intact exterior walls and roof structure;

b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

c. Interior wiring for interior lights; and

d. A heating system; and

2. The dwelling to be altered, restored or replaced:

a. Unless the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of ad valorem taxation since the later of:

i. Five (5) years before the date of the application; or

ii. The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment; or

b. If the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction or demolition and since the later of:

i. Five (5) years before the date of the destruction or demolition; or

ii. The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment;

3. The application was filed within three (3) years following the date that the dwelling last possessed all the features listed under subsection (A)(1); and

B. The replacement dwelling authorized under this section:

1. May be sited on any part of the same lot or parcel; and

2. Must comply with applicable siting standards to the greatest extent possible.

C. Notwithstanding other conditions of approval that may apply, the standards of this subsection shall be imposed as conditions of approval on replacement dwelling authorizations as applicable.

1. For all replacement dwelling authorizations without exception:

a. The applicant must cause to be recorded within the County deed records a statement that the dwelling to be replaced has been removed, demolished or converted.

b. The applicant must comply with Section 6-3A-3-4 *Deed Restriction Standard*.

c. 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.

2. For all authorizations where the dwelling to be altered, restored or replaced is located on a portion of the lot or parcel that is not on EFU, ERU, or EFFU zoned land:

a. The applicant shall execute and cause to be recorded in the County deed records a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the County Planning Director, or the director's designee, places a statement of release in the County deed records to the effect that the provisions of ORS 215.291 and 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

3. For all deferred placement authorizations:

a. Notwithstanding Section 6-3A-3-6 *Authorization Validity Period and Extensions*, the authorization does not expire and may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

b. The dwelling to be altered, restored or replaced shall be removed or demolished within three (3) months after the deferred replacement permit is issued.

4. For all authorizations not described in subsection (C)(3):

a. Construction of the approved replacement dwelling must commence no later than four (4) years after the date the authorization became final.

b. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within three (3) months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055.

D. The County Planning Director, or the director's designee, shall maintain a record of:

1. The lots and parcels for which dwellings to be replaced have been removed, demolished or converted; and

2. The lots and parcels that do not qualify for the siting of a new dwelling, including a copy of the deed restrictions filed under subsection (C)(2).

6-3A-4-3: SINGLE-UNIT DWELLINGS NOT PROVIDED IN CONJUNCTION WITH FARM USE:

This section shall not be used to authorize more than one (1) dwelling on a single lot or parcel. For the purposes of this section, "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(1) *High-Value And Non-High-Value Farmland Determination Standard*.

A. Non-Farm Dwelling.

1. A non-farm dwelling may be permitted upon the County's determination that:

a. The dwelling will be sited on a lot or parcel:

i. Created before January 1, 1993; or

ii. Created after January 1, 1993, as allowed under Section 6-3A-5(B)(6);

b. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

c. The dwelling will be situated upon a lot or parcel, or, in the case of an existing lot or parcel, upon a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. For the purposes of this criterion, a lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot

or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use;

d. The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, the County shall consider the cumulative impact of non-farm dwellings on other lots or parcels in the area similarly situated. If the application involves the creation of a new parcel for the non-farm dwelling, the County shall consider whether creation of the parcel will lead to creation of other non-farm parcels, to the detriment of agriculture in the area. To address this requirement, the County will:

i. Identify a study area for the cumulative impacts analysis. The study area shall include at least two thousand (2000) acres or a smaller area not less than one thousand (1000) 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 parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;

ii. Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of lot-of-record dwellings on non-high-value farmland and non-farm dwellings that could be approved, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot area standard that may be divided to create new parcels for non-farm dwellings under Section 6-3A-5(B)(6). The 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 non-farm dwellings under this subsection; and

iii. Determine whether approval of the proposed non-farm / lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm 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.

2. For any non-farm dwelling authorization, the County will impose conditions of approval, including:

a. Establishment of a non-farm dwelling precludes establishment of any other dwelling not provided in conjunction with farm use;

b. Building permit authorization shall not be granted for the approved non-farm dwelling until any additional taxes imposed upon the change in use have been paid;

c. Building permit authorization shall not be granted for the approved non-farm dwelling until the County has received evidence that the lot or parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308A.050 to 308A.128 or other special assessment under ORS 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855 and any additional tax imposed as the result of disqualification has been paid;

d. Prior to building permit authorization for the approved non-farm dwelling, the property owner shall:

i. Notify the County Assessor that the lot or parcel is no longer being used as farmland or for other specially assessed uses described in subsection (A)(2)(c);

ii. Request that the County Assessor disqualify the lot or parcel from special assessment under ORS 308A.050 to 308A.128, 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855;

iii. Pay any additional tax imposed upon disqualification from special assessment; and

e. Any other condition found to be necessary.

B. Lot-of-Record / Record Dwelling.

1. Definitions. As used in subsection (B) of this section, "owner" includes the spouses in a marriage, son, daughter, parent, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, parent-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one (1) or combination of these family members.

2. Approval criteria. A lot-of-record dwelling may be permitted provided it complies with all the requirements of subsection (B) of this section.

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:

i. Since prior to January 1, 1985; or

ii. By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

b. The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.

c. The tract on which the dwelling will be sited does not include a dwelling.

d. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law.

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

f. If the tract upon which the dwelling would be sited is located within the EFFU zone and was determined to be predominantly forest use on January 1, 1993 pursuant to subsection (C), then the proposal shall comply with ORS 215.720, ORS 215.730, and OAR 660-006-0027(1).

g. If the tract upon which the dwelling would be sited is located within the EFFU zone and was determined to be determined to be predominantly farm use on January 1, 1993 pursuant to subsection (C), or, if the tract upon which the dwelling would be sited is located with the EFU or ERU zone, then the proposal shall comply with (i) or (ii) below.

i. The lot or parcel on which the dwelling will be sited is non-high-value farmland.

ii. The dwelling may be sited on high-value farmland provided a hearings officer of the County determines that:

A. The dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

B. The lot or 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. For the purposes of this criterion, the hearings officer shall identify whether the subject lot or parcel can be physically put to 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 demonstrates that a lot of 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; and

C. The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the requirements described in subsection (A)(1)(d) of this section.

3. Grounds for denial. The County may deny approval of a dwelling in any area where it can be determined that the dwelling would:

- a. Exceed the facilities and service capabilities of the area;
- b. Materially alter the stability of the overall land use pattern in the area; or
- c. Create conditions or circumstances that the County determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

4. Procedures. In addition to other applicable noticing and procedural requirements, the County shall ensure the following requirements are addressed:

a. Prior to issuance of a decision for approval, the County Assessor shall be notified that the County intends to allow the dwelling; and

b. Applications submitted pursuant to subsection (B)(2)(g)(ii) shall be mailed to the State Department of Agriculture at least twenty (20) calendar days prior to the public hearing before the hearings officer.

5. Conditions of approval. For any lot-of-record dwelling authorization, the County will impose conditions of approval, including:

a. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

b. The authorization may be transferred by a person who has qualified under this section to any other person after the effective date of the land use decision;

c. Building permit authorization shall not be granted for the approved lot-of-record dwelling until the County has received evidence that the lot or parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308A.050 to 308A.128 or other special assessment under ORS 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855 and any additional tax imposed as the result of disqualification has been paid;

d. Prior to building permit authorization for the approved lot-of-record dwelling, the property owner shall:

i. Notify the County Assessor that the lot or parcel is no longer being used as farmland or for other specially assessed uses described in subsection (B)(5)(c);

ii. Request that the County Assessor disqualify the lot or parcel from special assessment under ORS 308A.050 to 308A.128, 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855;

iii. Pay any additional tax imposed upon disqualification from special assessment; and

e. Any other condition found to be necessary.

C. Predominant Use Determination Within EFFU Zone. Within the EFFU zone, for dwellings and other uses that may be subject to this subsection, the County shall determine the predominant use of the subject tract as farm or forest as of January 1, 1993. The County's determination will consider any relevant and available evidence including, but not limited to, aerial imagery, tax assessor records, land use and related records.

6-3A-4-4: SINGLE-UNIT DWELLINGS PROVIDED IN CONJUNCTION WITH FARM USE / FARM DWELLINGS:

For the purposes of this section, "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(1) *High-Value And Non-High-Value Farmland Determination Standard*.

A. Farming of and the gross sales derived from selling a marijuana or psilocybin-producing crop may not be used to demonstrate compliance with requirements for any farm dwelling pursuant to this section.

B. Farm Dwelling – Acreage Standard. A farm dwelling may be permitted where the County determines it to be consistent with all the following requirements:

1. The dwelling will be located on non-high-value farmland.
2. The parcel on which the dwelling will be located is at least:
 - a. One-hundred sixty (160) acres and not designated rangeland (EFU or EFFU); or
 - b. Three-hundred twenty (320) acres and designated rangeland (ERU).
3. The tract on which the dwelling will be located is currently employed for farm use.
4. The proposed dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.
5. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract.

C. Farm Dwelling – Income Standard. A farm dwelling may be permitted where the County determines it to be consistent with all the following requirements:

1. As used in this section, "farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use.
2. Where the proposed dwelling would be located on non-high-value farmland:
 - a. The tract on which the dwelling will be sited is currently employed for farm use, on which, in each of the last two (2) years or three (3) of the last five (5) years, or in an average of three (3) of the last five (5) years, the farm operator earned the lower of the following:

- i. At least \$40,000 in gross annual income from the sale of farm products; 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.

3. Where the proposed dwelling would be located on high-value farmland:

a. The subject tract is currently employed for farm use, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two (2) years or three (3) of the last five (5) years, or in an average of three (3) of the last five (5) years.

4. Except for seasonal farmworker housing approved prior to 2001, there are no other dwellings on the farm or forest lands of the farm or ranch operation owned by the farm or ranch operator.

5. The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (C)(2) or (3) above, whichever is applicable.

6. The applicant shall submit an IRS tax return transcript and any other information the County may require to determine compliance with the gross farm income requirements in subsection (C)(2) or (3) above, whichever is applicable.

7. In determining the required gross income:

a. The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

b. Only gross income earned from land owned, not leased or rented, shall be counted; and

c. Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

d. Noncontiguous lots or parcels zoned for farm use elsewhere in Malheur County or other contiguous Eastern Oregon counties may be used to meet the gross income requirements. The applicant shall provide evidence that covenants, conditions, or restrictions have been recorded with the applicable county clerk for each lot and parcel used to demonstrate compliance with the gross farm income requirements. The covenants, conditions, and restrictions for each lot and parcel shall:

i. Be irrevocable, unless a statement of release is signed by an authorized representative of the applicable county; and

ii. Be enforceable by the Oregon Department of Land Conservation and Development or the applicable county; and

iii. Preclude all future rights to construct a dwelling except for accessory farmworker dwellings, relative farm assistance dwellings, temporary hardship dwellings, or replacement dwellings; and

iv. Preclude the use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

8. Failure to follow the requirements of subsection (C) shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by subsection (C)(7)(d).

9. The County Planning Director or designee shall maintain a copy of the covenants, conditions and restrictions filed in the County deed records pursuant to subsection (C)(7)(d) and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the County deed records pursuant to subsection (C). The map or other record shall be readily available to the public in the County Planning Department.

D. Farm Dwelling – Dairy Farm Standard. A farm dwelling may be permitted where the County determines it to be consistent with all the following requirements:

1. The subject tract will be employed as a commercial dairy. As used in this section, "commercial dairy farm" means a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by subsection (C), from the sale of fluid milk.

2. The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy.

3. 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.

4. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract.

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.

6. The Oregon Department of Agriculture has approved the following:

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

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

E. Farm Dwelling – Relocated Farm Operations Standard. A farm dwelling may be permitted where the County determines it to be consistent with all the following requirements:

1. Within the previous two (2) years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five (5) years or four (4) of the last seven (7) years as required by subsection (C) of this section;

2. The lot or parcel on which the dwelling will be located:

a. Complies with the applicable minimum lot area standard; and

b. Currently employed for farm use and produced in each of the last two (2) years or three (3) of the last five (5) years, or in an average of three (3) of the last five (5) years the gross farm income required by subsection (C) of this section.

3. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract.

4. The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (E)(1) of this section.

5. In determining the gross income required:

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.

6. As used in this section, "farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use.

F. Farm Dwelling – Replacement of Historic Dwelling Standard. A replacement dwelling to be used in conjunction with farm use may be permitted if the existing dwelling has been classified as historic property as described in ORS 358.487(4).

6-3A-4-5: SINGLE-UNIT ACCESSORY FARM DWELLINGS:

For the purposes of this section, "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(1) *High-Value And Non-High-Value Farmland Determination Standard*. Farming of a marijuana or psilocybin-producing crop may not be used to demonstrate compliance with the requirements of this section.

A. Relative Assistance Dwelling.

1. Definitions. As used in subsection (A):

a. "Relative" means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin.

b. "Farm Operator" means 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.

c. "Foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).

2. Proposal for an accessory relative assistance dwelling may be permitted upon determination by the County all the following requirements have been met:

a. The proposed dwelling would be occupied by a relative of the farm operator or the farm operator's spouse;

b. The proposed dwelling would be located on the same lot or parcel as the dwelling of the farm operator and on real property used for farm use;

c. The farm operator does or will require a relative's assistance in the management and farm use of the existing commercial farming operation; and

d. The farm operator shall continue to play the predominant role in the management and farm use of the farm.

3. Notwithstanding ORS 92.010 to 92.192 or the applicable minimum lot area standard, if the owner of a relative assistance dwelling 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. Prior conditions of approval for the subject land and dwelling remain in effect.

B. Farmworker Dwelling.

1. Definitions. As used in subsection (B):

a. "Farm unit" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use.

b. "Farmworker" means an individual who, for an agreed remuneration or rate of pay, performs labor, temporarily or on a continuing basis, for a person in the production of farm products or the planting, cultivating, or harvesting of seasonal agricultural crops.

c. "Farmworker housing" means housing:

i. Limited to occupancy by farmworkers and their immediate families; and

ii. No dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.

d. "Owner" means a person that owns farmworker housing. "Owner" does not mean a person whose interest in the farmworker housing is that of a holder of a security interest in the housing.

e. "Relative" means:

i. A spouse of the owner or operator; and

ii. An ancestor, lineal descendant or whole or half sibling of the owner or operator or the spouse of the owner or operator.

2. Proposals for accessory farmworker dwellings may be permitted upon determination by the County that all the requirements this subsection have been met.

a. The accessory farmworker dwellings will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;

b. There is no other dwelling on the lands 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 farmworker dwelling.

c. The accessory farmworker dwellings will be located:

i. On the same lot or parcel as the primary farm dwelling;

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

iii. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farmworker dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the County Clerk and 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 reapproved;

iv. On any lot or parcel, when the accessory farmworker dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The County shall require all accessory farmworker dwellings approved under subsection (B) to be removed, demolished or converted to a nonresidential use when the farmworker dwellings are no longer required; or

v. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farmworker dwelling is located on a lot or parcel that complies with the applicable minimum lot area standard and the lot or parcel complies with the gross farm income requirements in Section 6-3A-4-4, subsection (C)(2) or (3), whichever is applicable; 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, on which, in

each of the last two (2) years or three (3) of the last five (5) years or in an average of three (3) of the last five (5) years, the farm operator earned the lower of the following:

A. At least \$40,000 in gross annual income from the sale of farm products. 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 the 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;

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, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two (2) years or three (3) of the last five (5) years or in an average of three (3) of the last five (5) years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

iii. It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and

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;

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

C. A Producer License for the sale of dairy products under ORS 621.072.

iv. The applicant shall submit an IRS tax return transcript and any other information the County may require to determine compliance with the gross farm income requirements in subsection (B)(2)(d) above.

3. Accessory farmworker dwellings authorized under subsection (B):

A. Cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to Section 6-3A-4-3.

B. Shall not be divided from the primary farm dwelling unless converted to a primary dwelling pursuant to Section 6-3A-4-4 and other applicable land division requirements.

6-3A-4-6: OTHER RESIDENTIAL USES:

A. Child care facilities, preschool recorded programs or school-age recorded programs. Proposals authorized pursuant to this subsection must be:

1. Be authorized under ORS 329A.250 to 329A.450;
2. Primarily for the children of residents and workers of the rural area in which the facility or program is located; and
3. Colocated with a community center per Section 6-3A-8-5(G) or a public or private school per Section 6-3A-8-5(E).

6-3A-5: RESOURCE LAND DIVISIONS OF LAND:

~~Subdivisions and planned developments are not consistent with the purpose and intent of this zone and are prohibited. Proposed lot line adjustments and partitions of land in an EFU, ERU or EFFU zone are subject to the provisions of the Malheur County subdivision and partitioning ordinance 1. In addition, proposed lot line adjustments and partitions shall meet the following requirements:~~

~~—A. Resource Use: Persons proposing a division of land to create parcels for farm or ranch use shall satisfactorily demonstrate to the planning director in writing photographs, maps, charts, statistics and other easily preserved means of communication that the proposal will conform to the following requirements. Facts and collaborating evidence need to be presented in as concise and accurate a manner as is practical. Failure to bring adequate and convincing facts to bear on this issue will result in no approval being granted.~~

~~—1. Is the proposed land division consistent with the state legislature's agricultural land policy as established in ORS 215.243 and 215.263(2)? How? Address each issue.~~

~~—2. Are the proposed parcels appropriate for the continuation of the existing commercial agricultural operations in the area based on the evaluation prescribed in subsection 6-3A-4B? Show substantiation. The evaluation shall include the subject property and commercial agricultural operations located in the same zone within one mile of the subject property.~~

~~—3. Are the proposed parcels equal or greater in size than the typical commercial agricultural units in the area? Substantiate. Are they appropriate for more intensive commercial agricultural operations such as the growing of nursery stock, greenhouse or hydroponic products, the raising of small fur-bearing animals or poultry in large quantity, drylot dairies or feedlots? If so, submit a management plan for five (5) years and project an outline for the second or following five (5) years. If not, it must be shown that the proposed parcels will support commercial farm practices by being used in conjunction with other farmland in the area. A management plan is also required in this situation.~~

~~—4. Will the addition and/or proposed location of new structures and other improvements on the property impose serious limitations on accepted farming practices on adjacent lands? How will this problem be avoided?~~

~~—5. Will the proposed land division materially alter the stability of the overall land use pattern of the area, assuming a principal dwelling may be allowed on the lot? Why not?~~

~~—B. Nonresource Land Partitions: Nonresource land partitions shall be approved as provided in sections 6-6-8-1 and 6-6-8-2 of this title.~~

~~—C. Financial Partitions:~~

~~—1. Partitions for financial purposes which are eligible may proceed through foreclosure proceedings after notice to the county planning department. Lien and sales contracts eligible for financial partitioning are those established at the time of sale and purchase of the subject land. Following the 1989 date of adoption of this code, all property used as collateral in conjunction with the sale of property, shall conform to the size, access and other requirements of the county zoning and land division ordinance in effect at the time of the property transaction.~~

~~—2. Those parcels created by a financial partition shall be disqualified from the farm tax deferral and appropriate back taxes paid up unless one or both meet the criteria of subsection A of this section. Title 7 Subdivisions and Land Partitioning and this section apply to all divisions of EFU, ERU, and EFFU zoned land.~~

A. Review required. Except for the creation and sale of cemetery lots or divisions resulting from lien foreclosures and foreclosure of recorded contracts for the sale of real property, all resource land divisions shall require prior review and authorization by the County.

B. Land division standards. The standards described in Section 6-3A-6 Dimensional Standards shall apply to all resource land divisions except as otherwise provided in this subsection.

1. Farmland division. The County may approve a division of land proposed to create parcels for farm use subject to the following requirements:

a. The proposed division is appropriate for the continuation of the existing commercial agricultural enterprise within the area. Parcels used or to be used for training or stabling facilities may not be considered appropriate to maintain the existing commercial agricultural enterprise in an area where other types of agriculture occur; and

b. The resultant parcels are not smaller than the applicable minimum lot area standard; or

c. A portion of a parcel proposed to be divided has been included within an urban growth boundary and redesignated for urban uses, and the portion of the lot or parcel that remains outside the urban growth boundary is smaller than the applicable minimum lot area standard. Such land division along the urban growth boundary may be permitted provided:

i. All resultant parcels proposed to contain a dwelling are large enough to support continued residential use; and

ii. For all resultant parcels not proposed to contain a dwelling, the parcels:

A. Are 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 agricultural or forestlands under the acknowledged comprehensive plan and land use regulations, except to allow a public park, open space or other natural resource use; and

iii. The property owner will comply with Section 6-3A-3-4 *Deed Restriction Standard*.

2. Church division. The County may approve a division of land proposed to create parcels smaller than the applicable minimum lot area standard to establish churches and cemeteries in conjunction with churches per Section 6-3A-8-5(K), subject to the following requirements:

a. The church has been approved by the County;

b. The resultant parcel containing the church is not larger than five (5) acres; and

c. The remainder of the original lot or parcel and resultant parcels not containing the church meet the applicable minimum lot area standard either by itself or after consolidation with another lot or parcel.

3. Non-farm, non-dwelling division. The County may approve a division of land proposed to create parcels for non-farm, non-dwelling uses notwithstanding the applicable minimum lot area standard subject to the following requirements:

a. The non-farm, non-dwelling use has been authorized pursuant to ORS 215.283(1)(c), (s), or (2);

b. The parcels for non-farm, non-dwelling use shall not be larger than the minimum size necessary to accommodate the use in a manner consistent with other provisions of law;

c. For all non-farm, non-dwelling land division authorizations, the County will impose a condition of approval requiring the applicant to cause to record in the County deed records a statement signed by the property owner declaring that the property owner and the property owner's successors in interest will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use; and

d. For all non-farm, non-dwelling land division authorizations, the County will impose a condition of approval stating that land which is divided pursuant to this subsection may not later be rezoned by the County for retail, commercial, industrial, or other non-resource use, except as provided under the statewide land use planning goals or under ORS 197.732.

4. Replacement of historic dwelling division. The County may approve a division of land proposed to create a parcel for an existing dwelling to be used as a historic dwelling pursuant to Section 6-3A-4-4(F), provided the replacement dwelling has been approved by the County.

5. Residential home division. The County may approve a division of land proposed to create a parcel with an existing non-farm dwelling to be used for a residential home, provided the residential home has been approved by the County.

6. Non-farm dwelling division. The County may approve a division of land proposed to create up to two (2) resultant parcels smaller than the applicable minimum lot area standard each containing no more than one (1) non-farm dwelling, subject to all the following requirements:

a. The resultant parcels containing non-farm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

b. The non-farm dwellings have been approved by the County pursuant to Section 6-3A-4-3(A)(1)(a)(ii);

c. Final plat authorization of a land division proposed pursuant to this subsection will not be granted until after all non-farm dwellings have received land use approval or are established;

d. The deed restriction required pursuant to Section 6-3A-3-4 *Deed Restriction Standard* has been executed and recorded;

e. The resultant parcels containing non-farm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land; and

f. The resultant parcels are:

i. Are divided from a lot or parcel that complies with the applicable minimum lot area standard, and the remainder of the original lot or parcel and any resultant parcel not containing a non-farm dwelling complies with the applicable minimum lot area standard; or

ii. Are divided from a lot or parcel that is not less than forty (40) acres in size and any resultant parcel containing a non-farm dwelling is not found to:

A. Be capable of producing at least twenty (20) cubic feet per acre per year of wood fiber;

B. Be composed of at least ninety percent (90%) Class VII and VIII soils, or composed of at least ninety percent (90%) Class VI through VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock; and

C. Have established water rights for irrigation.

C. Prohibited land divisions. Notwithstanding subsection (C) of this section, the County will not approve a land division proposal which will have the effect of separating the following uses from their primary dwellings or uses:

a. Temporary hardship dwellings per Section 6-3A-4-1.

b. Relative assistance dwelling per Section 6-3A-4-5(A).

c. Facilities for the processing of farm products per Section 6-3A-8-1(A).

d. Land applications of reclaimed water, agricultural or industrial process water or biosolids per Section 6-3A-8-4(A).

e. Home occupations per Section 6-3A-8-6(F).

f. Guest ranches per Section 6-3A-8-6(K).

D. Deed restriction. For all land divisions approved pursuant to subsection (C)(1)(c), the County will impose a condition of approval requiring compliance with Section 6-3A-3-4 Deed Restriction Standard for any resultant parcel not containing a dwelling.

E. Taxes. For all land divisions approved pursuant to subsection (C)(2) through (6), the County will impose a condition of approval stating that final plat approval of the proposed land division will not be granted unless any additional tax imposed for the change in use has been paid.

F. Divisions of EFFU land. Additional land divisions may be permissible for lands within the EFFU zone, subject to the requirement of ORS 215.780 through ORS 215.783, OAR 660-006-0026, and OAR 660-006-0055. (Ord. 86, 12-7-1993)

Notes

1 1. See title 7 of this code.

6-3A-6: DIMENSIONAL STANDARDS:

The following dimensional standards apply to all land and structures within the EFU, ERU, and EFFU zones, unless more restrictive requirements are found to apply or a variance is granted.

A. Setback Standards: No building or sight-obscuring fence, other than a fence or facility associated with irrigation activities, shall be located closer than forty feet (40') from a street or road right of way line and fifteen feet (15') from any other property line. No sight-obscuring fence exceeding three feet (3') in height shall be placed within the forty foot (40') street setback, also within this setback shrubbery other than trees shall be maintained at

~~heights not exceeding three feet (3'). Dwellings and inhabitable structures, including associated sewage disposal facilities and removal of vegetation, shall be prohibited within one hundred feet (100') of rivers, streams, lakes, reservoirs and other wetlands, unless topographic features make such setback unnecessary to protect riparian habitat.~~

1. Street Setback. All structures other than fences or non-habitable utility facilities shall have a minimum setback of forty feet (40') from a street or road right-of-way.

2. Interior Setback. All structures other than fences or non-habitable utility facilities shall have a minimum setback of fifteen feet (15') from any interior property line. For the purposes of this standard, interior property lines are defined as any property line not abutting a street or road right-of-way.

B. Minimum Lot Area Standards: A minimum lot area standard of eighty (80) acres applies to the EFU and EFFU zones. A minimum lot area standard of one hundred sixty (160) acres applies to the ERU zone. The minimum lot area standards apply to both lots and parcels and cannot be relieved through variance. The criteria in section 6-3A-5 of this article shall be used to determine the appropriate parcel size.

C. Height Standards. For the purposes of these standards, height shall be measured from finished grade to the tallest point of the structure, fence, or vegetation.

1. Zone Height Limit. All structures other than authorized non-habitable utility facilities shall be limited to a maximum of one hundred feet (100') in height.

2. Street Clearance Height Limit. Within ten feet (10') of a street or road right-of-way:

a. No sight-obscuring structures, fences, or vegetation shall exceed two-and-one-half feet (2.5') in height.

b. Trees shall be pruned to remove sight-obscuring foliage from between two-and-one-half feet (2.5') and ten feet (10') in height.

c. Authorized non-habitable utility facilities and road or other public safety signs are exempt from this standard.

3. Fence Height Limit. Fences exceeding seven feet (7') in height are subject to review and authorization by the County Building Department.

~~C. Contiguous Ownership: Contiguous lots or parcel of land under the same ownership will be considered as one lot or parcel, except that lots created by subdivisions or partitions approved in accordance with the subdivision ordinance 1 will be considered separate lots, regardless of whether they are under one ownership.~~

D. Wetland Protection Standard. Structural development shall not be permitted to contaminate wetlands, such as rivers, streams, lakes, and reservoirs. This requirement applies to all manner of structures and their associated components, such as sewage disposal facilities, and to the development thereof, such as grading and vegetation removal. (Ord. 86, 12-7-1993)

Notes

1. See title 7 of this code.

6-3A-8: NON-RESIDENTIAL USE OF RESOURCE LANDS:

In addition to other applicable requirements, including but not limited to the requirements of Chapter 4 and Chapter 6 of this Title, non-residential uses may only be authorized on EFU, ERU, and EFFU zoned land in accordance with the standards of this section.

6-3A-8-1: FARM, FOREST, AND NATURAL RESOURCE USES:

A. Facilities for the processing of farm products. Facilities for the processing of farm products authorized pursuant to this subsection must use less than ten thousand (10,000) square feet for processing area and comply with applicable siting standards to the greatest extent possible. For the purposes of this subsection, "processing area" means the floor area of a building dedicated to farm product processing and does not include the floor area designated for preparation, storage or other farm use. A "facility for the processing of farm products" means a facility for:

1. Processing farm crops, including the production of biofuel as defined in ORS 315.141, if at least twenty-five percent (25%) of the farm crops come from the farm operation containing the facility; or

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

B. Facilities for the primary processing of forest products. Facilities for the primary processing of forest products authorized pursuant to this subsection must be compatible with farm use and must not seriously interfere with accepted farming practices. For the purposes of this subsection, "primary processing of forest products" means the initial treatments of logs or other forest plant or fungi materials to prepare them for shipment for further processing or to market, including, but not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion, or other similar methods of initial treatments.

1. Within the EFU, ERU, and EFFU zones, the County may authorize a facility for the primary processing of forest products for a one (1) year period that is renewable provided it is portable or temporary in nature. Such a facility is limited to the processing of timber grown upon the subject tract to enable its shipment to market.

2. Within the EFFU zone, the following uses may also be authorized:

- a. Permanent logging equipment repair and storage;
- b. Log scaling and weigh stations;
- c. Permanent facilities not otherwise described for the primary process of forest products and which are:
 - i. Located in a building or buildings that do not exceed ten thousand (10,000) square feet in total floor area, or an outdoor area that does not exceed one (1) acre excluding laydown and storage yards, or a proportionate combination of indoor and outdoor areas; and
 - ii. Adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the County.

3. Within the EFFU zone, proposals for temporary forest labor camps or for temporary portable facilities for the primary processing of forest products are allowed outright and are only subject to review for compliance with applicable siting criteria.

C. 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 Oregon Department of Agriculture or the United States Department of Agriculture. The Oregon Department of Agriculture will be notified of all proposal submitted pursuant to this section. Notice will be mailed not less than twenty (20) calendar days prior to any public hearing or decision on the application.

6-3A-8-2: MINERAL, AGGREGATE, OIL, AND GAS USES:

A. Operations conducted for 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 215.283(1)(f). All proposals which include mining one thousand (1,000) cubic yards or more of material or excavation preparatory to mining of one (1) acre or more of surface area shall require prior review and authorization by the County. Proposals submitted pursuant to this subsection shall be reviewed for compliance with Section 6-3A-3-2 *Compatibility Evaluation Standard*, Article N G *Geothermal Development Overlay Zone* of Chapter 3 of this Title, and ORS 215.298. Existing operations approved prior to October 3, 1989 are exempt from this standard.

B. Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298. All proposals for mining one thousand (1,000) cubic yards or more of material or for excavation preparatory to mining of one (1) acre or more of surface area shall require prior review and authorization by the County. Proposals submitted pursuant to this subsection shall be reviewed for compliance with ORS 215.298, ORS 215.425, and OAR 660-023-0180. Existing operations approved prior to October 3, 1989 are exempt from this standard.

6-3A-8-3: TRANSPORTATION USES:

A. Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. As used in this subsection, "personal-use airport" 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 allowed under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances.

B. Transportation improvements not otherwise listed.

1. The following transportation uses and their accessory improvements may be permitted pursuant to this subsection:

- a. Channelization not otherwise described in Section 6-3A-2 Permitted Uses.
- b. Bikeways, footpaths and recreation trails not otherwise allowed as a modification or part of an existing road.
- c. Park and ride lots.
- d. Railroad mainlines and branchlines.
- e. Pipelines.
- f. Navigation channels.
- g. Replacement of docks and other facilities without significantly increasing the capacity of those facilities.
- h. Expansions or alterations of public use airports that do not permit service to a larger class of airplanes.
- i. Road realignment not otherwise described in Section 6-3A-2 Permitted Uses.
- j. Replacement of an intersection with an interchange.
- k. Continuous median turn lane.
- l. New access roads and collectors within a built or committed exception area, or in other areas 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 to provide adequate emergency access.
- m. Transportation facilities, services and improvements other than those listed in subsections (B)(1)(a) through (l) above that serve local travel needs. The travel capacity and performance standards 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.

2. Proposals for uses listed in subsections (B)(1)(i) through (m) of this section shall demonstrate compliance with the following:

a. Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;

b. Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands; and

c. Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.

3. All other road, highway, and other transportation facilities and improvements not otherwise listed may only be established in compliance with OAR Chapter 660 Division 12 and the adoption of goal exceptions to any goal with which the proposed facility or improvement does not comply.

6-3A-8-4: UTILITY/SOLID WASTE DISPOSAL FACILITY USES:

A. Land application of reclaimed water, agricultural or industrial process water or biosolids. Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality and as provided in ORS 215.246 through 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed within the EFU zone as described in Section 6-3A-2 Permitted Uses. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

B. Composting facilities on farms or for which a permit has been granted by the Department of Environmental Quality under ORS 459.245, OAR 340-093-0050, and OAR 340-096-0060. As used in this subsection, "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(1) *High-Value And Non-High-Value Farmland Determination Standard*. Composting facilities are subject to this section, to ORS 215.401, and other requirements of law including, but not limited to, the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-

0050 and OAR 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. Sales of compost shall be limited to bulk loads of at least one (1) unit, or seven and one-half (7.5) cubic yards, in size that are transported in one (1) vehicle.

1. On high-value farmland, new composting facilities shall not be permitted, and composting operations are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract. Only excess compost may be sold and are limited to neighboring farm operations in the local area.

2. Other composting operations may be permitted on non-high-value farmland.

3. Existing composting facilities may be maintained, enhanced, or expanded on the same tract regardless of farmland designation.

C. Disposal sites for 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 DEQ together with equipment, facilities or buildings necessary for its operation. New disposal site facilities may only be established on non-high-value farmland. Existing disposal site facilities may be maintained, enhanced, or expanded on the same tract regardless of farmland designation. As used in subsection (C) of this section, "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(1) *High-Value And Non-High-Value Farmland Determination Standard*.

D. Utility facilities necessary for public service, including associated transmission lines and 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 two hundred (200) feet high. As used in this subsection, "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(2) *High-Value And Non-High-Value Farmland Determination Standard*. Interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission are exempt from County review and authorization.

1. A utility facility is necessary for public service if the facility must be sited on resource land 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 on resource land 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 resource 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.

2. Costs associated with any of the factors listed in subsection (D)(1) above 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 subsection (D) of this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

4. The County shall impose clear and objective conditions on an application for utility facility siting to mitigate 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 when project construction is complete. Off-site facilities allowed under this subsection are subject to Section 6-3A-3-2 *Compatibility Evaluation Standard*. Temporary workforce housing facilities not included in the initial authorization may be considered through a minor amendment request. A minor amendment request shall have no effect on the original authorization.

6. An applicant for the establishment or extension of an associated transmission line may demonstrate that the transmission line is necessary through compliance with subsection (D)(1), or with at least one (1) of the requirements listed in subsection (D)(6)(a), or with all the requirements of (D)(6)(b) through (D)(6)(d).

a. An applicant demonstrates that the entire route of the associated transmission line:

i. Is not located on high-value farmland or on arable land;

ii. Is co-located with an existing transmission line;

iii. Parallels an existing transmission line corridor with the minimum separation necessary for safety; or

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

b. After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets two or more of the following criteria:

i. Technical and engineering feasibility;

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

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

iv. Public health and safety; or

v. Other requirements of state or federal agencies.

c. As pertains to subsection (D)(6)(b) above, the applicant shall present findings to the County on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.

d. The County may consider costs associated with any of the factors listed in subsection (D)(6)(b), but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

7. After an associated transmission line route is approved by all siting authorities and before construction of the transmission line begins, the applicant for establishment or extension of an associated transmission line shall consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two (2) weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two (2) weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. This consult requirement is in addition to and not in lieu of any other legally required consultation process.

8. The establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) shall also be subject to the provisions of OAR 660-011-0060.

9. The establishment or extension of a water system as defined by OAR 660-011-0060(1)(c) shall also be subject to the provisions of OAR 660-011-0065.

10. The establishment or replacement of a telecommunication facility shall also be subject to the provisions of Section 6-6-8-8 *Wireless Telecommunication Facilities*.

E. Transmission towers over two hundred (200) feet in height. As used in this subsection, "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(2) *High-Value And Non-High-Value Farmland Determination Standard*. After an associated transmission line route is approved by all siting authorities and before construction of the transmission line begins, the applicant for establishment or extension of an associated transmission line shall consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a

manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two (2) weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two (2) weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. This consult requirement is in addition to and not in lieu of any other legally required consultation process.

F. Commercial utility facilities for the purpose of generating power for public use by sale. As used in this subsection, "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(2) *High-Value And Non-High-Value Farmland Determination Standard* unless otherwise stated in law. All proposals subject to this section will be reviewed for compliance with OAR 660-023 for Goal 5 compliance. Additionally, a proposal for a commercial power generation facility using:

1. Non-renewable sources will be subject to review for compliance with:
 - a. OAR 660-033-0130(17) if located on a tract that is high-value farmland;
 - b. OAR 660-033-0130(22) if located on a tract that is non-high-value farmland; and
 - c. If located within the EFFU zone, OAR 660-006-0025(4)(J).
2. Geothermal power will be subject to review for compliance with:
 - a. ORS 215.446;
 - b. OAR 660-033-0130(17) if located on a tract that is high-value farmland;
 - c. OAR 660-033-0130(22) if located on a tract that is non-high-value farmland; and
 - d. If located within the EFFU zone, OAR 660-006-0025(4)(J).
3. Wind power will be subject to review for compliance with:
 - a. ORS 215.446 and OAR 660-033-0130(37); and
 - b. If located within the EFFU zone, OAR 660-006-0025(4)(J).
4. Solar power will be subject to review for compliance with:
 - a. ORS 215.446, ORS 215.447, OAR 660-033-0130(38), OAR 660-033-0130(44); and
 - b. If located within the EFFU zone, OAR 660-006-0025(4)(K).

6-3A-8-5: PARKS/PUBLIC/QUASI-PUBLIC USES:

A. Sites for the takeoff and landing of model aircraft. Buildings and facilities associated with a site for the takeoff and landing of model aircraft shall be reasonably necessary and not more than five hundred (500) square feet in floor area or placed on a permanent

foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this subsection. The property owner of a site authorized under this subsection 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 subsection, "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.

B. Churches and cemeteries in conjunction with churches. New church facilities may only be established on non-high-value farmland. Existing church facilities may be maintained, enhanced, or expanded on the same tract regardless of farmland designation. As used in this subsection, 'High-Value Farmland' shall have the meaning described in Section 6-3A-3-1(A)(1) *High-Value And Non-High-Value Farmland Determination Standard*. Churches are subject to other requirements of law including, but not limited to, Section 6-3A-3-5 *UGB Proximity Standard*.

1. Churches, synagogues, temples, mosques, chapels, meeting houses or other nonresidential places of worship shall be allowed the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including:

a. Worship services.

b. Religion classes.

c. Weddings.

d. Funerals.

e. Meal programs.

f. Child care or any preschool or prekindergarten education, but not private or parochial education for kindergarten through grade twelve (12) or higher education.

2. The County may:

a. Subject real property described in this subsection to reasonable regulations, including review concerning the physical characteristics of the uses; or

b. Prohibit or restrict the use of real property by a place of worship described in this subsection if the County finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship.

3. Notwithstanding any other provision of this subsection, the County may allow a private or parochial school for kindergarten through grade twelve (12) or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

C. Public parks and playgrounds. For the purposes of this subsection, public parks are areas open to the public intended for open space and outdoor recreation use that is owned and managed by a city, county, regional government, state or federal agency, or park district and that may be designated as a public park in the applicable comprehensive plan and zoning ordinance. Public parks shall comply with Section 6-3A-3-5 UGB Proximity Standard and the applicable requirements of ORS 195.120 and OAR chapter 660, division 34.

D. Golf courses. A "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. New golf course facilities may only be established on non-high-value farmland. Existing golf course facilities may be maintained, enhanced, or expanded on the same tract regardless of farmland designation. As used in this subsection, 'High-Value Farmland' shall have the meaning described in Section 6-3A-3-1(A)(2) High-Value And Non-High-Value Farmland Determination Standard. Golf course facilities are subject to this subsection and other requirements of law including, but not limited to, Section 6-3A-3-5 UGB Proximity Standard.

1. A nine (9) or eighteen (18) hole regulation golf course or a combination nine (9) or eighteen (18) regulation golf course may be allowed pursuant to this section in compliance with the following:

a. A regulation eighteen (18) hole golf course is generally characterized by a site of about one hundred twenty (120) to one hundred fifty (150) acres of land, has a playable distance of five thousand (5,000) to seven thousand two hundred (7,200) yards, and a par of sixty-four (64) to seventy-three (73) strokes;

b. A regulation nine (9) hole golf course is generally characterized by a site of about sixty-five (65) to ninety (90) acres of land, has a playable distance of two thousand five hundred (2,500) to three thousand six hundred (3,600) yards, and a par of thirty-two (32) to thirty-six (36) strokes;

c. No golf course may be expanded to contain more than thirty-six (36) total holes.

2. Non-regulation golf courses are not allowed. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course such as executive golf courses, par three golf courses, pitch and putt golf courses, and miniature golf courses and driving ranges.

3. Accessory uses provided as part of a golf course must comply with the following standards:

a. 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. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may 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. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;

b. Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and

c. Accessory uses may include one (1) or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

E. Public or private schools for kindergarten through grade twelve (12), including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located. New facilities may only be established on non-high-value farmland. Existing facilities may be maintained, enhanced, or expanded on the same tract regardless of farmland designation. As used in this subsection, 'High-Value Farmland' shall have the meaning described in Section 6-3A-3-1(A)(1) *High-Value And Non-High-Value Farmland Determination Standard*. Public or private schools are subject to this subsection and other requirements of law including, but not limited to, Section 6-3A-3-5 *UGB Proximity Standard*. A public or private school, including all buildings essential to the operation of the school, formerly allowed pursuant to ORS 215.283(1)(a), as in effect before January 1, 2010, may be expanded provided:

1. The school was established on or before January 1, 2009;

2. The expansion occurs on a tax lot:

a. On which the school was established; or

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

3. The County will not deny an expansion under this section upon any criterion or condition establishing:

a. A maximum capacity of people in the structure or group of structures;

b. A minimum distance between structures; or

c. A maximum density of structures per acre.

F. Living history museums. 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. A living history museum established pursuant to this subsection shall comply with Section 6-3A-3-5 UGB Proximity Standard and 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 within authentic buildings of the depicted historic period or the museum administration building, if areas other than resource land cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile (0.25 mi) of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

G. Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community. 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. Proposals submitted pursuant to this section are additionally subject to review for compliance with Section 6-3A-3-5 UGB Proximity Standard.

H. County law enforcement facilities. Proposals authorized pursuant to this subsection are limited to County law enforcement facilities that lawfully existed on August 20, 2002, and are 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, as provided for in ORS 215.283(1).

I. Firearms training facilities. Any firearms training facility in existence on September 9, 1995, shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility. Proposals submitted pursuant to this subsection are additionally subject to review for compliance with Section 6-3A-3-5 UGB Proximity Standard. For the purposes of this subsection, a "firearms training facility" is an indoor or outdoor facility that provides training courses and issues certifications required:

1. For law enforcement personnel;
2. By the State Department of Fish and Wildlife; or
3. By nationally recognized programs that promote shooting matches, target shooting and safety.

J. Equine and equine-affiliated therapeutic and counseling activities. Equine and equine-affiliated therapeutic counseling activities shall be conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental, and subordinate to the farm use on the tract. All individuals

conducting therapeutic or counseling activities must act within the proper scope of any licenses required by the state.

6-3A-8-6: COMMERCIAL USES:

A. Limited dog training classes or testing trials. Limited dog training classes or testing trials under this section must be conducted outdoors, or in farm buildings that existed on January 1, 2013, and are limited as follows:

1. The number of dogs participating in training does not exceed ten (10) dogs per training class and the number of training classes to be held on-site does not exceed six (6) per day; and

2. The number of dogs participating in a testing trial does not exceed sixty (60) and the number of testing trials to be conducted on-site does not exceed four (4) per calendar year.

B. Limited agri-tourism and other commercial events or activities. An expedited, single-event authorization for agri-tourism and other commercial events or activities that are related to and supportive of agriculture and which do not qualify as outdoor mass gatherings pursuant to Title 3, Chapter 2 of this code may be issued on a tract in a calendar year pursuant to this subsection. The authorization shall be personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. Wineries which are separately authorized for agri-tourism or other commercial events or activities are prohibited from obtaining additional authorization under this section. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. Prior to approval, the County must find that the proposal:

1. In consideration of relevant circumstances such as nature, intensity, and economic value of the respective farm and event uses, would be incidental and subordinate to the existing farm use on the tract;

2. Would be located on a tract of at least ten (10) acres unless the owners or residents of adjoining properties consent, in writing, to the location;

3. Would not begin before 6 a.m. or end after 10 p.m.;

4. Would not involve more than one-hundred (100) attendees or fifty (50) vehicles;

5. Would not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

6. Would not include an alteration to the land (e.g. grading, filling or paving);

7. Would occur outdoors, in temporary structures, or in existing permitted structures;

8. Would comply with applicable health and fire and life safety requirements.

C. Agri-tourism and other commercial events or activities that cannot be established under Section 6-3A-8-6(B). The County may authorize agri-tourism or other commercial

events or activities that are related to and supportive of agriculture and which do not meet the requirements of subsection (B) of this section or qualify as outdoor mass gatherings pursuant to Title 3, Chapter 2 of this code. The authorization shall be personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. Wineries which are separately authorized for agri-tourism or other commercial events or activities are prohibited from obtaining additional authorization under this section.

1. An applicant may propose:

a. A single agri-tourism or other commercial event or activity on a tract in a calendar year, not to exceed five-hundred (500) attendees, two-hundred-fifty (250) vehicles, and seventy-two (72) consecutive hours;

b. Up to six (6) agri-tourism or other commercial events or activities on a tract per calendar year, for up to two (2) calendar years at a time, in which the agri-tourism or other commercial events or activities do not individually exceed seventy-two (72) consecutive hours; or

c. Up to eighteen (18) agri-tourism or other commercial events or activities on a tract per calendar year, for up to four (4) calendar years at a time, provided that:

i. The lots or parcels on which the proposal would occur each comply with the applicable minimum lot area standard, and

ii. The proposed events are essential in order to maintain and support the existing commercial farm or the commercial agricultural enterprises in the area.

2. The applicant must submit a detailed description of the following:

a. Number, duration, and type of agri-tourism or other commercial events or activities that are proposed for each calendar year, including the anticipated daily attendance and the planned hours of operation for each;

b. Location of each structure proposed to be used in connection with the agri-tourism or other commercial events or activities;

c. Location of ingress, egress, and parking facilities to be used in connection with the proposal;

d. Traffic management plan and strategies, including the projected number of vehicles and any anticipated use of public roads; and

e. Sanitation and solid waste management.

3. The County must find that the proposal:

a. In consideration of relevant circumstances such as nature, intensity, and economic value of the respective farm and event uses, would be incidental and subordinate to the existing farm use on the tract;

b. Would not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area;

c. Would occur outdoors, in temporary structures, or in existing permitted structures; and

d. Would comply with health and fire and life safety requirements.

4. In addition to any other conditions of approval it deems necessary, the County will impose conditions of approval which:

a. Establish standards for each of the criteria described in subsections (C)(2)(a) through (e) above, and

b. Establish that the authorization is void upon reconfiguration of property lines or change in ownership for any part of the subject tract.

5. The original applicant may submit a request for renewal within one (1) month prior to and six (6) months after the expiration of an authorization issued pursuant to subsection (C) of this section. Upon receipt of a renewal request, the County shall provide public notice and an opportunity for public comment as part of the review process and limit its review to the prior proposal and conditions of approval.

D. Farm stands. Farm stands shall be subject to compliance with the requirements of this subsection.

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 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 sales of the incidental items and fees from promotional activity do not make up more than twenty-five percent (25%) 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. A farm stand may not be used for the sale, or to promote the sale, of marijuana psilocybin-producing fungi products or extracts.

4. At the request of the County, the farm stand operator of a farm stand approved under this section shall submit to the local government evidence of compliance with the annual sales requirement of subsection (D)(1). Such evidence shall consist of an IRS tax return transcript and any other information the County may require to document ongoing compliance with this section or any other condition of approval.

5. As used in subsection (D) of this section:

a. "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 the local agricultural area.

b. "Processed farm 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.

c. "Local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

E. Commercial activities in conjunction with farm use.

1. Except for marijuana and psilocybin-producing crops, uses authorized pursuant to this section may include the processing of farm crops not permitted under Section 6-3A-8-1(A).

2. A winery that would not be permitted under ORS 215.452 or ORS 215.453 may be authorized under this section. For any winery authorized pursuant to this section, the gross income from any activity other than the production or sale of wine shall not exceed twenty-five (25%) percent of total gross income from the on-site retail sale of wine produced in conjunction with the winery, exclusive of income received by third parties unaffiliated with the winery.

F. Home occupation. In addition to the requirements of Section 6-6-8-6 *Minor Home Occupations, Home Occupations, And Home Businesses*, applications for home occupations and the parking of vehicles on lands within the EFU, ERU, and EFFU zone may be authorized subject to compliance with the requirements of this subsection.

1. The proposed home occupation must be operated by a resident or employee of a resident of the property on which the business is located.

2. The proposed home occupation must not have more than five (5) employees on-site at any time.

3. The proposed home occupation must remain accessory, incidental, and subordinate to the primary residential use of a dwelling on the property.

4. The proposed home occupation must be operated substantially in the existing primary dwelling or buildings normally associated with uses permitted in the zone(s) in which the property is located.

5. The proposed home occupation must not unreasonably interfere with other uses permitted in the zone(s) in which the property is located.

G. Parking for up to seven (7) log trucks. Parking for up to seven (7) log trucks shall be allowed unless it is found that the parking on the proposed lot or parcel will:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

H. Aerial fireworks display businesses that have been in continuous operation at their current location since December 31, 1986, and possess a wholesaler's permit to sell or provide fireworks. Proposals authorized pursuant to this subsection are limited to aerial fireworks display businesses which have 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 as provided for in ORS 215.283(2). For the purpose of verifying the existence, continuity and nature of a business pursuant to this subsection, representatives of the business may apply to the County and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies.

I. Onsite filming and activities accessory to onsite filming for more than forty-five (45) days as provided for in ORS 215.306. The County may authorize on-site filming and activities accessory to on-site filming that exceed forty-five (45) days on any site within a one (1) year period or involve erection of sets that would remain in place for longer than forty-five (45) days. An authorization for filming pursuant to this section shall not include construction of new structures that require a building permit or the use of facilities for marketing, editing, and other such activities. As provided in ORS 215.306(5), an authorization submitted pursuant to this section would not be a land use decision. The proposal may include:

1. Filming and site preparation, construction of sets, staging, makeup and support services customarily provided for on-site filming.

2. Production of advertisements, documentaries, feature film, television services and other film productions that rely on the rural qualities of an exclusive farm use zone in more than an incidental way.

3. Office administrative functions such as payroll and scheduling.

4. The use of campers, truck trailers or similar temporary facilities. Temporary facilities may be used as temporary housing for security personnel.

J. Farm Stores.

1. Definitions. As used in subsection (J) of this section:

a. "Agri-tourism activity" means an activity that is conducted by a farm operation to promote the farm operation, visitors to a farm store and the sale of farm store products to the public and that may also generate commercial, entertainment or educational value. Such activities may include:

i. Farm tours;

- ii. Educational exhibits or classes;
- iii. Crop mazes;
- iv. Play structures;
- v. Farm-to-table meals;
- vi. Animal petting and feeding exhibits;
- vii. Hay or tractor rides; or
- viii. Other seasonal or holiday events.

b. "Farm-to-table meal" means a meal offered as part of a fee-based dining experience, where food grown by a farm operation or farmers in a local agricultural area is prepared and served in a manner that educates the public about agricultural production or on-site sourcing.

c. "Farm unit" means a farm operation comprising all parcels being farmed by a single operation, whether the operation owns or leases the parcels.

d. "Farm use" means, notwithstanding ORS 215.010, only those activities listed under ORS 215.203 (2)(a) undertaken for the primary purpose of obtaining a profit.

e. "Local agricultural area" means Oregon or an adjacent county in California, Idaho, Nevada or Washington that borders an Oregon county in which a farm store is located.

f. "Processed farm product" means a farm product that has been transformed into a manufactured product through methods such as cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, butchering or freezing and has been packaged or canned for human or animal use.

2. Approval criteria. The County will authorize a proposal for a farm store upon a determination that:

a. The farm store will be situated on a tract of:

i. At least eighty (80) acres with at least forty-five (45) acres employed for farm use;

ii. Less than eighty (80) acres but at least forty (40) acres and with at least twenty-five (25) acres employed for farm use;

iii. Less than forty (40) acres but at least twenty (20) acres and with at least fifteen (15) acres employed for farm use; or

iv. Less than twenty (20) acres if:

1. At least ten (10) acres are employed for farm use; or

2. The farm store operates as part of a farm unit that has earned at least ten thousand dollars (\$10,000) in gross farm income cumulatively over the preceding two (2) years.

b. The farm store will be used for the sale of farm products produced by the farm operation that operates the farm store. A farm store may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 and may also be used for:

i. The sale of the farm products or processed farm products produced in the local agricultural area;

ii. The sale of other retail items within a permanent enclosed structure if displayed in an area not to exceed twenty-five percent (25%) of the floor area of the structure;

iii. The sale of beverages and prepared food items that are cooked or otherwise made ready for immediate consumption provided they are not served in a manner that causes the kitchen facilities to function as a café or drive-through dining establishment; or

iv. For agri-tourism activities. Where agri-tourism activities are provided, a farm store may use temporary structures or mobile vending units.

c. No more than ten thousand (10,000) square feet of one (1) or more permanently enclosed structures will be used as described in subsections (2)(b)(i) through (iv);

d. The proposed farm store and associated activities will comply with the following:

i. No artificial amplification of music or voices will occur before 6 a.m. or after 10 p.m;

ii. Events will not begin before 6 a.m. or end after 10 p.m; and

iii. Applicable health and fire and life safety requirements will be met.

e. The application was submitted on or after January 1, 2027.

3. Farm stores shall not be used:

a. For lodging or as a dwelling;

b. For the sale, or to promote the sale, of marijuana psilocybin-producing fungi products or extracts.

K. Guest ranches.

1. Definitions. As used in subsection (K) of this section:

a. "Guest lodging unit" means a guest room in a lodge, bunkhouse, cottage or cabin used only for transient overnight lodging and not for a permanent residence.

b. "Guest ranch" means a facility for guest lodging units, passive recreational activities and food services that are incidental and accessory to an existing and continuing livestock operation that qualifies as a farm use.

c. "Livestock" means cattle, sheep, horses, and bison.

d. "High-Value Farmland" shall have the meaning described in Section 6-3A-3-1(A)(1) *High-Value And Non-High-Value Farmland Determination Standard*.

2. Location. A guest ranch must be located on a lawfully established lot or parcel that:

a. Is at least one hundred sixty (160) acres;

b. Contains the dwelling of the individual conducting the livestock operation;

c. Is non-high-value farmland;

d. Is not within the boundaries of or surrounded by:

i. A federally designated wilderness area or a wilderness study area;

ii. A federally designated wildlife refuge;

iii. A federally designated area of critical environmental concern; or

iv. An area established by an Act of Congress for the protection of scenic or ecological resources.

3. Capacity.

a. The guest ranch must:

i. Include four (4) to ten (10) overnight guest lodging units;

ii. Not exceed a total of twelve thousand (12,000) square feet in floor area, not counting the floor area of a lodge that is dedicated to kitchen area, rest rooms, storage or other shared or common indoor space.

b. If the proposed subject property exceeds one-hundred sixty (160) acres in size, up to five (5) additional overnight guest lodging units totaling no more than six thousand (6,000) square feet of floor area may be included for each additional increment of one-hundred sixty (160) acres. In no circumstance may the total guest lodging units exceed twenty-five (25) units or thirty thousand (30,000) square feet of floor area.

4. A guest ranch may not provide nor be permitted in conjunction with intensively developed recreational facilities including, but not limited to, golf courses or campgrounds.

5. A guest ranch may provide passive recreational activities that can be provided in conjunction with the livestock operation's natural setting including, but not limited to, hunting, fishing, hiking, biking, horseback riding, camping and swimming.

6. A guest ranch may provide food services only for guests of the guest ranch, individuals accompanying the guests, and individuals attending a special event at the guest ranch. The cost of meals, if any, may be included in the fee to visit or stay at the guest ranch. A guest ranch may not sell individual meals to an individual who is not a guest of the guest ranch, an individual accompanying a guest or an individual attending a special event at the guest ranch.

7. Reporting. Any guest ranch permitted after January 1, 2020, shall report the following to the County on an annual basis:

a. The size of the guest ranch's livestock operation;

b. The income that the guest ranch obtained from livestock operations and guest ranch activities; and

c. Other information the County may require to ensure ongoing compliance with this section or any condition of approval required by the County.

~~ARTICLE B. RESOURCE LANDS, SECONDARY LANDS OVERLAY ZONE~~

~~—(To be adopted when State Statute enables)~~

CHAPTER 4 SUPPLEMENTAL PROVISIONS

SECTION:

6-4-1: Authorization Of Similar Uses

6-4-2: Accessory Uses

6-4-3: Temporary Uses

~~**6-4-4: Farmstead Lots**~~

6-4-5: Clear Vision Areas

6-4-6: Residential Homes And Residential Facilities

~~**6-4-7: Mining In Exclusive Farm Use Zone**~~

6-4-8: Transportation Improvements

~~**6-4-9: Replacement of Damaged/Destroyed Dwellings In Any Zone Lot Or Parcel Of Record Dwellings**~~

6-4-10: Residential Trailer, Mobile Home And Manufactured Dwellings

6-4-11: Recreational Vehicles

~~6-4-4. FARMSTEAD LOTS:~~

~~—A. Criteria For Farmstead Lots: A parcel with a principal dwelling may be partitioned to create a farmstead lot on which the principal dwelling remains, provided that:~~

~~—1. The farmstead lot created to accommodate the principal dwelling may include up to two (2) acres. Depending on soil conditions, topography, or other unique circumstances, a larger area may be partitioned.~~

~~—2. No new dwelling shall be placed on the remaining parcel unless it complies with the dimensional standards set forth in subsection 6-3A-4A of this Title.~~

~~—3. If the remaining parcel is provided with a dwelling in compliance with this Title, it will not be eligible for further partitioning under these farmstead lot provisions for a period of ten (10) years.~~

~~—4. The following criteria are met and no objector convincingly establishes that the creation of a farmstead lot does not meet the following criteria:~~

~~The use is compatible with farm uses; it does not interfere with accepted farming practices on adjacent lands; it does not materially alter the stability of the overall land use pattern of the area; and it is situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract.~~

~~—5. The creation of the farmstead lot will subject it to the provisions of ORS 308.370, which may require removal from farm use assessment to a nonfarm use assessment.~~

~~—B. Procedure For Authorization: The procedure for authorization of a farmstead partition shall be as follows:~~

~~—1. The property owner shall file a notice of intent to create a farmstead lot, using forms provided by the Planning Department.~~

~~—2. The applicant shall pay a filing fee as prescribed pursuant to subsection 6-9-5B of this Title.~~

~~—3. Within ten (10) working days of filing, the Planning Director shall circulate notice of the pending application in the following manner:~~

~~— a. By publication in at least one newspaper of general circulation published in the County; and~~

~~— b. By individual notice mailed to all record owners of real property within two hundred fifty feet (250') of the parent parcel for which the application has been made.~~

~~—4. The notice shall contain a brief description of the application and the period, not less than ten (10) or more than thirty (30) days, within which written objections and/or requests for a hearing are required to be submitted to the Planning Department.~~

~~—5. Within ten (10) working days of receipt of written objections and/or requests for a hearing, the Planning Director shall schedule a hearing before the County Court, prepare a staff report and provide notice pursuant to Section 6-10-3. The County Court shall hold the public hearing and make findings as provided in Section 6-10-8.~~

~~—6. If no written objections and/or requests for a hearing are received within the time prescribed, the Planning Director shall provide the applicant with written notice of the decision. That decision may be appealed as provided in Chapter 13 of this Title. (Ord. 86, 12-7-1993)~~

6-4-6: RESIDENTIAL HOMES AND RESIDENTIAL FACILITIES:

A. ~~In all zones except the EFU, ERU, and EFFU zones, r~~Residential homes shall be permitted in the same manner that single-family dwellings are permitted under this title. For the purposes of this title, ~~except for the provisions of Chapter 3, Article A of this Title,~~ the term "dwelling" or "single-family dwellings" shall be synonymous with term "residential home".

B. ~~In all zones except the EFU, ERU, and EFFU zones, r~~Residential facilities shall be permitted in the same manner that multi-family dwellings are permitted under this title. For the purpose of this title, ~~except for the provisions of Chapter 3, Article A of this Title,~~ the term "multi-family dwellings" shall be synonymous with term "residential facility".

~~C. Within the EFU, ERU, and EFFU zones, residential homes and residential facilities shall only be permitted as set forth in Chapter 3, Article A of this Title.~~

~~D.C.~~ In any application for a residential home or residential facility, the applicant shall not be required to supply any information concerning the existence of or the nature or severity of any handicap (as the term is defined under the fair housing act) of the prospective residents. (Ord. 86, 12-7-1993)

~~6-4-7: MINING IN EXCLUSIVE FARM USE ZONE:~~

~~—A. A land use permit is required for mining more than one thousand (1,000) cubic yards of material or excavation preparatory to mining of a surface area of more than one acre.~~

~~—B. A permit for mining of aggregate shall be issued only for a site included on an inventory in the Malheur County comprehensive plan. (Ord. 86, 12-7-1993)~~

~~6-4-9: LOT OR PARCEL OF RECORD DWELLINGSREPLACEMENT OF DAMAGED/DESTROYED DWELLINGS IN ANY ZONE:~~

~~A. Notwithstanding Section 6-3A-4-2 *Replacement Dwellings* or Section 6-6-9 *Nonconforming Uses*, the County will approve an application in any zone to restore or replace a dwelling damaged or destroyed by a natural or involuntary event if:~~

1. The application was submitted on or after January 1, 2027, and within three (3) years following the date of the natural or involuntary event; and

2. The damaged dwelling to be restored or replaced:

i. Had intact exterior walls and a roof structure;

ii. Had indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

iii. Had interior wiring for interior lights;

iv. Had a heating system; and

v. Was authorized by building permits or other regulatory approval process; or

vi. Was assessed as a residential dwelling for purposes of ad valorem taxation for the tax year beginning on July 1, ten (10) years before the date of the application, and is not subject to unresolved enforcement proceedings challenging the lawfulness of the dwelling.

3. The replacement dwelling authorized under this section will:

i. Not exceed the floor area of the former dwelling by more than twenty-five percent (25%);

ii. Be adequately served by water, sanitation and roads;

iii. Be located wholly or partially within the footprint of the former dwelling unless necessary to comply with local flood regulations or to avoid a natural hazard area, in which case the applicant may choose a suitable location on the same lot or parcel; and

iv. Comply with applicable building codes that were in effect on the date the dwelling was damaged or destroyed.

B. For all replacement dwellings authorized under this section, the County will impose the following conditions of approval:

1. Construction of the approved replacement dwelling must commence no later than four (4) years after the date the authorization became final.

2. The damaged dwelling must be removed, demolished, incorporated into the approved replacement dwelling, or converted to authorized nonresidential use within three (3) months after the approved replacement dwelling is certified for occupancy.

3. Any condition as may be necessary to maintain participation in the National Flood Insurance Program under 42 U.S.C. 4001 et seq.

C. The findings of the County in approving an application under this section are not land use decisions and are subject to review only under ORS 34.010 to 34.100.

~~A. The Malheur County planning director may allow the establishment of a single-family dwelling on a lot or parcel located within an exclusive farm use zone, exclusive range use~~

~~zone or exclusive farm-forest use zone as set forth in this section and ORS 215.710(1), (5) and (6), after the director has notified the county assessor that the dwelling will be allowed. A dwelling under this section may be allowed if:~~

~~— 1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:~~

~~— a. Prior to January 1, 1985; or~~

~~— b. By devise or by interstate succession from a person who acquired the lot or parcel prior to January 1, 1985.~~

~~— 2. The tract on which the dwelling will be sited does not include a dwelling.~~

~~— 3. The proposed dwelling is not prohibited by, and will comply with, the requirements of the Malheur County comprehensive plan, this code and other provisions of law.~~

~~— 4. The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high value farmland described in ORS 215.710 except as provided in subsections B and C of this section.~~

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

~~— 6. When the lot or parcel on which the dwelling will be sited is part of the tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.~~

~~— B. 1. Notwithstanding the requirements of subsection A4 of this section, a single-family dwelling not in conjunction with farm use may be sited on high value farmland if:~~

~~— a. It meets the other requirements of ORS 215.705 to 215.750 that apply to Malheur County;~~

~~— b. The lot or parcel is protected as high value farmland as described under ORS 215.710(1); and~~

~~— c. Malheur County planning commission determines that:~~

~~— (1) The lot or 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.~~

~~— (2) The dwelling will comply with the provisions of ORS 215.296(1).~~

~~— (3) The dwelling will not materially alter the stability of the overall land use pattern in the area.~~

~~—2. The Malheur County planning department shall provide notice of all applications for dwellings allowed under this subsection 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 twenty (20) calendar days prior to the public hearing before the planning commission.~~

~~—C. For the purposes of subsection A1 of this section, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.~~

~~—D. When an application for a single family dwelling under the provisions of this section are approved, the application may be transferred by a person who has qualified under this section to any other person after the effective date of the land use decision. (Ord. 145, 4-14-2004)~~

6-4-11: RECREATION AL VEHICLES:

A. Recreation vehicles may not be occupied as a permanent dwelling in any zone within Malheur County. Nothing herein, however, shall be construed to violate ORS 197.493.

B. A recreational vehicle may be occupied temporarily, without a permit or fee, on a vacant lot, parcel or tract for a period not to exceed thirty (30) days in any twelve (12)-month period in the rural residential, rural service center and exclusive farm or ranch zones.

C. When building a permanent home, a recreational vehicle may be occupied, without a permit or fee, as a temporary residence during construction of the permanent residence as long as the building permit for the permanent residence is active and occupancy in the recreational vehicle does not exceed six (6) months may be permitted if due diligence and progress on the permanent home is demonstrated for a period not to exceed six (6) months. The occupancy of the recreational vehicle as a temporary residence shall cease within two (2) weeks of issuance of an occupancy permit for the permanent dwelling.

D. In certain circumstances, subject to special provisions, permits and fees as set out in the Malheur County Code and state law (i.e. connect to an existing sewage disposal system; conditional use permit, MCC 6-6-8-7) recreational vehicles may be occupied in a manufactured dwelling park, mobile home park or recreational vehicle park or as a medical hardship dwelling. Proposals to use a recreational vehicles as a single-unit temporary hardship dwelling within the EFU, ERU, and EFFU zones are also subject to Section 6-3A-4-1.

E. Recreational vehicles may not be occupied as a residence for security personnel or seasonal farm housing.

F. Tents Or Recreational Vehicles As An Accessory Use/Second Dwelling: Occupying a tent or a recreational vehicle for additional living space is not allowed. Temporary guests, when no monetary compensation is received by the landowner, may occupy a recreational vehicle for up to fourteen (14) days in a thirty (30) day period. This time period is to be intermittent, and not a regular, routine, constant or continuous basis.

G. Occupation of recreational vehicles within the UGB is also subject to the joint management agreement between City of Ontario and Malheur County codified at Malheur County Code 6-3E; as well as the joint management agreement between Malheur County and City of Nyssa and Malheur County and City of Vale.

H. Notwithstanding the limitations set out herein, temporary permits, under MCC 6-4-3, may be issued to allow the occupancy of an RV for the following: in an emergency, to seasonal fire fighters, construction workers, and volunteers.

I. The civil infraction for violation of this section can be found at 1-9A-3C of this code. (Ord. 220, 7-3-2019)

CHAPTER 6 CONDITIONAL USES

SECTION:

6-6-1: Purpose

6-6-2: Ex Parte Contact

6-6-3: Notice To Airport Owner

6-6-4: Authorization To Grant Or Deny Conditional Uses

6-6-5: Application Procedures

6-6-6: Summary Of Application Procedure

6-6-7: General Criteria To Evaluate Suitability

6-6-8: Specific Criteria To Evaluate Suitability

~~**6-6-8-1: Nonresource Dwellings In An EFU, ERU Or EFFU Zone**~~

~~**6-6-8-2: Nonresource Partition In An EFU, ERU Or EFFU Zone**~~

6-6-8-3: Temporary Use Of A Manufactured Dwelling Or Recreational Vehicle During Family Hardship On Non Resource Land

6-6-8-4: Mineral, Aggregate Or Geothermal Resource Exploration, Mining And Processing

6-6-8-5: Junkyards And Auto Wrecking Yards

6-6-8-6: Minor Home Occupations, Home Occupations, And Home Businesses

6-6-8-7: Recreational Vehicle Parks

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6-6-9: Nonconforming Uses

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6-6-9-5: Completion Of Nonconforming Structures

6-6-10: Additional Conditions

6-6-11: Assurance Requirements

6-6-12: Time Limit On Authorization

6-6-7: GENERAL CRITERIA TO EVALUATE SUITABILITY:

In considering the suitability of proposed conditional uses, the planning commission shall base its decision upon the following criteria:

- A. Comprehensive Plan Goals: Comprehensive plan goals and policies, as applicable.
- B. Specific Plans: Specific plan recommendations.
- C. Developments And Viewpoints: Existing development and viewpoints of property owners in the surrounding area.
- D. Services And Utilities: Availability of services and utilities.
- E. Effect: The effect of the proposed use on the stability of the community's social and economic characteristics.
- F. Fish And Wildlife: It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the fish and wildlife habitat protection plan for Malheur County. (Ord. 86, 12-7-1993)
- G. General Criteria:
 - 1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.
 - 2. Landscaping improvements for the visual benefit of the subject site and for the improved appearance of the neighborhood and county.

3. Location and size of driveway access points and right of way widening and improvement for present and future traffic circulation consistent with the adopted county road standards or the standards of the appropriate road district and the access management standards of the Malheur County transportation system plan.

4. Visual screening of outdoor waste and storage areas.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

6. Special criteria listed below, as applicable. (Ord. 125, 6-20-2000)

~~—H. Allowance Of Certain Uses: A use allowed under section 6-3A-3 of this title shall be approved only where it is found that the use will not:~~

~~—1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or~~

~~—2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)~~

~~6-6-8-1: NONRESOURCE DWELLINGS IN AN EFU, ERU OR EFFU ZONE:~~

~~—A. Conditions For Allowance: The use:~~

~~—1. Is compatible with farm uses and is consistent with ORS 215.243; and~~

~~—2. Does not interfere seriously with accepted farming practices on adjacent lands; and~~

~~—3. Does not materially alter the stability of the overall land use pattern of the area; and~~

~~—4. Is situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract.~~

~~—B. Chain Of Title: As a condition of approval, the owner is required to allow the following statement to be entered into the chain of title for the nonfarm parcel:~~

~~The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with nonresource uses. Nonresource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with Federal and State laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a nonresource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses.~~

~~—C. Evidence: Evidence shall be provided showing the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use under ORS 308.370. (Ord. 86, 12-7-1993)~~

~~6-6-8-2: NONRESOURCE PARTITION IN AN EFU, ERU OR EFFU ZONE:~~

~~—A. Nonfarm Use: The creation of all new parcels intended for nonfarm use shall meet the following requirements:~~

~~—1. Is the proposed use compatible with agriculture uses and is it consistent with ORS 215.243. How? Address each issue; and~~

~~—2. Is the proposed use located where it may interfere seriously with accepted farming practices on adjacent lands? What conditions exist to avoid this problem? and~~

~~—3. Will the proposed use materially alter the stability of the overall land use pattern of the area? Explain; and~~

~~—4. Is the proposed use situated on generally unsuitable land for the production of agricultural crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract? If so, the following factors must be met:~~

~~—a. If located on range or agricultural lands, are the proposed nonresource parcels only as large as necessary to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? The intent is that Class I through IV soils be included within nonagricultural parcels only when the limited extent or physical configuration of such soils make it impractical to keep them consolidated in an agricultural parcel.~~

~~—b. Are the proposed parcels located on land with predominantly low productivity V through VII soils not suited for agricultural use and are large enough to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? How so? and~~

~~—5. A new nonfarm parcel shall not be approved for a use that will have a significant adverse impact on the quality of farm or range land, watersheds, fish and wildlife habitat, soil and slope stability, air and water quality, or outdoor recreation areas. In what ways do the proposed parcels avoid conflict with these items? or~~

~~—6. Is an existing dwelling used as a residential home for up to six (6) persons who fit within the definition of persons listed in ORS 443.400(5) through (10)? or~~

~~—7. Is an alternative dwelling used so that a historical dwelling may be preserved without occupation as provided by ORS 215.263(8)(b).~~

~~—B. Nonresource Partition Approval: As a condition of a nonresource partition approval, the owner shall be required to sign and allow the following statement to be entered into the chain of title for the nonagricultural parcel:~~

~~The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with nonresource uses. Nonresource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with Federal and State laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a nonresource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses.~~

~~—C. Evidence Of Disqualification: Evidence shall be provided showing the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use under ORS 308.370 and as required by ORS 215.236.~~

~~—D. Application Of Provisions: This section shall not apply to divisions of land resulting from lien foreclosures or foreclosures of recorded contracts for the sale of real property. (Ord. 86, 12-7-1993)~~

6-6-8-3: TEMPORARY USE OF A MANUFACTURED DWELLING OR RECREATIONAL VEHICLE DURING FAMILY HARDSHIP ON NON RESOURCE LANDS:

Where permitted in all zones except the EFU, ERU, and EFFU, tTemporary use of a manufactured dwelling or recreational vehicle during a family hardship may be permitted subject to the following requirements under the following conditions: (Ord. 147, 4-14-2004)

A. A bona fide medical hardship must exist described in writing by a licensed medical care provider.

B. Tenancy shall be limited to a member or members relative of the property owner's immediate family and a person who is directly responsible for care of the owner or members of the owner's immediate family. A "relative" means child, parent, stepparent, grandchild, grandparent, step-grandparent, sibling, step-sibling, niece, nephew, or first cousin.

C. The permit shall be subject to annual renewal; the use shall be terminated when the hardship no longer exists.

D. The temporary residence shall use the same well and subsurface sewage disposal system used by the existing dwelling. The planning commission may attach any other conditions that it deems necessary. (Ord. 86, 12-7-1993)

6-6-8-4: MINERAL, AGGREGATE OR GEOTHERMAL RESOURCE EXPLORATION, MINING AND PROCESSING:

This section applies to all zones except for EFU, ERU, and EFFU.

A. Submitted plans and specifications shall contain sufficient information to allow the planning commission to set standards pertaining to:

1. Noise, dust, traffic and visual screening.
2. Setbacks from property lines.
3. Location of vehicular access points.
4. Fencing needs.
5. Prevention of the collection and stagnation of water at all stages of the operation.
6. Rehabilitation of the land upon termination of the operation.

B. In zones where processing is permitted, it shall be located no closer than two hundred feet (200') from residential or commercial uses.

C. Equipment and access roads shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noise, vibration or dust that is injurious or substantially annoying to livestock being raised in the vicinity. (Ord. 86, 12-7-1993)

6-6-8-8: WIRELESS TELECOMMUNICATION FACILITIES:

A. Siting Prioritization:

1. All wireless telecommunication facilities shall be sited in accordance with the following priorities, in order of preference:

a. Collocation by placement of antenna or other transmission and reception devices on an existing tower, building or other structure such as a utility pole or tower, water tank or similar facility.

b. Use of alternate technology whereby transmission and reception devices are placed on new or existing structures which are consistent in height with and sited similarly to types normally found in the surrounding area, such as telephone, electrical, or light poles.

c. Siting of a new tower in a visually subordinate manner. As used in this subsection "visually subordinate" means the relative visibility of a wireless telecommunication facility where that facility does not noticeably contrast with the surrounding landscape. Visually subordinate facilities may be partially visible, but not visually dominant in relation to their surroundings as viewed from residences, highways and other vantage points.

d. Siting of a new tower in a visually dominant location, but employing concealment technology. As used in this subsection a "concealment technology" means technology through which a wireless telecommunication facility is designed to resemble an object present in the natural environment or to resemble a building of a type typically and customarily found in the area.

e. Siting of a new tower in a visually dominant manner without employing concealment technology.

B. Height, Setback And Access Requirements:

1. Wireless telecommunication facilities shall be limited to the height necessary to provide the service.

2. Notwithstanding the setback requirements in the zone in which the facility is to be located, the following setbacks apply. Telecommunications towers shall be:

a. Set back from the property line at least the height of the tower plus ten percent (10%). A "tract" (contiguous property under the same ownership) shall be considered a single parcel for purposes of setbacks.

b. Except as provided in subsection B2b(1) of this section, the plot leased by the licensed carrier for the wireless telecommunication facility shall be at least six hundred feet (600') from residences and schools not on the applicant's tract, or as far away from nearby residences and schools as it is sited from the closest dwelling on the applicant's tract.

(1) A facility may be sited closer to a school when the school district makes a request and demonstrates the facility is necessary for educational purposes.

C. Construction Standards:

1. The following construction standards shall apply to all new or replacement telecommunication facilities:

a. No lighting of wireless telecommunication facilities is allowed, except as required by the federal aviation administration, Oregon department of aviation or as a condition of approval by the Malheur County planning commission.

b. Based on the existing conditions and vegetation at the proposed site, the wireless telecommunication facility shall be constructed or surfaced with materials to reduce visibility of the facility by the use of nonreflective materials that minimize glare and blend the structure into the surrounding environment.

c. Antenna(s) and associated equipment located on the same structure as the antenna shall be surfaced in a nonreflective material color to match the structure on which it is located.

d. Warning and safety signs, up to three (3) square feet in area, are allowed. All other signs are prohibited.

e. Equipment areas must be enclosed by a chainlink fence or equivalent with or without slats for screening.

f. Nothing in this subsection preempts the coloring requirements of the federal aviation administration or the Oregon department of aviation.

D. Application Requirements:

~~1. All new or replacement wireless telecommunication facilities proposed on lands, other than those under ORS 215.283(1)(d) or prohibited under this section, shall be reviewed as a conditional land use action and subject to the application requirements in section 6-6-5 of this chapter, this section and applicable provisions of ORS 215.296.~~

~~2. Any proposal to establish a new or replacement wireless telecommunication facility shall be subject to review for compliance with this section. Conditional use applications for new or replacement wireless telecommunication facilities will be accepted only from carriers licensed by the federal communications commission or from authorized agents of licensed carrier. In all zones except EFU, ERU, and EFFU, applications submitted pursuant to this section will be reviewed as a conditional use in accordance with Section 6-6-5 Application Procedures.~~

~~3. All new or replacement wireless telecommunication facilities proposed on lands where they are a permitted use under ORS 215.283(1)(d) are subject to the application requirements in section 6-6-5 of this chapter and this section.~~

~~4. All new or replacement wireless telecommunication facilities proposed on lands where they are a permitted use under ORS 215.283(1)(d) must demonstrate the facility is necessary in accordance with ORS 215.275 and OAR 660-033-0130-16(a).~~

52. Proposals for the expansion, collocation, or modification of a wireless telecommunication facility on an existing structure or building are not subject to the application process specified in this section or section 6-6-5 of this chapter. However, the applicant must submit to the planning director a letter of intent ~~to collocate~~, pay applicable fees, and receive a letter of authorization from the director.

63. In addition to other applicable requirements~~the application procedures specified in section 6-6-5 of this chapter~~, applications for wireless telecommunication facilities shall include:

a. A location map showing:

- (1) The applicant's proposed facility site;
- (2) Other sites in the vicinity evaluated for the proposed facility; and
- (3) Other similar existing facilities in the area.

b. A photographic simulation showing how the facility will appear on the landscape.

c. A site specific study of the wireless telecommunication facility identifying the proposed color and surfacing of the facility and associated fixtures.

d. Technical information reasonably justifying the need to locate the proposed facility in the requested location.

e. Documentation from the federal aviation administration, the Oregon department of aviation, the federal communications commission and any other local or state agency with

jurisdiction that the tower has been reviewed and is not determined to be a hazard to life, health or property if constructed as proposed.

74. At any time during the application process, the planning director may request any additional information relevant to the construction of the wireless telecommunication facility.

85. All applications for wireless telecommunication facilities shall be heard before the Malheur County planning commission.

E. Permit Renewal And Expiration Requirements:

1. Permit renewal is based on:

a. The applicant submitting documentation that the wireless telecommunication facility is in compliance with nonionizing electromagnetic radiation (NIER) emission standards as established by the federal communications commission (FCC);

b. Demonstration that the wireless telecommunication facility was constructed and placed into service within one year of issuance of the final approval by the county; and

c. Demonstration that the wireless telecommunication facility has been used as such for a period of one year.

2. If the wireless telecommunication facility is not in compliance with this section, all facilities shall be removed. The property owner shall bear the ultimate responsibility for removal of the facilities. After the county makes a determination of discontinued or nonuse, the property owner shall, within six (6) months, complete removal operations.

F. Performance: The county will require a performance bond not to exceed ten thousand dollars (\$10,000.00) from the applicant to provide for removal of a wireless telecommunication facility should the facility be nonoperational for a period of one year.

G. Exclusions:

1. Wireless telecommunication facilities shall not be permitted in land use zones designated rural residential (R-1), rural service center (RSC), and airport approach overlay (AA).

2. This section does not apply to commercial and public radio and television transmission towers. (Ord. 146, 4-14-2004)

6-6-12: TIME LIMIT ON AUTHORIZATION:

A. Authorization of a conditional use shall be void after two (2) years or such lesser time as the planning commission may specify, unless substantial construction pursuant thereto has taken place. However, the planning commission may extend authorization for additional periods, on request or on its own motion, without the necessity of following any formal procedures such as those set out in this chapter and in chapter 10 of this title.

B. ~~Authorization for a proposed residential development on lands zoned exclusive farm use, exclusive range use, or exclusive farm-forest use shall be valid for four (4) years.~~

~~— 1. An extension of this authorization shall be valid for two (2) years.~~

~~— 2. For purposes of this section, "residential development" only includes dwellings provided for under ORS 215.283(1)(s), 215.284, 215.705(1) to (3) and section 6-4-9, "Lot Or Parcel Of Record Dwellings", of this title. The requirements of Section 6-3A-3-6: Authorization Validity Period And Extensions shall govern all conditional uses authorized on resource land outside of an urban growth boundary. (Ord. 145, 4-14-2004)~~

CHAPTER 12 PLANNING DIRECTOR DECISIONS

SECTION:

6-12-1: Planning Director Action On Land Use Applications

6-12-2: ~~Limitations On Planning Director Actions~~Type One Procedure

6-12-3: ~~Administrative Decision~~Type Two Procedure

6-12-1: PLANNING DIRECTOR ACTION ON LAND USE APPLICATIONS:

~~—A. The Planning Director may make land use decisions as set forth in Section 6-12-2 of this Title without prior notification, as prescribed under Section 6-12-3, or he may refer the application to the Planning Commission for a hearing. The Planning Director may review land use applications and issue decisions as set forth in this Chapter. The Planning Director may decide to elevate any application to the Planning Commission for hearing within thirty (30) days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant. (Ord. 86, 12-7-1993)~~

6-12-2: ~~LIMITATIONS ON PLANNING DIRECTOR ACTIONS~~TYPE ONE PROCEDURE:

~~The Planning Director may make administrative decisions on the following land use actions:~~

~~—A. Farmstead lots as allowed in Section 6-4-4 of this Title.~~

~~—B. Mining of aggregate resources as allowed in subsection 6-3A-3E3 of this Title.~~

~~—C. Hardship dwellings as allowed in subsection 6-3A-3Q of this Title.~~

~~—D. Partitions. The Planning Director may review applications for compliance with non-discretionary standards and render decisions which do not require policy interpretation or legal judgement pursuant to both the Type 1 procedure described in this section and~~

Chapter 9 of this Title. Under this procedure, the Planning Director shall render a decision and issue notice of the decision to the applicant and property owner, if different, within thirty (30) days after an application is accepted as complete. Decisions made by the Planning Director under this procedure may be appealed to the Planning Commission for de novo hearing in accordance with Chapter 13 of this Title. This procedure shall apply to applications for:

A. Agricultural buildings customarily provided in conjunction with resources use.

B. Extension of validity periods as provided in Section 6-3A-3-6 of this Title.

C. Limited dog training classes or testing trials as provided in Section 6-3A-8-6(A) of this Title.

D. Replacement of damaged/destroyed dwellings as provided in Section 6-4-9 of this Title.

E. Expansion, colocation, or modification of an existing telecommunication facility as provided in Section 6-6-8-8 of this Title.

F. Final plat review and authorization as provided in Title 7.

G. Land use compatibility statements. (Ord. 86, 12-7-1993)

6-12-3: ~~ADMINISTRATIVE DECISION~~TYPE TWO PROCEDURE:

~~—A. The Planning Director's decision to approve, deny or send to a hearing shall be made within thirty (30) days after an application is accepted as complete. This time limit may be waived by the written consent of the applicant.~~

~~—B. Notice of the Planning Director's decision and the appeal period shall be sent as set forth in subsection 6-11-3A1a through e of this Title.~~

~~—C. The notice of decision shall contain the applicable information required by Section 6-11-4 of this Title.~~

~~—D. Any party can appeal the decision to the Planning Commission in accordance with Chapter 13 of this Title. On appeal, a de novo hearing shall be held by the Planning Commission. The Planning Director may review applications for compliance with certain discretionary criteria and render decisions which require limited policy interpretation or legal judgement pursuant to both the Type 2 procedure described in this section and Chapter 9 of this Title. Under this procedure, the Planning Director shall provide notice of application and opportunity for public comment, then render a decision and issue notice of the decision to all parties to the application in accordance with Section 6-11-3(A) Individual Mailed Notice, Section 6-11-4 Contents of Notice, and ORS 215.427. Decisions made by the Planning Director under this procedure may be appealed to the Planning Commission for de novo hearing in accordance with Chapter 13 of this Title. This procedure shall apply to applications for:~~

A. Facilities for the processing of farm products as provided in Section 6-3A-8-1(A) of this Title.

B. Limited agri-tourism and other commercial events or activities as provided in Section 6-3A-8-6(B) of this Title.

C. Establishment of dwellings as provided in Sections 6-3A-4-1 through 6-3A-4-5 of this Title.

D. Temporary uses as provided in Section 6-4-3 of this Title.

E. Minor home occupations as provided in Section 6-6-8-6 of this Title.

F. Property line adjustments as provided in Title 7. (Ord. 86, 12-7-1993)

TITLE 7

SUBDIVISIONS AND LAND PARTITIONING

CHAPTER 1

PURPOSES, GENERAL PROVISIONS AND DEFINITIONS

SECTION:

7-1-1: Adoption, Title And Revision Policy

7-1-2: Purposes

7-1-3: Ordinance Relationships

7-1-4: Construction Of Words

7-1-5: Definitions

7-1-5: DEFINITIONS:

For the purpose of this title, certain words and terms used herein are defined as follows:

ACCESS: The place, means or way by which pedestrians and vehicles shall have safe, adequate and usable ingress and egress to a property. Access management guidelines are located in table 7-2 of the Malheur County transportation system plan.

ACCESSWAY: A walkway that provides pedestrian and bicycle passage either between streets or from a street to a building or other destination such as school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway and additional land on either side of the walkway, often in the form of an easement or right of way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include

landscaping, trees, and lighting. Where accessways cross driveways, they are generally raised, paved, or marked in manner that provides convenient access for pedestrians.

BICYCLE: A vehicle designed to operate on the ground on wheels, propelled solely by human power, upon which any person or persons may ride, and with two (2) tandem wheels at least fourteen inches (14") in diameter. An adult tricycle is considered a bicycle.

BICYCLE FACILITIES: A general term denoting improvements and provisions made to accommodate or encourage bicycling, including parking facilities and all bikeways.

BIKEWAY: Any road, path, or way that is some manner specifically open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are shared with other transportation modes. The five (5) types of bikeways are:

A. **Multiuse Path:** A paved ten (10) to twelve foot (12') wide way that is physically separated from motorized vehicular traffic; typically shared with pedestrians, skaters, and other nonmotorized users.

B. **Bike Lane:** A four (4) to six foot (6') wide portion of the roadway that has been designated by permanent striping and pavement markings for the exclusive use of bicycles.

C. **Shoulder Bikeway:** The paved shoulder of a roadway that is four feet (4') or wider; typically shared with pedestrians in rural areas.

D. **Shared Roadway:** A travel lane that is shared by bicyclists and motor vehicles.

E. **Multiuse Trail:** An unpaved path that accommodates all terrain bicycles; typically shared with pedestrians.

BLOCK: A contiguous series of lots bounded on all sides by streets, railroad right of way, or subdivided land.

BUILDING LINE: A dashed line on a plat restricting the location of buildings or structures or that distance as prescribed by the zoning ordinance, when applicable.

~~CONTIGUOUS: Connected in such a manner as to form a single block of land.~~

~~CONTIGUOUS LAND: Two (2) or more parcels or units of land including water under a single ownership which are not separated by an intervening parcel of land under separate ownership.~~

DEVELOPER: Any person, corporation, partnership or other legal entity who creates or proposes to create a subdivision, partition or other land development, and includes any agent of a developer.

DEVELOPMENT: The construction, installation or change of a building or other structure; the division of land into two (2) or more parcels; any building or mining operation; or the creation or termination of rights of access.

DWELLING UNIT: A structure providing complete independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation.

A dwelling unit shall have a minimum habitable floor area of four hundred (400) square feet.

EASEMENT: A grant of right to use land for specific purposes, but in which ownership of the land is not transferred.

FAMILY: As defined in section 6-1-3 of this code, zoning ordinance.

FINANCIAL PARTITION: An exception in exclusive agricultural zones in effect only during a foreclosure on property in accord with section 7-7-12 of this title.

FLAG LOT: A parcel of land created by a subdivision or partition which includes a narrow projection to a public road for purposes of access to the main portion of the parcel. The projection is commonly known as the "flagpole".

LANE: A term used to indicate or suggest that a road or street is, or may be, privately owned.

LEGAL DESCRIPTION: The method by which the outer boundaries of a site or premises and all appurtenant easements and applicable restrictions or covenants are described or established by reference to established points, monuments, etc.

LOT: A single unit of land created by a subdivision ~~of land or partitioning of land and is a unit for disposition, transfer of ownership or interest or for development.~~

LOT AREA: The total horizontal net area within the lot lines of a lot.

LOT, CORNER: A lot situated at the intersection of two (2) or more streets.

LOT DEPTH: The depth of a lot shall be the horizontal length of a straight line connecting the bisecting points of the front and rear lot lines.

LOT LINE, FRONT: In the case of an interior lot, a line separating the lot from the street. In the case of a corner lot, the line separating the street frontages of the lot from the street.

LOT LINE, REAR: A lot line which is opposite and most distant from the front lot line.

LOT LINE, SIDE: Any lot boundary line not a front line or a rear lot line.

LOT, THROUGH OR DOUBLE FRONTAGE: A lot having frontage on two (2) parallel or approximately parallel streets other than alleys.

LOT WIDTH: The average horizontal distance between the side lot lines, measured at right angles to the lot depth.

MAP, PARTITION MAP: The diagram, drawing and associated writing which depicts a partition.

MASTER PLAN: A map, sketch, or other presentation filed with the planning commission showing the ultimate development layout of a parcel of property that is to be developed in successive stages of subdivision. The plan need not be completely engineered but shall be of sufficient detail to illustrate the property's inherent features and probable

development pattern thereon. The master plan will, therefore, be used as a guide in each successive stage of the development until its completion.

NEIGHBORHOOD ACTIVITY CENTER: An attractor or destination for residents of surrounding residential areas. Includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops, employment areas.

NOMINAL ONE ACRE: An approximate one-six-hundred-fortieth (1/640) of the public lands survey section in which it is located. In no case shall a nominal acre be less than thirty five thousand (35,000) square feet.

OFFICIAL MAP: The comprehensive plan map as adopted by the planning commission and county court.

OPEN SPACE: Those lands within a subdivision which have been dedicated, in common to the ownership within the subdivision or to the public, specifically for the purpose of providing places for recreational uses or for scenic purposes.

OWNER: The individual, firm, association, syndicated partnership or corporation having sufficient proprietary interest in the land sought to be subdivided or partitioned to commence and maintain proceedings to subdivide or partition the same under this title.

PARCEL: ~~A single unit of land that is created by a partitioning of land. As defined in section 6-1-3 of this code, zoning ordinance.~~

PARTITION: The act of partitioning land, or an area or tract of land which is partitioned.

Major Partition: A partition which includes the actual creation of a road or street to serve one of the parcels in the partition.

Minor Partition: A partition which does not require the creation of a road or street. Dedication of right of way may be required in order to acquire or preserve access to other lands.

PARTITION LAND: To divide an area or tract of land into two (2) or three (3) parcels within a thirty six (36) month period when such area or tract of land exists as a unit or contiguous units of land under single ownership at the time of the first partitioning. "Partition land" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size unless better field management or irrigation control will result. "Partition land" does not include the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner. "Partition land" does not include the creation of cemetery lots.

PLANNED UNIT DEVELOPMENT: A land area designed as a unified combination of land uses; generally with a mixture of residential, single- and multi-family types, open space or recreation areas for the direct use and benefit of all the lot owners within the development and sometimes shopping or community facilities. A planned development includes a

"planned unit", a "homeowners' association" and "common property" which are defined as follows:

Common Property: A parcel or parcels of land together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual sites in the planned unit.

Homeowner Association: An incorporated, nonprofit corporation to operate under recorded land agreements through which: a) each lot owner in a planned unit or other described land area is automatically a member, and b) each lot is automatically subject to a charge for the expenses for the organization's activities, such as maintaining a common property.

Planned Unit: A land area which: a) has both individual building sites and open space, known as common property such as park and b) is designed and organized as a separate entity without necessarily having participation of other building sites or other common property.

PLAT: A final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

PUBLIC HEARING: A public forum of the planning commission or the county court in which, after public notification, the commission or court hear testimony from all concerned citizens regarding the action which is the cause of the hearing. Public hearings shall be conducted when prescribed by this title, and may be conducted at the request of the commission or court at other times.

PUBLIC NOTIFICATION: Each notice of hearing authorized by this title shall be published in newspaper of general circulation in the county at least ten (10) days prior to the date of hearing. Notice shall also be mailed to all owners of property within two hundred fifty feet (250') of the subject property. The notice of hearing shall be mailed at least ten (10) days prior to the date of hearing. Failure of a person to receive the prescribed notice shall not impair the validity of the hearing.

RESERVE STRIP: A strip of land, usually one foot (1') in width, across the end or along the edge of a street, roadway or alley, which is reserved or held by the county for the purpose of controlling access, or for future street, roadway or alley extension or widening.

RIGHT OF WAY: The area between the boundary lines of an alley, easement, street or highway.

ROAD OR STREET: A public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

Cul-De-Sac (Dead End Street): A short street having one end open to traffic and being terminated by a vehicle turnaround.

Half Street: A portion of the width of a street usually along the edge of a subdivision, where the remaining portion of the street could be provided in another subdivision.

Marginal Access Street: A minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.

Rural Arterial: A roadway that provides linkage between population centers within the region and connection to state and national highways, serving primarily through traffic with limited access.

Rural Collector: A roadway that provides both local access and circulation within rural areas of the county, distributing trips from the arterials through the area to their ultimate destinations, often serving abutting uses directly.

Rural Local: A roadway having the primary function of providing access to immediately adjacent land and serving little to no through traffic.

Stubbed Street: A street having only one outlet for vehicular traffic and which is intended to be extended or continued to serve future subdivisions or developments on adjacent lands.

Walkway: A hard surfaced area intended and suitable for pedestrians, including sidewalks and the surfaced portions of accessways.

SUBDIVIDE LAND: To divide an area or tract of land into four (4) or more lots within a thirty six (36) month period when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of the first division.

SUBDIVIDER: A generalized term meaning any person, firm, corporation, partnership or association who causes the land to be divided into lots or parcels as defined herein. It is synonymous with "developer".

TENTATIVE PLAN: A clearly legible drawing of the proposed layout of streets, blocks, lots and other elements of a subdivision which shall help furnish a basis for the planning commission's approval or disapproval of the general layout of the subdivision or major partition.

TRACT: One or more contiguous lots or parcels under the same ownership.~~A generalized, all inclusive term used to describe any area of land.~~

USE: The purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained. (Ord. 25, 3-2-1983; amd. 1989 Code; Ord. 125, 6-20-2000)

Notes

1. See title 6, chapter 11 of this code.

**CHAPTER 7
LAND PARTITIONING**

SECTION:

7-7-1: Applicability Of Regulations

7-7-2: Procedures And Requirements For Filing

7-7-3: Requirements For Tentative Or Conditional Approval

7-7-4: Improvement Requirements

7-7-5: Administrative Record Of Partitioning

7-7-6: Approval Requirements For Creation Of A Fourth Parcel By Partitioning

7-7-7: Final Map Of Partition

7-7-8: Certification Of Final Approval

7-7-9: Application Review

7-7-10: Appeal

7-7-11: Special Partitioning And Property Line Adjustment Regulations

7-7-12: Partitioning For Financial Purposes

7-7-13: Notice And Effect Of Violation

7-7-7: FINAL MAP OF PARTITION:

Following approval of the tentative plan for a proposed partitioning, the applicant shall prepare and submit to the Planning Department the final plat map or drawing for the subject partitioning. Such filing shall be completed within six (6) months from the date of the approval, or the approval shall be void. The final map or drawing shall be prepared in accordance with the following requirements and submitted to the Planning Department:

~~A. Final Map In EFU, EFFU Or ERU Zones: In EFU, EFFU or ERU Zones, the tentative map may act as the final map if no changes are required by the Planning Director, or his designate or the Planning Commission.~~

~~—B. Final Map In Zones Other Than EFU, EFFU Or ERU: In zones other than EFU, EFFU or ERU, the final map shall meet the following requirements:~~Final Map Requirements: The final map shall meet the following requirements:

1. Maps shall be drawn on eight and one-half inch by eleven inch (8 1/2" x 11") sheets or forms provided by the Planning Department.

2. They shall be drawn to scale sufficient to show necessary detail.

3. Name of the owner, developer and engineer or surveyor shall be shown on the map or drawing.

4. Date, scale, north point, legal description of boundaries and a tie by actual survey to a section or donation land claim corner.

5. Parcel boundary lines, with dimensions and bearings and the area of each parcel shall be shown. Horizontal closure of all parcel boundaries shall be one in ten thousand (10,000) or better.

6. An affidavit by the engineer or surveyor having surveyed the land.

7. A certification of acceptance of any public dedication.

8. A guarantee of approved or required improvements, including identification of maintenance responsibilities for proposed or existing roads and streets.

9. A statement of availability of water rights. Also, assignment of water right to each parcel shall be indicated on the map or drawing and certification of approval thereof.

10. Certification of approval for execution by the parties specified in Section 7-7-8 of this Chapter. (Ord. 25, 3-2-1983; 1989 Code)

CB. Validity: In all cases, no such partition map, plat or plan shall be recorded or have validity unless it shall have the approval of the County Planning Director, the County Surveyor and the County Assessor. Approval shall be by dated signature in permanent black ink. (Ord. 96A, 1-2-1996)

7-7-11: SPECIAL PARTITIONING AND PROPERTY LINE ADJUSTMENT REGULATIONS:

A. The partitioning of a tract of land in which not more than one parcel is created and transferred to a public or semi-public agency for the purpose of a road, railroad, electric substation or canal right of way may be approved by the Planning Director. A filing fee may be required.

~~B. The adjustment of a lot line by the relocation of a common boundary may be approved by the Planning Director. Such adjustments shall be presented on the same partition map as required for the zone in which the property is located.~~

~~A boundary adjustment does not include any of the following:~~

~~—1. Creation of an additional parcel, ownership or tax lot.~~

~~—2. Reduction of a parcel below the minimum lot size required by the applicable zoning other than EFU, ERU and EFFU classifications. Within the EFU, ERU and EFFU Zones, the lot line adjustment shall be subject to the land division criteria of Section 6-3A-5 of the Zoning Title of this Code.~~

~~—3. Transfer of dwellings from one ownership to another.~~

~~—C. A memorandum of partition may be recorded with the County Clerk, on a form prescribed by the Planning Director, indicating that a partition has been made in accordance with the provisions of this Title, and that the survey maps have been filed with the Clerk. The adjustment of property by the elimination or relocation of a shared property line may be approved by the Planning Director. Property line adjustments shall be presented on the same partition or survey map as required for the zone in which the property is located. Property line adjustments shall not:~~

- ~~1. Create new lots or parcels;~~
- ~~2. Transfer dwellings from one lot or parcel to another; or~~
- ~~3. Reduce lots or parcels below applicable minimum lot area standards, except as provided in subsection (C) of this section for land with the EFU, ERU, and EFFU zones.~~

~~C. Property line adjustments of land with the EFU, ERU, and EFFU zones shall comply with all of the following requirements.~~

~~1. A lawfully established unit of land that would be reduced in size by a property line adjustment must comply with all applicable zoning ordinances after the adjustment unless otherwise stated.~~

~~2. Subject to subsection (C)(3), for land located entirely outside the corporate limits of a city, the Planning Director may approve a property line adjustment in which:~~

~~a. One or both of the abutting lawfully established units of land are smaller than the applicable minimum lot area standard before the property line adjustment and, after the adjustment, one is as large as or larger than the applicable minimum lot area standard; or~~

~~b. Both abutting lawfully established units of land are smaller than the applicable minimum lot area standard before and after the property line adjustment.~~

~~3. A property line adjustment may not be used to:~~

~~a. Decrease the size of a lawfully established unit of land that, before the relocation or elimination of the common property line, is smaller than the applicable minimum lot area standard and contains an existing dwelling or is approved for the construction of a dwelling, if another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the applicable minimum lot area standard required to qualify the other affected lawfully established unit of land for a dwelling;~~

~~b. Decrease the size of a lawfully established unit of land that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the applicable minimum lot area standard, if another lawfully established unit of land affected by the property line adjustment would be increased to a size as large as or larger than the applicable minimum lot area standard required to qualify the other affected lawfully established unit of land for a dwelling;~~

c. Allow an area of land used to qualify a lawfully established unit of land for a dwelling based on an acreage standard to be used to qualify another lawfully established unit of land for a dwelling if the land use approval would be based on an acreage standard; or

d. Adjust a property line that resulted from a subdivision or partition authorized by a waiver so that any lawfully established unit of land affected by the property line adjustment is larger than:

i. Two (2) acres if the lawfully established unit of land is, before the adjustment, two (2) acres in size or smaller and is high-value farmland, high-value forestland, or within a ground water restricted area; or

ii. Five (5) acres if the lawfully established unit of land is, before the adjustment, five (5) acres in size or smaller and is not high-value farmland, high-value forestland, or within a ground water restricted area.

4. Definitions. As used in subsection (D) of this section:

a. 'High-Value Farmland' shall have the meaning described in Section 6-3A-3-1(A)(2) *High-Value And Non-High-Value Farmland Determination Standard*.

b. "High-value forestland" has the meaning given that term in ORS 195.300.

c. "Ground water restricted area" has the meaning given that term in ORS 195.300.

d. "Waiver" has the meaning given that term in ORS 195.300. (Ord. 25, 3-2-1983; 1989 Code)

7-7-12: PARTITIONING FOR FINANCIAL PURPOSES:

A. Upon application to the Planning Director, a special permit may be granted authorizing the creation of a security interest in a parcel of land which is in an EFU, EFFU or ERU Zone. Partitions for financial purposes which are eligible may proceed through foreclosure proceedings after notice to the County Planning Department. Lien and sales contracts eligible for financial partitioning are those established at the time of sale and purchase of the subject land. Following the 1989 date of adoption of this code, all property used as collateral in conjunction with the sale of property, shall conform to the size, access and other requirements of the county zoning and land division ordinance in effect at the time of the property transaction.

B. Permits issued under the authority of this Section shall be subject to the following limitations and restrictions:

1. A parcel possessed or subject to a right of possession by a person under the terms of a foreclosure of a security interest, and the remaining parcels, must remain in the same legal use the parcels were in at the time the interest became possessory, except the parcels may be put into agricultural use; but in no case may an additional structure or

improvement, other than that which is the subject of the applicable security interest, be added to any parcel by the authority of the permit authorized in subsection A of this Section. In order to establish uses other than agriculture or to erect structures other than farm accessory structures, the owner of the parcel must secure a land partitioning approval as otherwise required by this Title.

2. The permit authorized in subsection A of this Section shall be valid only for the time of the life of the security interest, except in the case of default and foreclosure upon the interest. In the case of default and foreclosure, the permit shall be valid only until a land partitioning permit is granted or the parcels are rejoined in a contiguous unit of land under the same ownership.

3. At the expiration of the security interest if there is no default or foreclosure, the parcels shall be deemed to be rejoined into a contiguous unit of land under one ownership and shall be reunited or combined into a single tax lot and this permit authorization automatically becomes void.

The owner of the property shall be in violation of this Title if he has not, within thirty (30) days of the permit becoming void, made written application to the County Assessor for the combination of the parcels into a single tax lot.

C. No permit may be issued under this Section until the owners of the subject property and the holder of the security interest sign a statement indicating that all parties agree to comply with the limits being placed upon the permit.

D. The permit issued under this Section shall be immediately void if the owner of the property attempts any transfer of the subject parcels except as provided by the terms of the permit or of this Title and the Zoning Ordinance, Title 6 of this Code.

E. The partitioning permit authorized by this Section shall be granted only if the applicant certifies and the Planning Director finds that:

1. The intended partitioning is temporary and not created for the purpose of evasion of the requirements of this Title, other County ordinances or regulations or State law.

2. The partitioning will not result in the need for additional roads or other access.

3. The partitioning will not result in the need for additional improvements.

4. The partitioning will not interfere with adjoining and area land uses.

5. The partitioning will not violate any provisions of applicable zoning or policies of the Comprehensive Plan.

F. In those situations where foreclosure of less than the full property was not contemplated at the time of financing, and in situations where the lender is willing to allow the landowner to retain his dwelling and not more than three (3) acres, and the landowner will be resident in the dwelling for at least one year, the Planning Director may apply the provisions of this Section retroactively.

G. Those parcels created by a financial partition shall be disqualified from the farm tax deferral and appropriate back taxes paid up unless one or both meet the criteria of subsection (A) of this section. (Ord. 25, 3-2-1983; 1989 Code)