



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

05/06/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Larry French, Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment
DLCD File Number 012-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, May 20, 2009

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Sterling Anderson, Marion County
Doug White, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative

<paa> YA/ph

FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DEPT OF

APR 29 2009

LAND CONSERVATION AND DEVELOPMENT

DATE STAMP

For DLCD Use Only

Jurisdiction: **MARION COUNTY**

Local file number: **LA07-003**

Date of Adoption: **11/19/2008**

Date Mailed: **4/29/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 10/7/2009

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

AMENDMENTS TO THE TEXT OF THE MARION COUNTY RURAL ZONING ORDINANCE NO 516 TO UPDATE CODE DUE TO NEW LEGISLATION GENERAL CLEAN UP AND MODIFICATION TO PROVISIONS OF CHAPTER 181 THE SENSITIVE GROUNDWATER OVERLAY ZONE.

Does the Adoption differ from proposal? Please select one
ONLY IN MINOR DETAILS

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD FILE NO. 012-07 (16534)

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **STERLING ANDERSON**

Phone: **(503) 588-5038** Extension: **5906**

Address: **PO BOX 14500**

Fax Number: - -

City: **SALEM**

Zip: **OR**

E-mail Address:

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

An Ordinance Amending Marion County)
Rural Zoning Ordinance)
No. 516, as amended, amending)
Regulations in Chapter 181(Sensitive)
Groundwater Overlay Zone))
and Declaring an Emergency)

ORDINANCE NO. 1274

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS
FOLLOWS:

SECTION I. Purpose

This ordinance is enacted pursuant to the authority granted to general law counties in the State of Oregon by ORS Chapters 203, 197 and 215 to amend the Marion County Rural Zoning Ordinance, Ordinance 516, as amended, to conform with the provisions of state statutes and administrative rules.

SECTION II. Authorization

The Marion County Board of Commissioners initiated legislative amendments to the Marion County Rural Zoning Ordinance (MCRZO) by Resolution No. 07-28R, dated November 7, 2007. The proposed amendments included additions, deletions and amendments to Chapter 181 (Sensitive Groundwater Overlay Zone) MCRZO. The Board held a public hearing on the proposed amendment on November 12, 2008, for which proper public notice and advertisement were given. All persons present at the hearing were given the opportunity to speak or present written statements.

SECTION III. Evidence and Findings

The MCRZO amendments are based on consideration and analysis of the provisions of ORS Chapters 197 and 215, OAR 660-06 and 660-22. Due consideration was given to testimony in the hearing record. The Board finds that the MCRO amendments conform to the provisions of state statutes and administrative rules, the Statewide Land Use Planning Goals, and Marion County Comprehensive Plan

SECTION IV. Amendments to the Marion County Rural zoning Ordinance

Marion County Rural Zoning Ordinance Chapter 181 (Sensitive Groundwater Overlay Zone) is amended as set forth in Exhibit A, attached here to and incorporated herein.

SECTION V. Severability and Saving Clause

Should any section, subsection, paragraph, sentence, clause, or designation to a particular land use or area of land, or any other portion, segment or element of this ordinance or any amendments thereto and adopted hereunder, be declared invalid for any reason, that declaration shall not affect the validity and continued application of any other portion or element of this ordinance or amendment to Ordinance 516, as amended herein; and if this ordinance or any portion thereof should be held to be invalid on one ground, but valid on another it shall construed that the valid ground is the one upon which this ordinance or any portion thereof was enacted.

SECTION VI. Emergency Clause

This Ordinance being necessary to protect the public health, safety and welfare; an emergency is declared to exist and this ordinance shall take effect immediately upon its adoption.

SIGNED and FINALIZED this 19th day of November,
2008, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Samuel A. Brenden
Chair

D. Kim Skellett
Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

EXHIBIT A

CHAPTER 181 SENSITIVE GROUNDWATER OVERLAY ZONE DELETIONS IN STRIKEOUT ADDITIONS IN BOLD AND UNDERLINED

Amended 08/17/05
Amended 08/04/04
Amended 02/11/98
Effective 01/01/98

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181.010 PURPOSE. The purpose of this chapter is to implement the Groundwater Resources goals and policies of the Environmental Quality and Natural Resources section of the Marion County Comprehensive Plan. This chapter implements the program to review land use applications to assess the risk that a proposed use will adversely affect the sustainability of aquifer production. This ordinance is not intended to act as a guarantee that a property owner will successfully locate an adequate water supply at a particular location or on a specific lot or parcel, or that any individual well will continue to provide adequate water for an existing land use.

181.020 DEFINITIONS. The following definitions apply to this chapter only, and have no applicability to the same terms used in other chapters of this ordinance, unless specifically stated.

- (A) Aquifer - A layer of rock or alluvial deposit which holds water.
- (B) Development permit - A county building or manufactured dwelling placement permit, including any land-use decision, as defined in ORS 197.015, required by this ordinance to be made prior to issuance of the building or manufactured dwelling placement permit.

- (C) Exempt-use well - A well from which water use is exempt from permitting requirements of the Oregon Water Resources Commission. Water from such a well will be used only for the following purposes:
- (1) Stock watering;
 - (2) Watering any lawn or noncommercial garden not exceeding one-half acre in area;
 - (3) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;
 - (4) Down-hole heat exchange purposes; or
 - (5) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day.
- (D) Groundwater - Any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.
- (E) Permitted well - A well from which the intended use of water requires a registration, certificate of registration, application for a permit, permit, certificate of completion or groundwater right certificate under ORS 537.505 to 537.795 and 537.992.
- (F) SGO - The Sensitive Groundwater Overlay zone, as shown on the official Marion County zoning map. The SGO zone is comprised of two elements - the "SGO" zone and a number indicating the "threshold" lot size for that area (e.g., SGO-5).
- (G) Well log - A record of information about a new or altered well, as described in ORS 537.765.

181.030 APPLICABILITY.

- (A) The provisions of this chapter shall apply to all lands within the Sensitive Groundwater Overlay Zone boundary as shown on the official county zoning map. The overlay zone shall be applied to areas designated by the Oregon Water Resources Commission as Groundwater Limited Areas and other parts of the county where information provided by a licensed geologist or through a county well-monitoring program indicates a reasonable risk of over-appropriation of groundwater exists.
- (B) Nothing in this chapter shall be construed to constitute a waiver or suspension of the provisions of the underlying zone or other overlay zone. In the case of any conflict between the provisions of this chapter and any other provisions of this ordinance, the more restrictive shall apply.

181.040 REQUIRED REVIEW AND APPLICATION. All development permits for new land uses that rely on water from exempt-use wells within the Sensitive Groundwater Overlay zone shall be reviewed by the county to determine compliance with this chapter.

The applicant for such a development permit shall submit the request on a form approved by the Director along with a site plan of the subject property showing existing and proposed property boundaries; existing, abandoned, and proposed wells on the subject tract; and any other information as required in this chapter. The Board may establish a fee for review of water supply studies and well monitoring plans for new land uses.

181.050 Reserved

181.060 GENERAL PROVISIONS. Applicants for a development permit where the new land use will rely on groundwater in the Sensitive Groundwater overlay zone are subject to the following requirements:

- (A) Any wells on the tract subject to temporary or permanent abandonment under ORS 537.775 shall be abandoned prior to final development permit approval.
- (B) The well shall be made available to the county for monitoring purposes, pursuant to the county well monitoring program ordinance.
- (C) Evidence that any required permits from the Oregon Health Division for use of the water have been obtained shall be submitted to the county prior to development permit approval, or final plat approval in the case of partitions, subdivisions, and planned unit developments.

181.070 STUDY REQUIREMENTS. The following water supply studies shall be required by the county to help determine whether a land-use action will have an adverse impact on groundwater resources.

- (A) Residential partitions, planned unit developments, and subdivisions. The following provisions apply to land divisions in the Sensitive Groundwater overlay zone, where the residences will utilize exempt-use wells:
 - (1) Applications to partition a parcel of land shall be subject to the following requirements:
 - (a) If the ~~average-minimum~~ parcel size proposed in the application is equal to or larger ~~greater~~ than the "threshold" lot size displayed in the zone label on the official zoning map ~~five (5) acres~~, no demonstration of water supply is required;
 - (b) If the ~~average-minimum~~ parcel size proposed in the application is smaller ~~less~~ than the "threshold" lot size displayed in the zone label on the official zoning map ~~five (5) acres~~ and the subject property is located within the study area identified in "Geologic and Hydrogeologic Study of the Residential Acreage-Zoned Areas of Marion County Underlain by the Columbia River Basalt and Older Rocks" (NGS, 1997) and shown on Plate 2 of that document, the application shall be accompanied by a Water Use Inventory pursuant to section 181.090. If the subject property is located outside this study area and the average parcel size proposed in the application is smaller than the "threshold" lot size displayed in the zone label on the official zoning map, the application shall be accompanied by a Hydrogeology Review pursuant to section 181.100.

- (2) Within the "SGO" zone, applications to subdivide a parcel of land shall be subject to the following requirements:
 - (a) If the ~~average minimum~~ lot size proposed in the application is equal to or larger than the "threshold" lot size displayed in the zone label on the official zoning map ~~five (5)~~, no demonstration of water supply is required;
 - (b) If the ~~average minimum~~ lot size proposed in the application is smaller ~~less~~ than the "threshold" lot size displayed in the zone label on the official zoning map ~~five (5) acres~~, the application shall be accompanied by a Hydrogeology Review pursuant to section 181.100;
 - (c) An approved water level monitoring plan is required as a condition of approval for all subdivisions pursuant to section 181.120.

(B) New dwelling on an existing lot. When the application is for a development permit for a new dwelling that is reliant upon an exempt-use well on a lot existing on the effective date of this ordinance, the requirements of this section apply:

- (1) Prior to approval of the building or manufactured dwelling placement permit, the owner shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject parcel:

The property herein described is situated in a "Sensitive Groundwater Overlay" zone. The availability of groundwater may be limited, and if a long-term decline in water supply occurs the property owner may need to find an alternate source. Marion County is not responsible for deepening or replacing wells that fail to produce an adequate supply of groundwater.

- (2) Subsection (1) of this section do not apply to dwellings on lots or parcels within:
 - (a) A partition that was subject to application under the provisions of this chapter; or
 - (b) A subdivision approved by the county after October 1, 1992.

181.080 Reserved

181.090 WATER USE INVENTORIES. ~~The purpose of a Water Use Inventory is to use existing information to gain specific information to make conclusions regarding groundwater availability for an individual lot or a partition. Findings, maps, and conclusions shall be presented in a clear and understandable report.~~

(A) ~~A Water Use Inventory shall include, at a minimum, the following information in addition to the application requirements in section 181.040:~~

- (1) ~~A map showing all lots and parcels within at least one quarter mile of the proposed development;~~

- ~~———— (2) ——— The location of permitted wells with valid water rights within at least one quarter mile of the proposed development, and the quantity of water permitted to be used;~~
- ~~———— (3) ——— The estimated use of groundwater within at least one quarter mile of the proposed development, including 525 gallons/day use for each lot and parcel and water use from permitted wells (as required in subsection (2) of this section);~~
- ~~———— (4) ——— The quantity of water the proposed land use will utilize. If the proposal is for residential use, water use shall be calculated as 525 gallons/day. If the proposal is for a land division for residential purposes, all proposed lots or parcels shall be included in the calculation.~~

~~(B) ——— A Water Use Inventory shall demonstrate the following:~~

- ~~———— (1) ——— Whether the density of lots and parcels within one quarter mile of the proposed development is greater or less than, or the same as, the threshold parcel size for the subject parcel. In the case of applications for a land division, the density calculation shall assume full development (i.e., the maximum number of lots or parcels that could be created, considering the minimum lot size in the zone) of the subject lot or parcel.~~
- ~~———— (2) ——— The percent of available recharge that will be utilized by all users (exempt and permitted), including the proposed new use, for the area within one quarter mile of the subject lot or parcel based on the aquifer likely to be used by the proposed use.~~

~~———— For Columbia River basalts the percent of available recharge shall be 6 percent. For Marine Sediments the percent of available recharge shall be 2 percent. If the proposed use can pass using 6 percent of available recharge but fails when 2 percent of available recharge is used, the applicant may present three well logs representative of the area in which the proposed use would be located so that the aquifer that supplies local exempt use wells can be determined. The well log information must be submitted with a statement indicating how the wells were chosen, why the well logs should be considered representative, and the aquifer likely to be used by the proposed use. The submitted information and statement must bear the stamp of a registered geologist, pursuant to Chapter 181.130.~~

~~(C) ——— Water Use Inventory Results.~~

- ~~———— (1) ——— A Hydrogeology Review pursuant to section 181.100 shall be required if the Water Use Inventory establishes that either of the following circumstances exist:~~
 - ~~———— (a) ——— The average size of lots and parcels within one quarter mile of the proposed development, including all existing lots and parcels and all proposed parcels in the subject application (if any), is smaller than the “threshold” size indicated on the applicable zone label on the official zoning map (for example, if the applicable zone is “SGO-5” and the average size of lots and parcels in the area is four acres); or~~
 - ~~———— (b) ——— The new use will result in consumption of more than 80 percent of the available recharge within one quarter mile, based on use information generated for the Inventory and recharge data contained in “Geologic and Hydrogeologic Study~~

of the Residential Acreage Zoned Areas of Marion County Underlain by the Columbia River Basalt and Older Rocks" (NGS, 1997), and assuming one dwelling results in use of 525 gallons/day.

- ~~_____ (2) If the Water Use Inventory demonstrates that the new use will result in consumption of 70 percent or more, but less than 90 percent, of the available recharge within one-quarter mile, based on use information generated as part of the Inventory and recharge data contained in "Geologic and Hydrogeologic Study of the Residential Acreage Zoned Areas of Marion County Underlain by the Columbia River Basalt and Older Rocks" (NGS, 1997), and assuming one dwelling results in use of 525 gallons/day, the county may apply conditions pursuant to section 181.140 to approval of the proposed use.~~
- ~~_____ (3) If the results of the Water Use Inventory establish that none of the circumstances described in subsections (1) or (2) of this section exist, no further evidence of water availability is required. **Reserved**~~

181.100 HYDROGEOLOGY REVIEWS. The purposes of a Hydrogeology Review are to provide information regarding the geology and hydrogeology of the area in the immediate vicinity of the proposed development and to furnish professional analysis of the information. A Hydrogeology Review generally requires compilation and analysis of existing information but not development of new data. Study findings, maps, and conclusions shall be presented in a clear and understandable report.

(A) A Hydrogeology Review report shall include, at a minimum, the following information:

- ~~_____ (1) A map showing all lots and parcels within at least one-quarter mile of the proposed development;~~
- ~~_____ (2) The location of all wells within at least one-quarter mile of the proposed development, and the quantity of water permitted to be used;~~
- ~~_____ (3) The estimated use of groundwater within at least one-quarter mile of the proposed development, including 525 gallons/day use for each lot and parcel and water use from permitted wells (as required in subsection (2) of this section);~~
- ~~_____ (4) The quantity of water the proposed land use will utilize. If the proposal is for residential use, water use shall be calculated as 525 gallons/day. If the proposal is for a land division for residential purposes, all proposed lots or parcels shall be included in the calculation;~~
- ~~_____ (1) The information required for a Water Use Inventory in section 181.090(A);~~
- ~~_____ (2) The location of all wells within at least one-quarter mile of the proposed development;~~
- ~~(35) Identification of aquifers in the area of the subject property;~~
- ~~(64) Compilation and review of available geologic and hydrogeologic studies of the area;~~
- ~~(75) Compilation and evaluation of well deepening and replacement well information;~~

- (86) Compilation and analysis of existing geologic information, including representative well logs, physical location of representative wells, and an evaluation of the local stratigraphy and geologic structure;
- (97) Compilation and analysis of existing water level and pump test information including evaluation of long-term stability of groundwater levels (heads); and
- (108) Interpretation of the information gathered for subsections (1) through (7) of this section, including preparation of geologic and hydrogeologic maps and cross sections necessary to support and/or illustrate the interpretation.

(B) A Hydrogeology Review shall demonstrate the following:

- (1) The available geologic and hydrogeologic information is sufficient to make a reasonably accurate estimate of the groundwater budget;
- (2) The geologic conditions that affect the recharge and discharge of ground water;
- (3) The locations and causes of well deepenings and/or replacements in the area of concern;
- (4) Long-term water level (head) trends in the area of concern if available; and
- (5) The groundwater budget for the area of concern indicates that additional recharge is available for the proposed new use. The groundwater budget will:
 - (a) assume that all lots and parcels in the area of concern are developed; and
 - (b) use the recharge data and assumptions contained in "Geologic and Hydrogeologic Study of the Residential Acreage-Zoned Areas of Marion County Underlain by the Columbia River Basalt and Older Rocks" (NGS, 1997) or explain why another source is used; and
 - (c) assume that one dwelling results in use of at least 525 gallons/day.

(C) Hydrogeology Review Results. A Hydrogeology Study pursuant to section 181.110 shall be required if the Hydrogeology Review establishes that any of the following circumstances exist. If none of the following circumstances exist, no further evidence of water availability is required. As used in this section, "proposed development" includes any water conservation practices or standards proposed in the application that will influence the quantity of water needed for the use.

- (1) More than 90 percent of the recharge in the area of concern will be used after the proposed development is completed;
- (2) The proposed use will adversely affect the long-term water supply of existing uses or potential new uses on existing vacant parcels in the area of concern;

- (3) The additional proposed use will deplete the ground water resource over the long or short term; and
- (4) Existing information is inadequate to determine whether any of the circumstances described in subsection (1) through (3) of this section exist.

181.110 HYDROGEOLOGY STUDIES. The purpose of a Hydrogeology Study is to provide professional conclusions and recommendations regarding long-term aquifer capacity in areas where there is already considerable evidence that the groundwater resource is inadequate to support additional development. A Hydrogeology Study will include development of new data to help determine the availability of groundwater in the immediate vicinity of a proposed development. Study findings, maps, and conclusions shall be presented in a clear and understandable report.

- (A) A Hydrogeology Study report shall include, at a minimum, the following information:
 - (1) The information required for a Hydrogeology Review in section 181.100(A);
 - (2) Identification of aquifers in the area, characterization of aquifer properties, and estimation of the amount of use from each aquifer;
 - (3) Estimation of a detailed groundwater budget for the proposed development and surrounding area;
 - (4) Factual support for interpretations and study conclusions, which may include, but is not limited to: water level monitoring, pump tests to define aquifer properties, and surveys of well owners in the area; and
 - (5) Identification and discussion of all assumptions and methods employed in the study together with a discussion of the uncertainties of the analysis and the probable size of errors inherent in the assumptions and methods employed.
- (B) The report shall include the following findings and recommendations in a form usable by the county in making a land-use decision:
 - (1) Identification of the level or density of development the aquifer(s) supplying the proposed development can sustain without exceeding 90 percent use of recharge;
 - (2) Identification of specific measures that can be employed to mitigate impact of the proposed development on existing users of groundwater and the groundwater resource.

181.120 Reserved WATER LEVEL MONITORING. The purpose of water level monitoring is to provide new data in areas where no or inadequate monitoring is currently being done to determine if current measures protect groundwater resources and enable the development of more accurate hydrogeology reviews and studies. Monitoring data, analysis, and conclusions shall be presented in a clear and understandable report in a format that is compatible with Oregon Water Resources data management systems to allow pooling of data.

- (A) Monitoring requirements for partitions in SGO zones:

(1) Static water level measurements shall be made in all existing wells prior to recording the plat.

(2) For undeveloped lots created by partitions in SGO zones, at least one static water level measurement shall be made prior to the issuance of a building permit in any new or existing wells intended as the water supply for the lot. This requirement is only for lots created by partitions recorded after January 1, 1998.

(3) For new wells, the measurement shall be made at least 72 hours after the well is completed. The static water level reported on the well log cannot be used to meet these requirements.

(4) All measurements shall be reported on a form provided by the county.

(5) A tax lot map showing the location and identification of each measured well shall accompany the form.

(6) Each measurement shall be associated with all corresponding well log identification numbers and the Oregon Water Resources well tag number, if available.

(7) Water levels shall be measured with an electric or steel tape or other suitable equipment on a list approved by the County.

(8) Measurements shall be reported in decimal feet to at least the nearest 0.5 feet.

(9) Measurements shall be made after the well has been idle for a minimum of 8 hours, if practicable, or after the well has been idle at least the same length of time it was last pumped. The length of time the well was idle prior to the measurement shall be recorded and care shall be taken to determine and report whether the water level was static or still recovering from recent pumping.

(10) All measurements shall be made by a registered geologist, licensed professional engineer, water well pump installer, certified water rights examiner, or by Marion County or Oregon Department of Water Resources staff.

(B) Monitoring requirements for subdivisions in SGO zones:

(1) An approved water-level monitoring plan is required as a condition of approval for subdivisions.

(2) The monitoring plan shall be submitted to the county for peer review and is subject to approval by the county.

(3) The monitoring plan shall be approved and implemented before building permits are issued.

(4) A minimum of one observation well per 15 lots is required in each subdivision and at least one observation well is required for each phase of a subdivision. Monitoring shall begin at the start of development of Phase I of an approved subdivision. A report that

includes an analysis of data collected to date shall be submitted to the County for peer review prior to approval of the next phase of development.

(5). Evidence of water level declines shall require preparation of a Hydrogeology Study prior to the release of the next phase for development if the county determines that the available data suggests that ground-water supplies may not be sufficient for additional development.

(6). Access easements that allow county and OWRD personnel to measure water levels shall be recorded with deeds for lots containing an observation well as a condition of approval of the subdivision.

181.130 QUALIFICATIONS FOR PERFORMANCE OF HYDROGEOLOGY REVIEWS AND STUDIES AND WELL MONITORING PLANS. In order for the county to accept a Hydrogeology Review, ~~or Hydrogeology Study, or well monitoring plan~~ pursuant to Sections 181.100, ~~and 181.110, and 181.120,~~ the report shall bear the stamp of a geologist, engineering geologist, or professional engineer that qualifies under ORS 672, registered with the state of Oregon.

181.140 CONDITIONS OF APPROVAL FOR LAND USES RELYING ON GROUNDWATER. ~~The county shall determine appropriate measures to help ensure that approved land uses will have an adequate supply of water and that the uses will not result in long-term aquifer overdraft or conflicts between water users. Any conditions placed on the approval of a development permit resulting from information gathered pursuant to this chapter shall be designed to mitigate possible aquifer or well deficiencies identified by the results of the tests or studies required by this chapter. Such conditions shall be reasonable. Conditions may limit development and may include, but are not limited to, the following requirements:~~

- (A) Water storage;
- (B) Metering;
- (C) Well monitoring and water level reporting;
- (D) Phasing of development;
- (E) Conservation measures, such as designating the type and/or extent of landscaping and irrigation systems;
- (F) Minimum well spacing;
- (G) Water conservation planning;
- (H) Planning for remedial action (in conjunction with monitoring);

- (I) Well sharing; and
- (J) Placement of requirements as deed covenants/restrictions.

181.150 REVIEW OF HYDROGEOLOGY STUDIES. All studies, ~~and reviews, and monitoring plans~~ required by this chapter shall be reviewed by a qualified professional, pursuant to Section 181.130, of the county's choice prior to acceptance of the land-use application. Such review shall include examination to ensure required elements have been completed, study procedures and assumptions are generally accepted, and all conclusions and recommendations are supported and reasonable.

181.160 ADMINISTRATION.

- (A) The Planning Director or designee shall have the following responsibilities regarding administration of this chapter:
- (1) Review applications for land-use actions to determine whether they are within the boundaries of the Sensitive Groundwater overlay zone;
 - (2) Insure all applications and accompanying documentation are complete and timely, and receive any required fees;
 - (3) Maintain a record for public inspection of all records pertaining to the provisions of this chapter.
- (B) All conclusions regarding adequacy of evidence, findings derived from the evidence, and decisions concerning conditions on or limitations to development permits for requested land uses based on the provisions of this chapter shall be made by the approving authority that would ordinarily act on the specific type of application, as required by the Marion County Rural Zoning Ordinance. If the request is for a development permit for a new dwelling on an existing lot, the initial conclusions, findings, and decision shall be made by the Planning Director or designee.
- (C) Appeals. Upon final action on the application required in section 181.040 by the approving authority, interested persons may appeal the decision. The following procedures apply:
- (1) If the review required by this chapter is performed in conjunction with another application (e.g. a subdivision or conditional use permit), the appeal procedures required by ordinance for the applicable type of application shall apply;
 - (2) If the review required by this chapter is not performed in conjunction with another application (e.g., a new dwelling on an existing lot):
 - (a) ~~And the final level of study is a Water Use Inventory, the applicant may appeal the decision; or~~
 - (b) ~~A~~and the final level of study is a Hydrogeology Review or Hydrogeology Study, the appeal procedures for Administrative Review in Section 110.680 apply.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

An Ordinance Amending Marion County)
Rural Zoning Ordinance)
No. 516, as amended, amending)
Provisions, adding new provisions and)
Repealing Chapters 132 and 133)
And Declaring an Emergency)

ORDINANCE NO. 1271

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS
FOLLOWS:

SECTION I. Purpose

This ordinance is enacted pursuant to the authority granted to general law counties in the State of Oregon by ORS Chapters 203, 197 and 215 to amend the Marion County Rural Zoning Ordinance, Ordinance 516, as amended, to conform with the provisions of state statutes and administrative rules.

SECTION II. Authorization

The Marion County Board of Commissioners initiated legislative amendments to the Marion County Rural Zoning Ordinance (MCRZO) by Resolution No. 07-28R, dated November 7, 2007. The proposed amendments included additions and amendments to MCRZO provisions and repeal of MCRZO Chapter 132 and 133. The Board held a public hearing on the proposed amendment on October 29, 2008, for which proper public notice and advertisement were given. All person present at the hearing were given the opportunity to speak or present written statements.

SECTION III. Evidence and Findings

The MCRZO amendments are based on consideration and analysis of the provisions of ORS Chapters 197 and 215, OAR 660-06 and 660-22. Due consideration was given to testimony in the hearing record. The Board finds that the MCRO amendments conform to the provisions of state statutes and administrative rules, the Statewide Land Use Planning Goals, and Marion County Comprehensive Plan

SECTION IV. Repeal of Chapters 132 and 133

MCRZO Chapter 132 and 133 are hereby repealed.

SECTION V. Amendments to the Marion County Rural zoning Ordinance

Marion County Rural Zoning Ordinance is amended as set forth in Exhibit A, attached here to and incorporated herein.

SECTION VI. Severability and Saving Clause

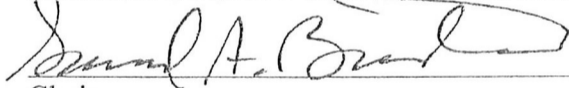
Should any section, subsection, paragraph, sentence, clause, or designation to a particular land use or area of land, or any other portion, segment or element of this ordinance or any amendments thereto and adopted hereunder, be declared invalid for any reason, that declaration shall not affect the validity and continued application of any other portion or element of this ordinance or amendment to Ordinance 516, as amended herein; and if this ordinance or any portion thereof should be held to be invalid on one ground, but valid on another it shall construed that the valid ground is the one upon which this ordinance or any portion thereof was enacted.

SECTION VII. Emergency Clause

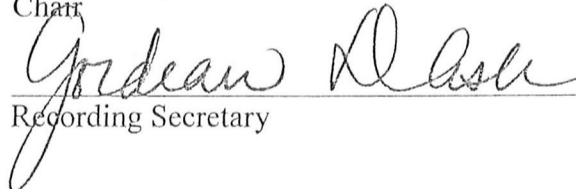
This Ordinance being necessary to protect the public health, safety and welfare; an emergency is declared to exist and this ordinance shall take effect immediately upon its adoption.

SIGNED and FINALIZED this 12th day of November 2008,
2008, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

EXHIBIT A

DRAFT – 10/20/08

~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 110 GENERAL PROVISIONS

Revised _____
Revised 07/28/04
Revised 08/08/03
Revised 12/12/02

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110.001 **SHORT TITLE.** This ordinance shall be known as the Marion County Rural Zoning Ordinance, and may be so cited and pleaded.

110.002 **AUTHORITY.** This ordinance is enacted pursuant to the authority granted to Marion County in ORS Chapters 92, 197, 203, and 215.

110.003 **PURPOSE.** It is the intent and purpose of this ordinance to:

- (a) Provide and coordinate regulations governing the development and use of lands in the portions of Marion County outside acknowledged urban growth boundaries that implement and conform to the County Comprehensive Plan;
- (b) Promote and protect the public health, safety, and general welfare;
- (c) Conserve farm and forest lands for the production of crops, livestock, and timber products; and
- (d) Provide for development and arrangement of efficient public services and facilities within the County.

110.005 - 110.6158 **DEFINITIONS**

110.005 **DEFINITIONS, GENERALLY.**

- (a) The meanings given terms in this chapter may, in certain contexts in which they are used, be clearly inapplicable. In such cases the context in which a term is used will indicate its intended meaning, and that intent shall control.
- (b) Where a term used in this ordinance is already defined in another County ordinance (e.g., the Marion County Urban Zoning Ordinance and the Uniform Building Code) the term is not redefined herein unless it has a different meaning in this ordinance, or is so frequently used herein that the same definition is reproduced in this chapter for the reader's convenience. If a term elsewhere defined in County ordinance is not defined herein, it is intended that such terms have the same meaning in this ordinance as the definitions elsewhere adopted unless the context otherwise clearly requires.
- (c) Terms not defined in this ordinance, shall have their ordinary accepted meanings within the context in which they are used. Webster's third New International Dictionary of the English Language, Unabridged, copyright 1961, shall be considered a standard reference to ordinary accepted meanings.
- (d) For the purpose of this ordinance, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and not directory, the word "building" includes structure.

- (e) Terms defined in other chapters of this ordinance apply only within the chapter where the term is defined.

110.010 ACCESSORY BUILDING. A detached, subordinate building or portion of a main building, the use of which is incidental to that of the main building or to the use of the land.

110.015 ACCESSORY. A building, structure, vehicle, or use which is incidental and subordinate to and dependent upon the primary use on the lot.

110.025 AIR CONTAMINANT. Any dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid, or particulate matter of any combination thereof.

110.030 AIR CONTAMINATION. Any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

110.040 AIRPORT. A landing area, runway or other facility designed, used, or intended to be used for the landing and taking off of aircraft, aircraft storage, hangars, and other necessary buildings and open spaces.

110.045 ALLEY. A public space or thoroughfare not more than 20 feet, but not less than 10 feet in width which has been dedicated or deeded to the public for public use providing a secondary means of access.

110.050 ALTERATION, STRUCTURAL. Any change or repair which would affect or materially change a supporting member of a building, such as a bearing wall, column, beam, or girder.

110.052 ANTENNA. A device the surface of which is used to capture an incoming and/or to transmit an outgoing electromagnetic radiation signal from wireless communication facilities. Antennae include the following types:

- (a) Omni-Direction ("whip") Antenna - receives and transmits signals in a 360 degree pattern.
- (b) Directional or Parabolic ("panel" or "disk") Antenna - receives and transmits signals in a directional pattern typically encompassing an arc of 120 degrees.
- (c) Other - All other transmitting or receiving equipment not specifically described herein shall be regulated in conformity with the type of antenna described herein which most closely resembles such equipment. For the purpose of this Chapter, the term "antenna" shall not include Accessory Antenna which are antennae less than 12 inches in its largest dimension and are not directly used to provide personal wireless communications services. An example would be a global positioning satellite (GPS) antenna.

110.055 APARTMENT. An apartment shall mean a dwelling unit as defined in this ordinance.

110.060 APARTMENT HOTEL. A building or portion thereof designed for or containing both individual guest rooms or suites or rooms and dwelling units.

- 110.065 APARTMENT HOUSE.** A building or portion thereof designed, built, rented, leased, let or hired out to be occupied, or which is occupied or is the home or residence of 3 or more families living independently of each other and doing their own cooking in said building, and shall include flats and apartments.
- 110.068 APPEAL PERIOD.** Means the number of days specified for the particular type of land use action for filing an appeal. The appeal period begins the day the notice of decision is mailed and ends at the close of business on the last day of the period. Business days, holidays and weekends are included. If the appeal period would otherwise end on a Saturday, Sunday or a holiday when County offices are closed, the appeal period ends at the close of business on the first following business day.
- ~~**110.070 AUTO COURT.** See Motel.~~
- 110.075 AUTOMOBILE SERVICE STATION.** A premises used for retail sales directly to the consumer for the supplying of gasoline, oil, minor accessories, and services for automobiles.
- 110.080 AUTOMOBILE OR TRAILER SALES LOT.** A lot used for display, sale, or rental of new or used automobiles or trailers, where no repair work is done except minor, incidental repairs of automobiles or trailers to be displayed, sold or rented on the premises.
- ~~**110.085 AUTOMOBILE TRAILER CAMP.** See Trailer Park, Mobile Home Park.~~
- 110.090 AUTOMOBILE WRECKING YARD: JUNK YARD.** A premises used for the storage or sale of used automobile parts or for the storage, crushing, recycling, dismantling, or abandonment of junk, obsolete automobiles, trailers, trucks, machinery, or parts thereof.
- 110.095 AWNING.** A movable shelter supported entirely from the exterior wall of a building and of a type which can be retracted, folded or collapsed against the face of a supporting building.
- 110.100 AWNING, MOBILE HOME, TRAILER.** A stationary structure, permanent or demountable, used in conjunction with a mobile home or trailer, other than a window awning, for the purpose of providing shelter from the sun and rain, and having a roof with supports and not more than 1 wall or storage cabinet substituting for a wall.
- 110.105 BASEMENT.** That portion of a building between floor and ceiling which is partly below and partly above grade, but so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from grade to ceiling. If such portion of a building is not a basement, then it shall be considered a story.
- 110.108 BED AND BREAKFAST INN.** A single-family dwelling where lodging and a morning meal for guests only are offered for compensation, having no more than five sleeping rooms for this purpose. An establishment where more than one meal per day is offered shall not be deemed a bed and breakfast inn. An establishment with more than five sleeping rooms shall be deemed a hotel. Unless specifically listed as a permitted or conditional use, a bed and breakfast inn is considered a home occupation. Weddings, receptions, group meetings, conferences and similar activities are not allowed as secondary uses, accessory uses or temporary uses in association with a Bed and Breakfast.

110.110 BLOCK. The properties abutting on one side of a street between either:

- (a) 2 cross streets;
- (b) Or between the city limits and the nearest cross streets;
- (c) Or when there is only 1 cross street:
 - (1) Between a cross street and the dead-end of a street;
 - (2) Between a cross street and the line projected from the centerline of an intersecting street, such as a "T" intersection;
 - (3) Between a cross street under consideration when there is no other cross street or intersecting street within 600 feet;
- (d) Or when there are no cross streets, then the block shall be between the points 600 feet from each side of the property under consideration and along the street.

110.012 BOARD. Means the Marion County Board of Commissioners.

110.115 BOARDING HOUSE. A building or portion thereof used for the purpose of providing meals or meals and lodging for pay or compensation of any kind to persons other than members of the family occupying such dwelling.

110.120 BUILDING. A structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

110.123 BUILDING OFFICIAL. The Building Official for Marion County duly appointed by the Board pursuant to the Uniform Building Code.

110.125 CABANA. A stationary, light-weight structure which may be prefabricated or demountable, with 2 or more walls, used adjacent to and in conjunction with a mobile home or trailer to provide additional living space and designed to be moved with the trailer or mobile home.

110.130 CAMPGROUNDS. A premises under 1 ownership where persons camp or live in any manner other than in a permanent building constructed entirely of wood or more lasting materials, excepting mobile home parks, and trailer parks.

110.135 CARPORT. A permanent structure that is not enclosed on two or more sides, and which is used or intended for the parking of motor vehicles.

110.140 CELLAR. See Basement.

110.145 CEMETERY. Land used or intended to be used for the burial of the dead, including pets, and dedicated for cemetery purposes, including a columbarium, crematory, mausoleum, or mortuary, when operated in conjunction with and within the boundary of such cemetery.

110.147 CHILD CARE FACILITY. Any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250(5).

This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

110.148 CHILD CARE HOME.

(a) A child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 12 children at any one time; or

(b) A group childcare home as used in OARRS Chapter 657A.

110.149 CHILD FOSTER HOME. Refers to a home certified by State Department of Human Services which is maintained and lived in by the person named on the foster home certification.

110.150 CHURCH. See Religious Organization.

110.151 CLUB. An organization, group, or association supported by the members thereof, the purpose of which is to render a service primarily for members and their guests, but shall not include any organization, group, or association the chief activity of which is to render a service customarily carried on as a business.

110.152 CO-LOCATION. The use of a single support structure and/or site by more than one wireless communications provider.

110.154 COMPREHENSIVE PLAN. The officially adopted generalized, coordinated land use map and policy statement of the Board that interrelates all functional and natural systems and activities relating to the use of land.

110.156 CONDITIONAL USE. Any use that is permitted in a particular zone only after review and approval as a conditional use and includes, where not excepted, conditional uses established under previous zoning ordinances.

110.158 CONFERENCE GROUNDS. A retreat or meeting place used for organized discussion and consultation, including overnight accommodations for conferees.

110.160 CONVALESCENT HOME. See Nursing Home.

110.162 CORNER LOT. A lot having two or more intersecting lot lines, which are also street or roadway right-of-way lines, in which the interior angle formed by the extensions of the street or roadway lot lines in the direction which they take at their intersection with the side or rear lot lines forms an angle of 135 degrees or less. In the event the street or roadway lot line is a curve at the point of intersection with a side or rear lot line, the tangent to the curve at that point shall be considered the direction of the lot line.

110.163 CONTIGUOUS. Means touching along a boundary at more than a point.

110.165 COURT. A space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on 3 or more sides by walls of a building.

- 110.168 CRITERIA.** Mandatory requirements used to evaluate land use actions that shall not be varied or adjusted.
- 110.169 DAY NURSERY.** See Child Care Home.
- 110.170 DECISION.** The written recommendation, order or ordinance by which the Zoning Administrator, Hearings Officer, Planning Commission or Board makes its disposition of a land use action.
- 110.173 DEVELOPMENT STANDARDS.** Any standard or condition imposed in the applicable zone and in Chapters 110 to 191 and any conditions imposed as a condition of application approval.
- 110.175 DIRECTOR.** The Planning Director or the Planning Director's designee.
- 110.180 DORMITORY.** A building other than a hotel, boarding or rooming house, used primarily for sleeping purposes.
- 110.185 DWELLING.** Any building or any portion thereof which is not an "apartment house" or a "hotel" as defined in this code, which contains one or more "apartment" or "guest rooms" used, intended or designed to be built, used, rented, leased, let or hired out to be occupied or which is occupied for living purposes but excluding hotels, motels, boarding or rooming houses, mobile homes, travel trailers, and campers.
- 110.190 DWELLING UNIT.** An independent area in a building including permanent provision for living, sleeping, eating, cooking, and sanitation occupied by and serving: 1) a single family; or 2) a single family and rooming or boarding of up to two domestic employees or other persons; or 3) a single family and residents of a residential home as defined in subsection 110.477.
- 110.195 DWELLING, SINGLE FAMILY.** A detached building on a lot, or portion of a building on a separate lot, containing only one dwelling unit, exclusive of a mobile home.
- 110.200 DWELLING, TWO FAMILY (DUPLEX).** A building designed exclusively for occupancy by 2 families living independently of each other in independent dwelling units.
- 110.205 DWELLING, MULTIPLE-FAMILY.** A building or portion thereof designed for occupancy by 3 or more families living independently of each other in independent dwelling units.
- 110.210 EDUCATIONAL INSTITUTION.** A college, community college, or university supported by public funds or by contributions or endowments and giving general instruction, excluding elementary and high schools and trade or commercial schools. those defined in 110.505 and 110.510.
- 110.215 EQUIPMENT ENCLOSURE.** A small structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communications signals. Associated equipment may include air conditioning and emergency generators.
- 110.220 FAMILY.** One or two adults and children related by blood or legal guardianship to one or both of the adults living together in a dwelling unit; or, one to five persons any of whom are

not related by blood, marriage, or legal guardianships, living together in a dwelling unit; one or more persons any of which are not related by blood, marriage, legal guardianship and who qualify as handicapped under the Federal Fair Housing Act (42 USC SS3602 H) or residents of a residential home as defined in subsection 110.477.

110.223 FARM USE. "Farm Use" means 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 species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife 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 as defined in ORS 215.203 (3) of this section or land described in ORS 321.267 ~~(3)~~ ~~(4)(e)~~ or 321.~~824(3)~~ 415 ~~(5)~~.

Preparation of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products. Products or by-products raised on such land means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.

110.225 FENCE. An unroofed barrier or an unroofed enclosing structure such as masonry, ornamental iron, woven wire, wood pickets or solid wood or any other material used as an unroofed barrier to light, sight, air or passage.

110.228 FOREST USE. In those zones allowing "forest uses" the use of land for any of the following: the production of trees; the processing of forest products; open space; watersheds; wildlife and fisheries habitat; vegetative soil stabilization; air and water quality maintenance; outdoor recreational activities and related support services and wilderness; livestock grazing.

110.230 FRATERNITY, SORORITY, STUDENT HOME. A residential building in which living accommodations are furnished to students.

110.232 FRONTAGE. That portion of a lot which abuts a street, whether or not access to the property is accorded thereby, and whether or not a building or structure faces the street frontage. In context, coupled with the term "alley" or "roadway" "frontage" has the same meaning with respect to an abutting alley or roadway.

110.235 GARAGE. A building or portion thereof, other than a carport, designed and constructed for or used for the storage, parking or keeping of a motor vehicle.

110.240 GARAGE, PRIVATE. A detached accessory building or portion of a main building for the parking or temporary storage of automobiles in which no business, occupation or service is provided for or is in any way conducted.

110.245 GARAGE, PUBLIC. A building other than a private garage used for the care, repair or equipping of motor vehicles or where such vehicles are parked or stored for compensation, hire or sale.

110.247 GOVERNING BODY. Marion County Board of Commissioners.

110.250 GRADE (GROUND LEVEL). The lowest point of elevation of the finished surface of the ground between the exterior wall of a building and a point 5 feet distant from said wall or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than 5 feet distant from said wall. In case walls are parallel to and within 5 feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way.

110.252 GRADE, NATURAL. Grade with the land in an undisturbed state.

110.255 GROUP CARE HOME. A dwelling where residential care alone or in conjunction with treatment or training or a combination thereof is provided by a family or non-resident staff for resident individuals who need not be related. The provider family or non-resident staff need not be related to each other or to any resident of the dwelling. It includes a facility meeting this definition licensed by or under the authority of the Department of Human Resources under ORS 443.400 to 443.825. It includes homes for the aged and retirement homes. It also means a child care facility with no limits on where employees reside.

110.257 GUEST. Any person occupying a room or lodging room for living or sleeping purposes on a temporary and gratuitous basis.

110.258 GUEST FACILITY. An accessory building maintained for the purpose of providing temporary and gratuitous living accommodations, but dependent upon the main dwelling for cooking or bathroom facilities or both. ~~Occupancy of a guest facility is limited to 120 days in a calendar year and subject to Section 126.020 (9).~~

110.259 HEARINGS OFFICER. The person(s) so designated by the Board.

110.260 HEIGHT OF BUILDING. The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building. The reference datum shall be whichever of the following yields a greater height of building:

- (a) The elevation of the highest adjoining sidewalk or ground surface within a 5 foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above grade.
- (b) An elevation 10 feet higher than the grade when the sidewalk or ground surface described in item (a) above is more than 10 feet above grade.

110.262 HELIPORT. A heliport is an area used or to be used for landing or take-off of helicopters or other VTOL aircraft capable of hovering and may include any or all of the area or buildings which are appropriate to accomplish these functions.

110.265 HOMES FOR THE AGED AND INFIRM. Means Group Care Home.

110.270 HOME OCCUPATION. Any business or professional activity engaged in for the production of income by a resident of a dwelling or dwelling unit as a subordinate use of the building and its premises, and in conformance with the provisions of this ordinance. A home occupation may include a Limited Home Occupation, Conditional Home Occupation or a Home Occupation in a resource zone. Such term does not include the lease or rental of a dwelling unit or the rooming or boarding of persons on the same premises.

110.275 HOSPITAL. An institution devoted primarily to the rendering of healing, curing and nursing care, which maintains and operates facilities for the diagnosis, treatment or care of 2 more non-related individuals suffering from illness, injury or deformity, or where obstetrical or other healing or nursing care is rendered over a period exceeding 24 hours.

110.280 HOSPITAL, VETERINARY. A building or premises for the medical or surgical treatment of domestic animals or pets.

110.285 HOTEL. Any building containing guest rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by guests.

110.290 JUNK YARD. See Automobile Wrecking Yard.

110.295 KINDERGARTEN. See Child Care Facility.

110.300 KENNEL. Any lot or premises on which 4 or more dogs and/or cats or pets over the age of 4 months are kept for sale, lease, boarding, shows, training, or racing.

110.302 LAND USE ACTION. An amendment to the applicable county comprehensive plan or this ordinance, or a decision on a zone change, variance, adjustment, administrative review, or conditional use permit, including appeals from any of the foregoing.

110.303. LANDSCAPED. Primarily devoted to the planting and preservation of trees, shrubs, lawn and other organic ground cover, together with other natural or artificial supplements such as watercourses, ponds, fountains, decorative lighting, benches, arbors, gazebos, bridges, rock or stone arrangements, pathways, sculpture, trellises, and screens.

110.304. LEGISLATIVE ACTION. A land use action involving amendments to the applicable comprehensive plan, the text of this Ordinance, or an amendment to the Zoning Map involving five six or more lots in separate ownership.

110.305 LIQUID WASTE. Any waste oils, septic tank pumpings, industrial wastes and other similar materials.

110.310 LOADING SPACE. An off-street space or bay on the same lot or parcel with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise, passengers or materials, and which abuts upon a street, alley, or other appropriate means of access.

110.312 LODGES. A facility providing temporary lodging in conjunction with outdoor recreational activities.

110.315 LOT. A unit of land created by a subdivision or partitioning as defined in ORS 92.010 in compliance with all applicable zoning and subdivision partitioning ordinances; or created by deed or land sales contract if there were no applicable zoning, subdivision or partitioning ordinances, exclusive of units of land created solely to establish a separate tax account.

110.320 LOT AREA. The total area measured on a horizontal plane within the lines of a lot.

110.325 LOT DEPTH. The horizontal distance between the front lot line and the rear lot line measured at a point half-way between the side lot lines.

110.330 LOT, INTERIOR. A lot other than a corner lot.

110.335 LOT LINE. The lines bounding a lot as defined herein.

110.340 LOT LINE, FRONT.

- (a) In the case of an interior lot having only one street or roadway easement frontage, the lot line separating the lot from the street right-of-way or the nearest right-of-way line of a roadway easement. In the case of an interior lot, a line separating the lot from the street, and in the case of a corner lot, a line separating the lot from the street on which the improvement or contemplated improvement will face.
- (b) In the case of any lot not covered by (a), the lot line which the architecturally designed front of the building faces or the lot line designated by the zoning administrator on an approved site plan.

110.345 LOT LINE, REAR.

- (a) In the case of any lot having a rear lot line designated on a subdivision approval the lot line so designated.
- (b) In the case of any other lot, the lot line opposite, and most distant from the front lot line. In the case of a triangular shaped lot, the rear lot line for setback purposes, shall be a line connecting points 20 feet from the intersecting side lot lines.

110.350 LOT LINE, SIDE. Any lot line which is not a front or rear lot line.

110.355 LOT, CORNER. A lot or portion thereof situated at the intersection of 2 or more streets.

110.360 LOT OF RECORD. A lot which is part of a subdivision or a lot or parcel described by metes and bounds, which has been recorded in the office of the County Recorder and which complied with all applicable laws at the time of its recording.

110.365 LOT WIDTH. The horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

110.370 MARQUEE. A permanent roofed structure attached to and supported by the building and projecting over public property.

110.375 MATERNITY HOME. See Hospital.

110.380 MOBILE HOME. A structure constructed for movement on public highways that has sleeping, cooking, and plumbing facilities, is intended for use as a dwelling unit and is at least 8 feet wide and at least 35 feet long. This definition includes manufactured dwelling, manufactured home, mobile home, and residential trailer as those terms are defined in ORS 446.003 (26a) provided they meet the width and length requirements. The definition does not include recreational vehicles as defined in Section 110.466, or structures or vehicles that have a State of Oregon or U.S Government label designating them as a recreational vehicles. It also does not include buildings or structures subject to the structural specialty code adopted pursuant to ORS 455.100 to 455.450.

110.385 MOBILE HOME PARK. Any lot where four or more occupied mobile homes not in conjunction with farm use, are located, exclusive of mobile homes allowed under this ordinance as temporary dwellings, and mobile homes without a functioning bathroom or kitchen.

110.390 MOTEL (~~TOURIST COURT~~). A series of attached, semi-attached, or detached apartments, each composed of bedroom and bathroom, with each apartment having entrance leading directly from the outside of the building.

110.392 NOISE IMPACT AREA. The area within 500 feet of the boundaries of Highways 99 and 22, Interstate 5, the Woodburn Dragstrip, and within the NEF 30 or Ldn 65 contour line based on the projected use at the end of the airport master planning period around public airports, and any area identified as a Noise Impact Area in applicable county comprehensive plans.

110.395 NONCONFORMING LOT. A lot which does not meet the area or width requirements of the zone in which it is located.

110.400 NONCONFORMING STRUCTURE. A building or structure or portion thereof lawfully existing at the time this ordinance became effective, which was designed, erected or structurally altered, for a use that does not conform to the use regulations of the zone in which it is located, or which does not conform to the setbacks for maximum lot coverage or other provisions herein established for the zone.

110.405 NONCONFORMING USE. A use to which a building, structure, vehicle, or land was lawfully put at the time this ordinance became effective and which does not conform with the use regulations of the district in which it is located.

110.408 NOTIFICATION AREA. The notification area shall be as required in Section 111.030 (c) (unless a greater distance is required by Oregon Administrative Rules or Oregon Revised Statutes) from and parallel to the boundaries of the subject property.

110.409 NOTIFICATION LIST. A written list of the names and addresses of all property owners within the notification area. The names and addresses shall be obtained from the most recent property tax assessment roll at the time an application is received.

110.410 NURSERY. See Child Care Home.

110.415 NURSING HOME. Any home, place or institution which operates and maintains facilities providing convalescent or nursing care, or both, for a period exceeding 24 hours for 2 or more ill or infirm patients not related to the nursing home administrator, or owner, by blood or marriage. Convalescent care may include, but need not be limited to, the procedures commonly employed in nursing and caring for the sick. A nursing home includes rest homes, sanitariums, convalescent homes, but does not include group care homes, hotel, hospital, or a chiropractic facility.

110.425 OWNER. The owner of record of real property as shown on the latest tax rolls or deed records of the county, or a person who is purchasing a parcel of property under written contract, including any person having legal or equitable interest in a lot or parcel other than a leasehold or an interest less than a leasehold.

110.427 PARCEL. A unit of land created by a partitioning as defined in ORS 92.010 in compliance with all applicable zoning and partitioning ordinances; or created by deed or land sales contract if there were no applicable zoning or partitioning ordinances, excluding units of land created solely to establish a separate tax account.

110.430 PARKING AREA, PRIVATE. An open area, building or structure, other than a street or alley, used for the parking of the automobiles of residents and guests of a building.

110.435 PARKING AREA, PUBLIC. An open area, building or structure other than a private parking area, street, or alley used for the parking of automobiles and other motor vehicles, but not to include trucks, and available for use by the public or by persons patronizing a particular building or establishment.

110.440 PARKING SPACE, AUTOMOBILE. Space within a private or public parking area, building or structure, for the parking of 1 automobile.

110.452 PARTITION LAND. To divide land into two or three parcels of land within a calendar year, but does not include:

- (a) A 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;
- (b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing land reduced in size by the adjustment complies with an applicable zoning ordinance;
- (c) The division of land resulting from the recording of a subdivision or condominium plat;
- (d) 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 applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property for state highway, county road, city street or other 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; or
- (e) A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.

110.453 PERMIT. Any determination, conditional use, variance or adjustment granting permission to do an act or to engage in activity where such permission is required by this zoning ordinance.

110.454 PERMITTED USE. Those uses permitted in a zone that are allowed without obtaining a conditional use permit.

110.455 PERSON. A natural person, his heirs, executors, administrators, or assigns and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid, and any political subdivision, agency, board or bureau of the State.

110.457 PET. A domestic animal customarily kept, and cared for, by the occupants of a dwelling for personal pleasure, and which are not raised for food, fur, or monetary gain. Typically, dogs, cats, birds and other small mammals and reptiles, but not including fowl, herd animals, goats or horses.

110.460 PLANNING COMMISSION. The Marion County Planning Commission.

110.461 PRIMARY BUILDING, STRUCTURE, OR USE. A permanent or temporary building, structure, vehicle, or use that is not an accessory or secondary building, structure or use.

110.462 PUBLIC UTILITY FACILITY. All on-site and off-site improvements and related accessories to be accepted for ownership, maintenance and operation by a public agency, including but not limited to, sanitary sewers and pump stations, water lines including related reservoirs, pump stations, pressure reading stations and hydrants, storm drain systems, bikepaths and pedestrian paths, and streets including alleys, street lights, street name signs, traffic control systems and devices.

110.464 QUASI-JUDICIAL. Any land use action not meeting the definition of a legislative action.

110.465 RAMADA. A stationary structure having a roof extending over a mobile home or trailer, which may also extend over a patio or parking space for motor vehicles, and is used principally for protection from sun and rain.

110.466 RECREATIONAL VEHICLE. A vehicle with or without motive power, that is designed for human occupancy, to be used temporarily for recreational or emergency purposes, that has a gross floor space of less than 400 square feet. Recreational vehicle includes camping trailers, camping vehicles, motor homes, park trailers, bus conversions, van conversions, tent trailers, travel trailers, truck campers and any vehicle converted for use or partial use as a recreational vehicle.

110.467 RECREATIONAL VEHICLE PARK. A lot upon which 2 or more recreational vehicle spaces are located, established, or maintained. Where 2 or more recreational vehicle spaces are provided within a campground, the portion of the campground with the recreational vehicle spaces shall be considered a recreational vehicle park.

110.468 RECREATIONAL VEHICLE SPACE. The portion of a lot where a recreational vehicle is parked and occupied or intended to be parked and occupied. A camping site within a campground that is equipped with electrical, water, or sewer hookups designed for use by recreational vehicles shall be considered a recreational vehicle space.

110.469 RECYCLING DEPOT. A lot or portion of a lot used for the collection, sorting, and temporary storage of non-putrescible waste and discarded materials which are reprocessed elsewhere into usable raw materials or taken elsewhere to be re-used or recycled. The term does not include drop stations.

- 110.470 REFUSE.** Any putrescible and non-putrescible solid wastes including garbage, rubbish, ashes, dead animals, abandoned automobiles, junk, solid market wastes, street cleaning, and industrial wastes (including waste disposal in industrial salvage).
- 110.472 RELIGIOUS ORGANIZATION (CHURCH).** Establishments operated by religious organizations for worship and religious training or study of its members and the administration of such establishments. If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under the local zoning ordinances, the county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs, but not including private or parochial school education for pre-kindergarten through grade 12 or higher education.
- 110.475 REPAIR.** The reconstruction or renewal of any part of an existing building for the purpose of its maintenance. The word "repair" or "repairs" shall not include structural changes.
- 110.476 RESIDENTIAL FACILITY.** means a A dwelling where residential care alone or in conjunction with treatment or training or a combination thereof is provided by a family or non-resident staff for resident individuals who need not be related. The provider family or non-resident staff need not be related to each other or to any resident of the dwelling. It includes a facility meeting this definition licensed by or under the authority of the Department of Human Resources under ORS 443.400 to 443.825. It also means a child care facility with no limits on where employees reside.
- 110.477 RESIDENTIAL HOME.** A dwelling unit where the resident family provides residential care alone or in conjunction with treatment or training or a combination thereof for the resident individuals who need not be related. Any home employees must reside in the dwelling unit. The provider family need not be related to those receiving residential care. It includes a home meeting this definition licensed by or under the authority of the Department of Human Resources under 443.400 to 443.825. It also means a child care facility in a dwelling unit where any facility employees reside in the dwelling unit.
- 110.480 REST HOME.** See Nursing Home.
- 110.485 RESTAURANT, CAFE.** An establishment where prepared food is served to the public for consumption within the building, or to "take out" to some other location.
- 110.490 RESTAURANT, DRIVE-IN.** An establishment where prepared food is served to the public for consumption on the premises, or to "take out" to some other location.
- 110.495 ROADWAY.** means a right-of-way across private property granted by the property owner to owners of one or more lots and allowing vehicles access from a street or roadway to those lots.
- 110.500 ROOMING HOUSE.** A residential building or portion thereof providing sleeping rooms where lodging for 3 or more persons is provided for compensation.
- 110.505 SCHOOL, TRADE OR COMMERCIAL.** A building where instruction, training or lessons are given to pupils for a fee in money or otherwise which fee is the principal reason for the existence of the school.

110.510 SCHOOL, ELEMENTARY, MIDDLE, JUNIOR HIGH OR HIGH. An institution, public or parochial, offering instruction in the several branches of learning and study, in accordance with the rules, and regulations of the State Department of Education.

110.515 SCRAP AND WASTE MATERIALS ESTABLISHMENT. Any establishment or place of business that is maintained, operated or used for storing, keeping, buying or selling old or scrap copper, brass, rope, rags, batteries, paper, rubber, or debris, junked, dismantled, wrecked, scrapped, or ruined motor vehicles or motor vehicle parts (except wrecking yards), iron, steel, or other old scrap metal or non-metal materials. Scrap and waste materials establishment does not include drop stations, solid waste transfer stations, or recycling depots.

110.522 SECONDARY USE. A use located on a lot with one or more primary uses that occupies less than 40% of the lot and it is, or can be, maintained independent of the primary use (see Section 126.020 for regulations).

110.523 SEMI-PUBLIC. Any use that is partly but not completely public and is open to at least some persons outside the regular constituency of an entity or institution having some features of a public institution, such a non-profit organization, as a public service.

110.524 SOLID WASTE TRANSFER STATION. A fixed or mobile facility, used as an adjunct to collection vehicle(s), resource recovery facility, or disposal site between the collection of the waste/solid waste and disposal site, including but not limited to, another vehicle, a concrete slab, pit, building, hopper, railroad gondola or barge. The term does not include a self-propelled compactor type solid waste collection vehicle into which scooters, pick-ups, small packers or other satellite collection vehicles dump collected solid waste for transport to a transfer, disposal, landfill or resource recovery site or facility.

110.525 STABLE, PRIVATE. An accessory building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire, or sale.

110.530 STABLE, PUBLIC. A building in which horses are kept for remuneration, hire, or sale, including saddle and riding clubs.

110.532 STANDARD INDUSTRIAL CLASSIFICATION MANUAL (SIC). The document so entitled, referenced by Section 110.730, published in 1987, and used in this Ordinance to identify land use classifications

110.533 STANDARDS. See Development Standards.

110.540 STORY. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar, or unused underfloor space is more than 6 feet above grade as defined herein for more than 50% of the total perimeter or is more than 12 feet above grade as defined herein at any point, such basement, cellar or unused under floor space shall be considered as a story.

110.545 STORY, HALF. A story under a gable, hip or gambrel roof, the wall plates of which, on at least 2 opposite exterior walls, are not more than 2 feet above the floor of such story.

110.550 STREET. A way of travel more than 20 feet wide which has been dedicated or deeded to the public for public use.

110.555 STRUCTURE. That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, regardless of whether it is wholly or partly above or below grade including mobile homes.

110.556 SUBDIVIDE LAND. To divide land into four or more lots within a calendar year.

110.557 SUBDIVISION. Either an act of subdividing land or an area or a tract of land subdivided.

110.558 SUPPORT STRUCTURE. A structure to which antennae and other necessary associated hardware are mounted. Support structures include, but are not limited to the following:

- (a) Lattice tower - a support structure which consists of a network of crossed metal braces, forming a tower which is usually triangular or square in cross-section.
- (b) Monopole - a support structure which consists of a single pole sunk into the ground and/or attached to a foundation.
- (c) Guyed tower - a support structure which consists of metal crossed strips or bars and is steadied by wire guys in a radial pattern around the tower.
- (d) Existing structure - an existing or approved nonresidential structure or building, water tower or tank, utility pole, wireless communication support structure, etc.

110.560 TEMPORARY USE means a primary, secondary, or accessory use that occurs on a lot for less than 6 months in any calendar year, or a lesser period as prescribed in Section 126.30 or elsewhere in this Ordinance.

110.565 TRAILER (TRAVEL OR VACATION). A vehicle or structure equipped with wheels for highway use that is intended for human occupancy, which is not being used for residential purposes and is being used for vacation and recreational purposes.

110.567 TRANSMISSION FACILITY. High voltage (57 KV or more) power lines and related support structures used to convey electricity from a power generator facility to electric substations along a line or corridor.

110.568 TRANSMISSION TOWERS. A single structure and related unoccupied buildings transmitting or relaying electronic signals to the surrounding area or along a communication corridor including radio, television and telephone transmitters and microwave relay stations.

~~**110.575 TOURIST COURT.** See Motel.~~

110.580 TRUCK. A motor vehicle designed or used for carrying, conveying, or moving over highways of this State any property, article, or thing and having a combined weight of vehicle and maximum load to be carried thereon of more than 6,000 lbs.

110.581 TURNAROUND AREA. A paved area of a sufficient size and configuration that a motor vehicle having a turning radius of 30 feet or less may maneuver around to head in the opposite direction without having to move in reverse more than once.

110.582 UNIFORM BUILDING CODE (UBC). The code of building design and construction standards adopted by Marion County.

110.583 URBAN GROWTH BOUNDARY (UGB). The 20 years growth limit identified in a City Comprehensive Plan and the Marion County Comprehensive Plan acknowledged under ORS Chapter 197.

110.584 UTILITY FACILITY. Any water, gas, sanitary sewer, storm sewer, electricity, telephone and wire communication service, and CATV (cable television) service lines, mains, pumping stations, reservoirs, poles, underground transmission facilities, substations, and related physical facilities which do not include buildings regularly occupied by employees, parking areas, or vehicle, equipment and material storage areas, wireless communications facility or wireless communications facility attached.

Under the provisions of the EFU, SA, and FT zones, "wireless communications facility" and "wireless communications facility attached" shall be included in the definition of utility facility. Under the provisions of the TC zone these facilities shall be considered microwave and radio communication facilities and transmission towers.

110.585 USE (noun). The purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied.

110.586 VEHICLE. For the purposes of this Ordinance vehicle shall have the same meaning as the definition in the rules and regulations of the State Department of Motor Vehicles.

110.590 VISION CLEARANCE. A triangular area at the street or highway corner of a corner lot, or the corner at an alley-street intersection of a lot, the space being defined by a diagonal line across the corner between the points on the street right-of-way line or street-alley right-of-way line measured from the corner.

110.592 WIRELESS COMMUNICATION FACILITIES (WCF). An un-staffed facility for the transmission and reception of electromagnetic signals used for commercial communications. WCFs are composed of two or more of the following components: (1) Antenna; (2) Support Structure; (3) Equipment Enclosures; and (4) Security Barrier.

110.594 WIRELESS COMMUNICATION FACILITIES ATTACHED (WCFA). A wireless communication facility that is attached to an existing or approved structure, e.g., an existing building wall or roof, mechanical equipment, tower or pole, water tank, utility pole, or light pole, that does not include an additional wireless communications support structure.

110.595 YARD. A space other than a court on the same lot with a building open from the ground upward except as otherwise provided herein.

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

110.603 YARD, INTERIOR. A front, side or rear yard that is not adjacent to a street or roadway.

110.605 YARD, LANDSCAPED. An open area or areas devoted primarily to the planting and maintaining of trees, grass, shrubs, and plants together with sufficient permanent irrigation installation to

properly maintain all vegetation. As complimentary features, such as fountains, pools, screens, decorative lighting, sculpture and outdoor furnishings may be placed within said area.

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

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

110.618 YURT. A round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliances.

110.620 ZONES: OFFICIAL MAP. The County (Marion) is hereby dividing into use zones, as shown on the official zoning map which, together with all explanatory matter thereon, is hereby adopted and declared to be a part of this ordinance. The zone names and designations are as follows:

<u>FULL NAME</u>	<u>DESIGNATION</u>
Acreage Residential Zone	"AR" Zone
Single Family Residential Zone	"RS" Zone
Duplex Residential Zone	"RD" Zone
Limited Multi-Family Residential Zone	"RL" Zone
Multi-Family Residential Zone	"RM" Zone
Exclusive Farm Use Zone	"EFU" Zone
Special Agriculture Zone	"SA" Zone
Timber Conservation Zone	"TC" Zone
Farm/Timber Zone	"FT" Zone
Public Zone	"P" Zone
Commercial Zone	"C" Zone
Community Commercial	"CC" Zone
Interchange District Zone	"ID" Zone
Unincorporated Community Industrial	"IUC" Zone
Industrial Zone	"I" Zone

Whenever the terms "S" zone, "A" zone, "R" zone, "F" zone, "C" zone, "P" zone, or "I" zone are used herein, they shall be deemed to refer to all zones containing the same zone letter in their names. For example, the term "R" zone shall include the RS, ~~RD~~, ~~RL~~, and RM zones.

The RS zone is the most restricted zone and the I zone is the least restricted zone. The CC and C zones shall be considered less restricted than the RM zone, but more restricted than the IUC zone.

110.630 CERTIFICATION. The Board and the County Clerk shall certify that "this is the official zoning map referred to in Section 110.620 of the Marion County Zoning Ordinance." **The official zoning map may consist of a hard copy printed on mylar or paper or a digital copy.**

110.650 **LOCATION.** Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, there shall be only one official zoning map which shall be located in the County Planning Division office, and which official zoning map shall be the final authority as to the zoning status of land and water areas, buildings and other structures.

110.660 **AMENDING OFFICIAL ZONING MAP.** When an ordinance has been enacted amending the official zoning map, the Director shall so change the official map.

110.670 **REPLACEMENT OF OFFICIAL ZONING MAP.** In the event the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature and number of changes and additions, or when it is necessary or desirable for some other reason, the Board may adopt all or part of a new zoning map by resolution, and such map shall supersede the prior official zoning map. The superseded map shall be filed for reference purposes for at least 1 year. The new official map may correct drafting or other errors and omissions in the prior official zoning map, but no such corrections shall have the effect of amending the ordinance or any subsequent amendment thereof. The replacement map shall be certified by the Board and County Clerk that "this official zoning map supersedes and replaces the official zoning map (date of map being replaced) as part of the Marion County Rural Zoning Ordinance."

110.680 **ADMINISTRATION OF THE ORDINANCE.** This ordinance shall be jointly administered by the County Building Official and by the Director or designee.

The Building Official and the Director or other designated officer, prior to issuing any permit pertaining to the use of land or structures, or the erection or alteration of any structure, shall ascertain that the proposed use or construction shall in all ways conform to the requirements set forth in this ordinance.

No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, **is in violation of local, state or federal law,** or is being used or has been divided in violation of the provisions of this ordinance unless issuance of the permit would correct the violation.

The Director shall handle all matters pertaining to zone changes, variances, **land divisions,** and conditional uses, and other administrative matters as prescribed by this ordinance; and such other matters as directed by the Planning Commission, Hearings Officer, or Board.

Any provision in any plat requiring that the Board or the Planning Commission approve any future land uses or divisions shall be satisfied if the proposed land use or division is reviewed and approved by the Hearings Officer, Planning Director or designee in accordance with the other provisions of this ordinance.

The Director or the Hearings office may deny any land use application if it is determined that the application includes any false or misleading information. Before a decision granting an application becomes final, any land use permit granted pursuant to Marion County Rural Zoning Ordinance may be reconsidered by the Director or Hearings Officer and may be denied if it is determined that the application included any false or misleading information.

Any land use permit granted pursuant to Marion County Rural Zoning Ordinance shall be subject to revocation by the Director if the Director determines that the application for the permit included any false or misleading information, if the conditions of approval have not been complied with or are not being maintained, or if the land use is not being conducted in full compliance with the requirements of local, state and federal laws.

The Director's decision revoking a land use permit may be appealed to the Hearings Officer, who shall hold a public hearing in order for the permit holder to show cause why the permit should not be revoked. No hearing may be held without a minimum 12 days notice to the permit holder.

If the Hearings Officer finds that the conditions of permit approval have not been complied with or are not being maintained, or that the land use is not being conducted in compliance with applicable laws, the Hearings Officer may grant a reasonable time for compliance. If corrections are not made within that time, the permit shall be revoked effective immediately upon expiration of the time specified. The Hearings Officer's decision may be appealed to the Board as provided in MCRZO section 122.120.

All land uses shall be conducted in full compliance with any other County Ordinance, Code or requirement of State Law. Failure to conform to other applicable laws shall be grounds for revocation of the permit.

The Director or designee shall determine whether dwellings, structures or uses are a permitted use subject to standards and the limited use provisions in the applicable zone. The administrative review procedures, as provided below, shall be followed in making these decisions. The same process shall be used for other administrative reviews under this Ordinance including, but not limited to, modifications of the special setbacks in Sections 128.050 (a), 136.0750 (a), 137.0750 (a), 138.0650 (a), and 139.0750 (a).

- (a) The decision shall be made on the basis of the Marion County Comprehensive Plan and applicable standards and criteria in the Rural Zoning Ordinance. The Director or designee may attach any conditions of approval deemed necessary to ensure conformance of the use or structure to the standards or criteria. Administrative Review applications may be filed and shall be signed as required in Sections 119.020 and 119.025. **Notwithstanding any other provisions of this ordinance, the Director or designee may forward any land use permit or application to the Planning Commission or Hearings Officer for a public hearing and initial decision.**
- (b) Notice of a decision allowing a proposed use shall be sent to the applicant, the owner(s) of the subject property, the co-tenants if the subject property is owned by tenants in common, and all property owners within the notification area prescribed by Section 110.408 and Section 111.030 (c) of this ordinance or as required by state law or administrative rule.
- (c) The applicant or any persons aggrieved or affected by the decision may file a request for a hearing to the County Planning Division within 12 days of the date the decision was rendered. The request must be in writing and should explain wherein the decision is factually or legally incorrect, or state new facts material to the decision that were not available to the Director or designee.
- (d) The applicant may file a request for reconsideration without a hearing to the County Planning Division within 12 days of the date the decision was rendered. The request must be in writing and received in the Planning Division office prior to the decision being final, and should explain wherein the decision is factually or legally incorrect, or state new facts material to the decision that were not available to the Director, or propose modifications that will better conform the proposal to the requirements of the ordinance. The request for reconsideration shall include a signed 30 day waiver of the 150 day time limit in ORS 215.427.

Applicants shall be limited to one request for reconsideration per application. The Director shall reconsider the matter and provide notice to the person requesting reconsideration and as required in (b).

The Board may call up any action of the Director, Planning Commission or Hearings Officer in granting or denying Administrative Reviews. This action of the Board shall be taken at the meeting where notice of the decision is presented. When the Board takes such action the Director's, Planning Commission's or Hearings Officer's records pertaining to the Administrative Review in question shall be submitted to the Board by the Director or Hearings Officer. The call up shall stay all proceedings in the same manner as the filing of a notice of appeal.

- (e) When reconsideration has been requested, the decision is stayed until final action is taken.
- (f) On request for a hearing, the Hearings Officer shall hold a hearing on the matter in accordance with Chapter 111 of this Ordinance.
- (g) Sections 122.070 through 122.130 of this Ordinance shall apply to any appeals from the decision of the Hearings Officer.

110.690 **MINIMUM REQUIREMENTS.** In interpreting and applying this ordinance, the provisions herein shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare and shall apply uniformly to each class or kind of structure or land.

110.700 **EFFECT ON OTHER ORDINANCES, AGREEMENTS BETWEEN PARTIES.** It is not intended by this ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law or ordinance, previously adopted, relating to the use of buildings or premises, or relating to the erection, construction, establishment, alteration, or enlargement of any buildings or improvements; nor is it intended by this ordinance to interfere with or abrogate or annul any easement, covenant, or other agreement between parties; provided, however, that where this ordinance imposes a greater restriction upon the erection, construction, establishment, alteration, or enlargement of buildings, structures, or improvements, or the use of any such structures or premises in said several zones or districts, or any of them, than is imposed or required by such existing provisions of this ordinance shall control, except that such precedence of this ordinance shall not apply to valid and unexpired permits previously granted under the terms and provisions of any ordinance.

110.705 **PERMIT EXPIRATION DATES.**

- (a) Except in the EFU, TC, SA and FT zones, and notwithstanding other provisions of this ordinance, a discretionary decision approving a proposed development expires two years from the date of the final decision if the development action is not initiated during that period. The Director may grant an extension period of up to 12 months if:
 - (1) An applicant makes a written request for an extension of the development approval period.
 - (2) The request is submitted to the county prior to expiration of the approval period.
 - (3) The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.
 - (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
- (b) Approval of an extension granted under this section is not a land-use decision described in ORS 197.015 and is not subject to appeal as a land use decision.

- (c) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

110.710 **RULES FOR INTERPRETATION OF ZONE BOUNDARIES.** Where uncertainty exists as to the boundaries of zones as shown on the official zoning map, the following rules shall apply:

- (a) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.
- (b) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- (c) Boundaries indicated as approximately following County boundaries shall be construed as following County boundaries;
- (d) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
- (e) Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
- (f) Boundaries indicated as parallel to or extensions of features indicated in subsections (a) through (e) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;
- (g) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections (a) through (f) above, the Director shall interpret the zone boundaries, and if need be, may refer the matter to the Planning Commission or Hearings Officer for their interpretation.

110.720 **INTERPRETATION OF ORDINANCE.**

- (a) The Director may, in the administration of this ordinance, issue an interpretation of its provisions consistent with (b) (1) and (2) below. This interpretation is not a land use decision and is not appealable.
- (b) When, in the administration of this ordinance, there is doubt by the Director regarding the intent of the ordinance, the Director may request an interpretation of the provision by the Planning Commission or Hearings Officer, who may issue an interpretation of the question if they have determined that such interpretation is within their power and is not a legislative act. Any interpretation of the ordinance shall be based on the following:
 - (1) The purpose and intent of the ordinance as applied to the particular section and question; and
 - (2) The opinion of the Marion County Legal Counsel when requested by the Director, Planning Commission or Hearings Officer.
- (c) The Director, Planning Commission or Hearings Officer may decide that the interpretation of the question is not within their power or that there is insufficient basis upon which to make an

interpretation and may request the Director to study the problem and, where necessary, propose an amendment to the ordinance.

- (d) The interpretation by the Planning Commission or Hearings Officer shall be forwarded to the Board for its information. Copies of the interpretation shall also be furnished each Commissioner, the Hearings Officer and the Director. When such interpretation is of general public interest, copies of such interpretation shall be made available for public distribution.

110.725 **INTERPRETATION OF USES. The following rules shall apply in interpreting use classification and descriptions:**

- (a) Within each zone, uses are classified as "permitted," and "conditional." Further, uses are functionally classified by description of the particular activity (such as "single family residence"), or by reference to a category in the "Standard Industrial Classification Manual, 1987 (SIC)." The SIC is an aid to interpretations. Where the term used to describe a permitted or conditional use is defined in this code the definition takes precedence over any SIC classification.
- (b) When uses have a functional SIC classification the applicable SIC index number assigned to the manual is referenced as an aid to interpretation.
- (c) Where a use is not described with reference to the SIC manual or defined in this code, the words describing such use are to be given their ordinarily accepted meaning. The descriptions and lists of included activities in the SIC classifications may be used to interpret which use classification is appropriate for a particular use not specifically identified in the ordinance.
- (d) A use defined in this code is also included within an SIC category, and it is the intent that the use defined in this code be allowed in a zone where the SIC category including the defined use is referenced even though the use is not specifically referenced in the zone.
- (e) A use defined in ORS 215 or OAR 660 takes precedent over any definition or SIC classification.

110.730 **SIMILAR USES.** The Director may permit in any zone any use not described or listed in this ordinance for any other zone if, in the opinion of the Director, the requested use is of the same general type and is similar to the uses permitted in the zone. Such review and permission shall be made in the same manner as other interpretations of this ordinance. The Director shall use the Standard Industrial Classification Manual 1987 as a guide in making this interpretation.

110.740 **FEES.** Filing fees shall be set by Order of the Board of Commissioners.

~~**110.750** **ENFORCEMENT.** It shall be the duty of the Director and County Building Official to enforce this ordinance. It shall be unlawful for any person to violate any provision of this ordinance, to permit or maintain any such violation, to refuse to obey any provisions hereof, or to fail or refuse to comply with any such provision except as variation may be allowed under this ordinance. Proof of such unlawful act or failure to act shall be deemed prima facie evidence that such act is that of the owner. Prosecution or failure to prosecute either the owner or the occupant shall not be deemed to relieve the other of responsibility for the violation.~~

~~Violations of this ordinance may be prosecuted and penalties assessed pursuant to Marion County Enforcement Ordinance.~~

110.755 TRANSFERABILITY. Any land use decision or permit that has not expired runs with the land and is transferable unless the decision or permit specifically limits transferability.

~~**110.760 COMPLAINTS REGARDING VIOLATIONS.** Whenever a violation of this ordinance occurs or is alleged to have occurred, any person may file a signed written complaint with the Director or County Building Official. It shall be the duty of said official to investigate any such complaint and any violation regardless of whether or not a complaint has been made thereof and to take such action as may be necessary. The Director has the discretion to choose not to enforce a violation.~~

110.765 BOARD AUTHORITY. The Board may, on its own motion, summon any application for a land use decision at any time and make the initial determination on said application. In those cases where the Board exercises its authority to make the initial determination on an application, the Board substitutes itself for the Planning Commission, Hearings Officer or Director and shall follow all procedures for reaching a decision just as if the Board was the Planning Commission, Hearings Officer or Director, except that the decision issued is final and appealable only to the Oregon Land Use Board of Appeals.

The Board may call up any land use decision of the Director, Planning Commission or Hearings Officer. This action of the Board shall be taken at the meeting where notice of the decision is presented. When the Board takes this action, the Director's, Planning Commission's or Hearings Officer's records pertaining to the land use action in question shall be forwarded the Board. The call up shall stay all proceedings in the same manner as the filing of a notice of appeal.

110.770 VISION CLEARANCE AREA. The following regulations shall apply in all zones at all intersections of streets, alleys, roadways, and driveways in order to provide safe visibility for vehicular and pedestrian traffic:

- (a) Local street intersections shall have vision clearance areas defined by a minimum of 30 foot legs along each street. Where there is stop control at the intersection of local streets, the vision clearance area shall have a minimum of a 10 foot leg on the minor street and a 50 foot leg on the major street.
- (b) Local streets intersecting streets designated as collectors or arterials in the Comprehensive Plan shall have vision clearance areas defined by minimum of a 10 foot leg along the local street and a 100 foot leg along the collector or arterial street.
- (c) Private roadways, driveways and public alleys intersecting local streets shall have vision clearance areas defined by a minimum of a 10 foot leg along the driveway and a 50 foot leg along the street.
- (d) Private roadways, driveways and public alleys intersecting streets designated as collectors or arterials in the Comprehensive Plan shall have vision clearance areas defined by a minimum of a 10 foot leg along the driveway and a 100 foot leg along the collector or arterial street.
- (e) The Department of Public Works may prescribe special dimensions and conditions for the vision clearance area at intersections of driveways, roadways and streets with a public street according to recognized traffic engineering standards, where, due to grade, road alignment and geometry,

irregular lot shape, substandard right-of-way width, or vehicle speeds, the vision clearance areas provided in (a), (b), (c) and (d) do not provide for adequate intersection visibility.

- (f) The vision clearance area shall be defined as the area contained by a diagonal line across the corner between points on: a public right-of-way or public easement line; a boundary of a private roadway easement or 10 feet from the centerline thereof, whichever is greater; a line parallel to and 10 feet from the centerline of a driveway. The points are measured from the intersection of the right-of-way lines or the boundary of a roadway or driveway. If no point exists it shall be measured from the point of intersection of the projection of these lines.
- (g) Except as provided in (1) and (2) below, the vision clearance area required by this section shall not contain any planting, fences, walls, structures, or temporary or permanent obstructions to vision, including parked vehicles, exceeding 30 inches in height above the curb level or the end of the travel lane when there is no curb:
 - (1) Only one supporting post or pillar, no greater than 12 inches in diameter or 12 inches on the diagonal if rectangular, is permitted within a vision clearance area unless otherwise approved by the Department of Public Works. Exceptions are posts or supporting members of street signs, street lights and traffic control signs installed as directed by the Department of Public Works, or any other sign, post or pole erected for public safety.
 - (2) Vision clearance shall be required to a minimum height of 7 feet above the curb level or edge of travel lane where there is no curb. Where public buses, trucks and other service vehicles travel on the minor leg of the intersection, vision clearance shall be required up to a height of 10 feet above the curb level or edge of travel lane where there is no curb.
- (h) The street classification (local, collector or arterial) shall be as established in the Marion County Transportation System Plan.
- (i) The vision clearance provisions of this section shall not be construed as waiving or altering any yard, landscaping or setback requirements that may be required by this or any other ordinance.

110.780 MINIMUM STREET WIDTH. All street rights-of-way shall be not less than as set forth below:

~~(a) — Arterials and collectors as set forth in Section 112.030.~~

~~(b) — Through streets, 60 feet.~~

~~(b) — Cul de sac, 50 feet wide unless otherwise specified by the Director, Planning Commission or Hearings Officer.~~

(a) All street rights-of-way, pavement widths, shoulder widths and other design features shall meet Marion County Engineering Standards.

(b) Special Street Setbacks as set forth in Section 112.020 also apply.

110.790 LOTS ABUTTING A PARTIAL STREET. No building permit shall be issued for a building or structure on a lot which abuts a street dedicated to a portion only of its required width and is located on that side which has not yet been dedicated or condemned, unless the yards provided on such lot

include both that portion of the lot lying within the required street and the required yards. This portion shall not be construed as being in lieu of or waiving any subdivision or partitioning requirement of this or any other ordinance.

110.800 **DWELLINGS AND ALL OTHER BUILDINGS TO BE ACCESSIBLE TO PUBLIC STREET.** Every dwelling shall be situated on a lot having direct access by abutting upon a public street or a pre-existing private driveway of a width not less than 20 feet. A private drive shall not serve more than 4 dwelling units unless the parcels, on which those units are proposed to be placed, were established with the approval of the Marion County Planning Commission or Hearings Officer in accordance with State law and Marion County Ordinances, prior to May 1, 1977, or were approved under Chapter 121, Planned Development.

NOTE: Driveway widths, grade and surfacing pertaining to parking lots access will be referred to Parking Section.

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

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

- (a) Federally owned lands are exempt from the permit provisions of this Ordinance. However, land use activities on federal lands shall be managed in a manner consistent with the intent of the Marion County Comprehensive Plan, Zoning Ordinance, and the Land Policy and Management Act of 1976;
- (b) On public park lands, park maintenance including rehabilitation, replacements minor improvements, repair and similar maintenance activities are not subject to conditional use permit requirements. In addition, development of new facilities identified in County approved State Parks master plans and in County approved County Park plans are not subject to the conditional use procedures.

110.830 **WATER RESOURCE PROTECTION.** The impact of proposed land uses on water resources shall be evaluated and potential adverse impacts on the water resource shall be minimized. Where evidence indicates groundwater limitations and the development will use groundwater as a water supply, the developer shall demonstrate that adequate water can be provided without adversely affecting the ground water resource.

110.831 **SIGNIFICANT AND POTENTIAL MINERAL AND AGGREGATE SITES.** Proposed land uses within 1,500 feet of a County designated or approved significant or potential mineral or aggregate extraction site shall be evaluated and if it will be adversely affected, the proposed use shall be relocated, buffered or the potential impact otherwise mitigated without imposing special requirements of the extraction operation.

110.832 **PROTECTION OF SCENIC AND NATURAL AREAS AND TRAILS.** Proposed land uses regulated by Marion County within, or adjacent to, scenic and natural areas and recreational trails

designated for protection in the Comprehensive Plan shall be evaluated to determine if the proposed use will adversely impact on the designated resource. If there are potential adverse impacts, the proposed use shall be modified or conditioned to mitigate the impacts.

110.833 STORMWATER MANAGEMENT

The impact of proposed land uses on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per County Standards. Compliance with this requirement shall be demonstrated by compliance with Department of Public Works Engineering Standards.

110.834 NOISE IMPACTS. A proposed residence or place of public assembly proposed in a noise impact area identified in the Comprehensive Plan, shall be referred to the DEQ (Department of Environmental Quality) for comment on how serious the impact will be and how the proposal can be modified to maintain acceptable noise levels. Adequate mitigation of noise impacts shall be provided.

110.835 FISH AND WILDLIFE HABITATS. The impact of land use actions regulated by this Ordinance on fish and wildlife habitat identified in the Marion County Comprehensive Plan shall be evaluated and the proposal modified or conditioned as necessary to minimize potential adverse impacts and to preserve the existing resource.

110.836 HISTORIC STRUCTURES OR SITES. The historic structures and sites identified in the Marion County Comprehensive Plan are a unique resource deserving of special consideration. To ensure that these and any other historic structures and sites identified in the future are protected the following regulations shall apply to lands containing a historic structure or site and to adjacent lands:

- (a) Where the Comprehensive Land Use Plan identifies a historic use or structure the subject property shall be identified by a graphic symbol on the official zoning map. Designation on the official zone map shall be amended automatically to correspond to any additions or deletions in the Comprehensive Land Use Plan designation.

110.838 AGRICULTURAL SOILS DETERMINATION. Agricultural soils determinations shall be based on the classifications shown in "Soil Survey of Marion County Area: September, 1972", unless the applicant provides a detailed soils evaluation from a consulting soils scientist whose credentials have been certified as acceptable to the State Department of Agriculture that the soil class, soil rating, or other soil designation should be changed, and the report satisfies the most recent requirements in the Oregon Administrative Rules for acceptable soils reports. **Any changes in the soil class, soil rating, or other soil designations are limited to those authorized in the Oregon Administrative Rules and Oregon Revised Statutes for dwellings in farm or forest zones (see ORS 215.705).**

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

In every case of a proposed amendment, the Director shall fix a date for a public hearing before the Board, Planning Commission or Hearings Officer and shall cause notice to be given as provided in

Chapter 111. After the public hearing, the Director, Planning Commission or Hearings Officer may refer its recommendations to the Board.

110.850 PENDING ZONE CHANGE PROCEEDINGS. Any petition or proceeding pending before the Planning Commission, Hearings Officer or the Board for a zone change or reclassification of any premises from one zone to another, or for any variance, shall abate by the passage of this ordinance, but the petitioner, if he so requests, shall be permitted to amend his petition or application so as to conform to the designation of zones and other provisions of this ordinance.

110.860 VIOLATIONS OF REGULATIONS UNLAWFUL; PROOF OF VIOLATION PRIMA FACIE EVIDENCE OF OWNER'S RESPONSIBILITY. It shall be unlawful for any person to violate any provision of this ordinance, to permit or maintain any such violation, to refuse to obey any provision hereof, or to fail or refuse to comply with any such provision except as variation may be allowed under this ordinance. Proof of such unlawful act or failure to act shall be deemed prima facie evidence that such act is that of the owner. Prosecution or lack thereof of either the owner or the occupant shall not be deemed to relieve the other.

110.870 ENFORCEMENT AND PENALTIES FOR VIOLATIONS. It shall be the duty of the Director and County Building Official to enforce this ordinance. Violations of this ordinance may shall be prosecuted and penalties assessed pursuant to Marion County Enforcement Ordinance.

110.880 SAVINGS CLAUSE. If any section, paragraph, subdivision, clause, sentence, or provision of this ordinance shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence, or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the Board to enact the remainder of this ordinance notwithstanding the parts so declared unconstitutional and invalid; and should any section, paragraph, subdivision, clause, sentence or provision of this ordinance be declared unreasonable or inapplicable to a particular premises or to a particular use at any particular location, such declaration of judgment shall not affect, impair, invalidate, or nullify such section, paragraph, subdivision, clause, sentence, or provision as to any other premises or use.

~~**110.890** REPEALING CONFLICTING ORDINANCES. The following ordinances passed by the Board and all ordinances amendatory thereof, and all other ordinances and parts of ordinances in~~

~~conflict herewith, hereby are repealed:~~

Ordinance No. 24	2/3/60	Ordinance No. 140	8/18/67
Ordinance No. 25	4/27/60	Ordinance No. 151	8/18/67
Ordinance No. 26	6/29/60	Ordinance No. 149	12/6/67
Ordinance No. 68	1/16/63	Ordinance No. 175	7/31/68
Ordinance No. 62	3/13/64		
Ordinance No. 78	10/14/63		
Ordinance No. 83	3/11/64		
Ordinance No. 183	3/22/68		

DRAFT – 9/19/08
DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 111
PUBLIC HEARING

Revised _____
Revised 08/06/03
Revised 12/12/02

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111.010 **HOLDING PUBLIC HEARINGS.** Public hearings, when required by this ordinance, shall be conducted by the Hearings Officer, Planning Commission, or Board of Commissioners in a manner prescribed by state law and this Chapter. For the purposes of this Chapter, “hearings authority” means the Hearings Officer, Planning Commission, or Board of Commissioners.

110.020 **SCHEDULING.** The Director shall schedule all hearings before the Hearings Officer and Planning Commission. If the applicant for a quasi-judicial land-use action requests a different hearing date, the Director may reschedule the hearing. If the requested hearing date is later than otherwise would have been scheduled, the Director may require the applicant to request an extension of the time limit for making a decision under state law. The Director may require the applicant to pay a fee for renotification. If the Hearings Officer or Chair of the Planning Commission requests a change in the hearing date the Director shall reschedule the hearing.

111.030 **NOTICE OF QUASI-JUDICIAL PUBLIC HEARING.** Upon the fixing of the time of a quasi-judicial public hearing notice shall be provided as follows:

- (a) Notice of hearing shall be mailed to the applicant, the property owners, co-tenants if the subject property is owned by tenants, in common, state and local agencies that may have concerns regarding the request, and as provided in subsection (c) of this section.
- (b) The notice of hearing shall contain:
 - (1) The date, time and location of the hearing;
 - (2) The nature of the application, and the proposed uses that could be authorized;
 - (3) The address or other easily understood geographical reference to the subject property;

- (4) A list of the topical headings and numbers of the criteria from the Comprehensive Plan and this ordinance that apply;
 - (5) A statement that failure to raise an issue in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the hearings authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue;
 - (6) The name of the Planning Director's staff to contact, and the telephone number where additional information may be obtained;
 - (7) A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and that a copy will be provided at reasonable cost upon request;
 - (8) A statement that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and that copies will be provided at reasonable cost upon request;
 - (9) A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- (c) Notices of quasi-judicial public hearings shall be mailed at least 20 days prior to the date of the **first evidentiary hearing and 10 days prior to the date of any subsequent** hearings. Failure to receive such notice by mail shall not affect the validity of the proceedings. In addition, notices shall also be mailed to an appointed Area Advisory Committee when it exists. The Director of the Department of Land Conservation and Development shall be notified of a hearing involving an amendment to a comprehensive plan or land use regulation, 45 days prior to the first evidentiary hearing on adoption. The notice shall be provided to the applicant, the owner(s) of the subject property, and owners of record of property on the most recent property tax assessment role where the property is located within:
- (1) 250 feet of the property subject to the notice for subject property that is not within the EFU, SA, FT or TC zone; or
 - (2) 750 feet of the property subject to the notice for subject property that is within EFU, SA, FT or TC zone;
 - (3) Notice shall be sent to owners of a public-use airport of any land-use action within 5,000 feet of the side or end of a "visual airport" runway, or within 10,000 feet of an "instrument airport" runway, unless the action involves structures less than 35 feet tall outside the runway approach surface.
 - (4) Notice shall also be provided to any neighborhood or community organization recognized by the Board and whose boundaries include the site.
 - (5) Notice of the public hearing on an application for an aggregate site shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property.

111.040 **NOTICE OF LEGISLATIVE PUBLIC HEARINGS.** Upon the fixing of the time of a public hearing, notice shall be provided as follows:

- (a) Notice shall be mailed to Area Advisory Committee members, the Oregon Department of Land Conservation and Development; other local, state or federal agencies that are likely to have an interest in the subject of the hearing; and any citizens that have expressed or have been identified as having interest in the subject of the hearing.
 - (b) The notice shall contain a description of the action being considered; the date, time and location of the hearing; a file or case number if one exists, and the name and telephone number of a person who can be contacted for additional information.
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111.050 PUBLISHING NOTICES. Notices of public hearings to be held by the Planning Commission, Hearings Officer or Board on **legislative** amendments to the text of this ordinance or the Comprehensive Plan, ~~or to be held by the Planning Commission, Hearings Officer, or Board on zone changes, or Comprehensive Plan map amendments,~~ shall be given by publishing notice in a newspaper of general circulation in the County at least once not less than 10 days prior to the hearing.

111.060 CONDUCT OF HEARINGS. The following procedures shall be observed in the conduct of all quasi-judicial hearings:

- (a) At the commencement of a hearing, a statement shall be made to those in attendance that:
 - (1) Identifies the applicable substantive criteria;
 - (2) States testimony and evidence must be directed toward the identified criteria or other criteria in the plan or this Ordinance which the person believes to apply to the decision; and
 - (3) States failure to raise an issue accompanied by statements or evidence sufficient to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
- (b) The hearings authority may continue the hearing to a certain date, may close the hearing and keep the hearing record open to a certain date to allow submittal of written testimony, and may reopen the hearing record to admit new evidence or testimony.
- (c) Prior to conclusion of an initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. If such a request is made, the hearings authority shall:
 - (1) Grant a continuance, in which case the hearing shall be continued to a date, time, and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments, and testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence; or
 - (2) Leave the record open for at least seven days for additional written evidence, arguments, or testimony. Any participant may file a written request with the hearings authority for an opportunity to respond to new evidence submitted during the period the record was left

open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (d) of this section.

- (d) If the hearings authority reopens the hearing record to admit new evidence or testimony, any person may raise new issues that relate to the new evidence, testimony or criteria for decision-making, which apply to the matter at issue.

- (e) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 unless the continuance or extension is requested or agreed to by the applicant.
- (f) Unless waived, the applicant shall be allowed at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427.
- (g) For the purposes of this section:
 - (1) "Argument" means assertions and analysis regarding satisfaction or violation of legal standards or policy believed to be relevant by the proponent of a decision. "Argument" does not include facts.
 - (2) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

111.070 DECISIONS AND NOTICE OF DECISION.

- (a) Following the close of the hearing and receipt of all evidence and arguments:
 - (1) The Hearings Officer shall issue a written order or recommendation. The order shall be transmitted to the Board's office. A copy of the order and the file shall be transmitted to the Director.
 - (2) For Planning Commission decisions, the Director shall prepare a notice of decision or recommendation.
 - (3) For quasi-judicial decisions, the Board shall issue a written ordinance for zone changes and comprehensive plan amendments, or a written order for other types of applications. The order or ordinance shall be filed with the County Clerk.
- (b) Notice of the decision of quasi-judicial land-use actions shall be mailed to the applicant, the applicant's representative, the owners of the subject property identified in the application, those who testified at the hearing or requested notice in writing, and others as required by law.
- (c) A decision by the hearings authority shall be effective ~~125~~ days from the date the notice of decision is mailed, unless appealed, called up by the Board, or further action is required.

DRAFT – 2/22/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 112
FUTURE RIGHT-OF-WAY LINES

Revised _____
Revised 08/06/03

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112.010 **ESTABLISHMENT, ALTERATIONS, OR ELIMINATION OF FUTURE RIGHT-OF-WAY LINES.** The Governing Body may establish, vary, modify, alter or eliminate any future right-of-way line for any reason or purpose after proceedings as provided for Administrative Reviews as outlined in Section 110.680.

112.020 **SPECIAL STREET SETBACKS.**

- (a) The special setbacks in this section are based upon the functional classification of streets as described in the Marion County ~~Comprehensive~~ **Rural Transportation System** Plan outside urban growth boundaries. The purpose of these special setbacks is to permit the eventual expansion or improvement of streets and roads in order to safely accommodate vehicular or pedestrian traffic. The special setback shall be measured from the centerline of the street right-of-way.
- (b) Except as provided herein structures and paved surfaces shall not be located within the special setbacks specified in (e) below. Any portion of a structure lawfully established within a special street setback prior to adoption of this ordinance shall be considered a non-conforming structure. Other yards ~~areas~~ **areas** and setbacks specified adjacent to streets shall be in addition to the special setbacks required by this Section. These setback distances shall be measured at right angles to the centerline of the established right-of-way. **Parking requirements shall be met outside of the special setback area.**
- (c) The Planning Director may approve placement of signs or light standards, and temporary structures, or paved surfaces **within the special setback area** upon determination that the County Department of Public Works or Division of State Highways, if applicable, has no objections and provided the property owner signs a written agreement that the owner or his heirs or assigns will, within 45 days after being notified by the County remove all portions of the structure or signs, light standards, parking or temporary structures within the special setback. The agreement shall provide that if the owner fails to remove the listed items the County or State may do so at the expense of the owner and the expense shall be a lien against the land and may be collected or foreclosed in the same manner as liens entered in the County lien docket. The agreement shall be recorded by the owner in the applicable deed records. Notice requiring removal shall ~~not~~ be given ~~until~~ **when** the responsible public agency **is planning a project or identifies an actual need** to ~~widen~~ **improve** the street in front of the owner's property or the Department of Public Works determines that the structure is a threat to the public health, safety or welfare. The agreement shall

~~MR 13~~ (State Highway No. 219) From North City limits of St. Paul to Newberg Bridge

~~MR 14~~ (State Highway Nos. 214, 219) From East City limits of St. Paul to West City limits of Woodburn

~~MR 16~~ (State Highway No. 214) From East City limits of Woodburn to the North City limits of Mt. Angel

~~MR 33/48~~ (State Highway No. 213) From East City limits of Silverton to Marion County boundary

~~MR 23/43/
45/78~~ (Silver Creek Falls Highway) From Santiam Highway to the South City limits of Silverton

~~MR 57~~ (State Highway No. 211) From Pacific Highway 99E to Marion County boundary

DRAFT – 2/22/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 113
LOT AREA, YARDS, AND HEIGHT RESTRICTIONS

Revised _____
Revised 12/12/02

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113.010 NEW BUILDINGS TO BE ON A LOT. Every building erected shall be located on a lot as herein defined.

113.020 LOTS NOT TO BE REDUCED BELOW MINIMUM. No lot or parcel of land held under separate ownership at the effective date of this ordinance shall be separated in ownership or reduced in size below the minimum lot width or lot areas required by this ordinance, nor shall any lot or parcel of land held under separate ownership at the effective date of this ordinance, which has a width or an area less than required by this ordinance, be further reduced in any manner.

113.030 LOT OR YARD AREAS NOT TO BE SEPARATED FROM THE LOT CONTAINING THE BUILDING. No portion of a lot necessary to provide the required area per dwelling unit shall be separated in ownership from the portion of the lot on which the building containing dwelling units is located. No required yard or other open space around an existing building shall be separated in ownership from the portion of the lot upon which the building is located.

113.040 YARD AREAS NOT TO BE REDUCED. No lot area shall be so reduced or diminished that the yards or other open space shall be smaller than prescribed by this ordinance, nor

shall the number of dwelling units be increased in any manner except in conformity with the regulations herein established.

113.050 **YARDS APPLY ONLY TO ONE BUILDING.** No required yard or other open space or required driveway provided around or for any building or structure for the purpose of complying with the provisions of this ordinance shall be considered as providing a yard or open space for any other building, nor shall any yard or other required space on an adjoining lot be considered as providing a yard or open space on the lot whereon the building is to be erected.

113.060 **YARDS TO BE UNOBSTRUCTED.** Every required front, side and rear yard shall be open and unobstructed by buildings or structures from the ground to the sky except for those projections and accessory structures permitted by this ordinance.

113.070 **NO PARKING IN FRONT YARDS, YARDS ADJACENT TO A STREET, OR LANDSCAPED AREAS.** No parking shall be allowed exclusive of driveways within the required front yard areas. The side yard and rear yard areas may be used for parking of vehicles unless otherwise prohibited by this ordinance. The yard areas and driveways adjacent to a street shall not be used for the permanent storage of utility trailers, house or vacation trailers, boats or other similar vehicles.

113.080 **AVERAGE YARD SETBACK ADJACENT TO A STREET (FRONT AND EXTERIOR SIDE YARDS).** Every building shall set back from the front lot line at least 20 feet, except in the instance where the average depth of the other buildings on the same side of the street are between 20 and 10 feet, then the average depth may be used. The average depth is the average of the distance from the closest part of the foundation of the existing buildings to the front property line where the existing buildings are within 200 feet of the center of the proposed building, on the same side of the street, within the same block.

If existing buildings are within 10 feet of the property line, then no less than 10 feet shall be used in figuring the average, or if existing buildings are more than 20 feet from the property line then the minimum requirement of 20 feet shall be used in figuring the average.

When, by this ordinance or any other ordinance, a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply.

113.090 **FRONT YARD PROJECTIONS.** Planter boxes, chimneys and flues, steps, cornices, eaves, gutters, belt courses, leaders, sills, pilasters, lintels, and other ornamental features of not more than 24 inches, from main buildings, uncovered porches, covered but unenclosed porches when not more than one story high and which do not extend more than 10 feet beyond the front walls of the building, but in no case shall such projection come closer than 10 feet from the property line and the floors of which are not more than 4 feet above grade, are exempt from the front yard setback provisions and need not be included when determining the average setback.

113.100 **SIDE YARD PROJECTIONS.**

- (a) Cornices, eaves, gutters, and fire escapes when not prohibited by any other code or ordinance, may project into a required side yard not more than 1/3 of the width of the side yard, nor more than 3 feet in any case.

- (b) Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, and ornamental features may project not more than 1½ feet into a required side yard, provided, however, chimneys and flues shall not exceed 6 feet in width.
- (c) Uncovered decks and patios attached to the main building when measured directly beneath the outside edge of the deck or patio may be extended to the side yard property line when they are 3 feet or less in height from ground level.

113.110 REAR YARD PROJECTIONS.

- (a) Chimneys, flues, belt courses, leaders, sills, pilasters, lintels, gutters, and other ornamental features, may project not more than 1½ feet into a required rear yard, provided, however, chimneys and flues shall not exceed 6 feet in width.
- (b) A fire escape, balcony, outside stairway, cornice or other unenclosed, unroofed projections may project not more than 5 feet into a required rear yard and set back at least 6 feet from any property line.
- (c) Planter boxes, steps, uncovered porches, covered but unenclosed porches including covered patios when not more than 1 story high and the floors, which are not more than 4 feet above grade and which shall not come closer than 14 feet from the rear lot line, are exempt from the minimum rear yard depth requirement. (See Accessory structures - Section 117.070).
- (d) No permitted projection into a required rear yard shall extend within 10 feet of the centerline of an alley, or of a rear lot line if no alley exists, or within 6 feet of an accessory building.
- (e) Uncovered decks and patios attached to the main building when measured directly beneath the outside edge of the deck or patio may be extended to the rear yard property line when they are 3 feet or less in height from ground level.

113.120 HEIGHT EXCEPTIONS.

- (a) Towers and chimneys may exceed the maximum height of the zone in which they are located.
- (b) Electronic communication antennas, such as radio and television receiving antennas, may exceed the height limits, but must meet provisions regulating such installation.
- (c) Ham (non-commercial) radio transmitting towers and antennas may exceed the height requirements but must meet any other provisions regulating such installations.
- (d) Steeples may exceed the maximum height of the zone in which they are located provided:
 - (1) That they do not contain any habitable space;
 - (2) That they do not exceed 185 feet in height;
 - (3) That the Planning Commission or Hearings Officer permits a greater height, as a conditional use, when they are within 185 feet of or are in an RS ~~or RD~~ zone.

113.140 STREAM SETBACKS. To prevent encroachment of potential hazards in the floodplain of natural waterways particularly those not having a designated floodplain, and to permit or afford better light, air, vision, stream pollution control, and to preserve the natural scenic amenities

and vistas along the streams in all zones, there shall be a special setback from open waterways for all structures, fill, and outdoor storage as provided herein:

- (a) All septic tank, septic tank drain field, cesspool and pit privy disposal facilities shall meet State of Oregon Department of Environmental Quality (DEQ) standards.
- (b) Outdoor storage, fill, and structures with the exception of bank stabilization structures, dams, wiers, cable crossings, power poles, docks, bridges, culverts, and ramps and streets leading thereto, are prohibited within the following setback areas.
 - (1) 30 feet from natural lakes of 1 acre or more, reservoirs of 1 acre or more, and from the following natural waterways more than 15 feet wide: Willamette River, Santiam River, North Fork of the Santiam, Butte Creek, and the Pudding River. (See Chapter 179 - Greenway Management Overlay Zone).
 - (2) 20 feet from all other perennial rivers and streams, and any portion of the rivers and streams in (1) that are less than 15 feet in width.
- (c) All measurements are horizontal and perpendicular from the line of non-aquatic vegetation, or the ordinary high waterline, whichever is furthest from the waterway.
- (d) Where the combination of setbacks required in the applicable zone and the stream setback result in a buildable lot depth of less than 50 feet an adjustment to the stream setback or the setback requirements of the applicable zone may be granted provided the adjustment is the minimum necessary to accommodate the proposed structure.

DRAFT – 9/19/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 114
NONCONFORMING BUILDINGS AND USES

Revised _____
Revised 12/12/02

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114.010 NONCONFORMING USE OF LAND. The lawful use of land existing on the effective date of this ordinance, although such use does not conform to the regulations specified for the zone in which such land is situated, may be continued, provided that no such use shall be enlarged or increased, or be extended to occupy a greater area than that occupied by such use at the time of the passage of this ordinance, and if any such use ceases, as hereinafter provided, subsequent use of such land shall be in conformity with the regulations specified in this ordinance for the zone in which such land is situated.

114.020 NONCONFORMING USE OF A BUILDING. The lawful use of a building existing on the effective date of this ordinance may be continued although such building or the use made thereof does not conform to the regulations specified for the zone in which such building is located.

114.040 NONCONFORMING LOTS OF RECORD. Notwithstanding Section 110.680, *supra*, and Chapter 172, those lots or parcels that were not created in conformance with the applicable laws and regulations pertaining to division of land at the time they were created, but meet all of the following standards will be considered nonconforming legal lots.

(a) Prior to January 5, 2000, For a lot or parcel created between August 8, 1962 and September 1, 1977, an application to validate a unit of land that did not comply with the applicable criteria for creation of a unit of land may be approved if:

- (1) The subject lot or parcel that has been transferred by a recorded deed or contract into an ownership separate from the lot or parcel from which it was separated and has remained in separate ownership since that transfer; and
- (2) The subject lot or parcel has not been combined with a contiguous lot or parcel by a recorded deed or contract; and
- (3) There is no record of a land use action or building permit issued based upon or requiring combination of the lot or parcel with contiguous lot(s) or parcel(s) for land use purposes, and there is no record of a land use decision denying a partition.

(b) For a lot or parcel created by sale on or after September 1, 1977 but before January 1, 2007, an application to validate a unit of land that did not comply with the applicable criteria for creation of a unit of land may be approved if:

- (1) The unit of land could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.
- (2) Notwithstanding subsection (a) of this section, an application to validate a unit of land may be approved if the county approved a land use permit, as defined in ORS 215.402 for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the county must determine that the dwelling qualifies for replacement under the criteria set forth in section 136.030(d)(1)-(5).
- (3) An application to validate a unit of land under this section is an application for a land use permit, as defined in ORS 215.402. An application under this section is not subject to the minimum lot or parcel sizes established by ORS 215.780.
- (4) The unit of land becomes a lawfully established parcel when the county validates the unit of land under this section if the owner of the unit of land causes a partition plat to be recorded within 90 days after the date the county or city validates the unit of land.
- (5) Development or improvement of a parcel created under subsection (d) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted.
- (6) An application for a land use permit, as defined in ORS 215.402, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established may be approved if:

- (i) The dwelling or other building was lawfully established prior to January 1, 2007; and
- (ii) The permit does not change or intensify the use of the dwelling or other building; and
- (iii) There are no other violations on the property.

114.050 CESSATION OF NONCONFORMING USE OF BUILDING AND LAND. If the actual operation of a nonconforming use of a building ceases for a continuous period of 1 year, such building and the land on which it is located shall then be subject to all the regulations, except required setback and off-street parking specified in this ordinance for the zone in which such land and building is situated. In case the nonconforming use of land where no building is involved ceases for a period of 30 days, then such land shall be subject to all the regulations specified for the zone in which the land was located.

114.060 REPAIR TO NONCONFORMING STRUCTURES. A nonconforming structure may be repaired and maintained so long as any such repair or maintenance does not in any way increase its nonconformity and it remains otherwise lawful.

114.070 DESTRUCTION OF NONCONFORMING STRUCTURES.

- (a) Restoration or replacement of any lawful nonconforming building or structure may be permitted when the restoration is made necessary by fire, other casualty or natural disaster.

~~In case any lawful nonconforming building is damaged or destroyed by fire, explosion, an act of God, or an act of a public enemy or by any other cause, to the extent that the total deterioration exceeds 60% of the cost of replacement of the building, based on the County Assessor's Office's current evaluation of the structure, using new materials, the land and building shall be subject to all the regulations specified by this ordinance for the zone in which such land and buildings are located.~~

- (b) ~~When it is permissible to rebuild or repair~~ restore or replace any lawful nonconforming building or structure restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster. ~~which is partially destroyed, the rebuilding thereof shall commence within 1 year if the new building is to be used for the same use as was made of the old building.~~
- (c) ~~A maximum of 6 months shall be allowed for completion of the exterior of any reconstruction.~~

114.080 ENLARGEMENT OR EXTENSION OF NONCONFORMING BUILDINGS. A nonconforming building may be enlarged, extended, or structurally altered provided such enlargement, extension or structural alteration itself conforms in all respects to the regulations specified by this ordinance for the zone in which such building is located, but otherwise it shall be unlawful to enlarge, extend or structurally alter any nonconforming building.

For buildings where the structure is nonconforming for property line setback only, a one-time expansion is allowed that extends the linear setback non-conformance no more than 10%, or not more than 10 feet, whichever is greater.

114.085 IMPROVEMENTS OR ADDITIONS TO NONCONFORMING RESIDENTIAL STRUCTURES. Additions and improvements may be made to nonconforming residential structures located in industrial zones, provided such additions comply with the regulations specified by the Marion County ordinance for the RS zone.

114.090 EXTENSION OF NONCONFORMING USE THROUGHOUT A BUILDING. A nonconforming use of a portion of a building may be extended throughout the entire building provided that such extension be approved by the Director, Planning Commission or Hearings Officer after proceedings are held as in this ordinance provided for variances and adjustments.

114.100 CHANGE OF NONCONFORMING USE. The nonconforming use of a building may be changed to a use of the same or more restricted nature when such change of use is approved by the Director, Planning Commission or Hearings Officer after proceedings are held as in this ordinance provided for variances and adjustments.

114.110 CONDITIONAL USES ARE NOT NONCONFORMING USES. Any use which is permitted as a conditional use as provided in this ordinance shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use, qualified with such conditions as the Director, Planning Commission or Hearings Officer has required.

114.120 EFFECT OF CHANGE OF ZONES. Whenever any premises are reclassified or changed from one zone to another, the provisions of this ordinance dealing with nonconforming uses and buildings shall apply to any use or building in the area reclassified or changed from one zone to another.

114.130 REPEAL OF FORMER ORDINANCE DOES NOT CHANGE NONCONFORMING STATUS. Any use conducted or established, or any building or structure erected or maintained at and before the effective date of this ordinance in violation of any planning or zoning ordinance then in effect, which use, building or structure, or the establishment, erection, or maintenance whereof is also unlawful under this ordinance, shall not be classified as a nonconforming use by virtue of the repeal of any such former ordinance; and continuation of any such use, building or structure shall constitute a violation of this ordinance.

114.140 VARIANCE USES MAY CONTINUE. Any use or building heretofore lawfully established or erected pursuant to the variance provisions of any ordinance (except that those buildings or uses which were established as permitted variances by said ordinance shall be considered as conditional uses and shall be maintained in the manner prescribed for conditional uses in Section 119.010 to 119.070) may continue to be used and may continue to be maintained as heretofore authorized, even though the ordinance authorizing the same, or pursuant to which ordinance such use or building was established or erected, has since been repealed notwithstanding the fact that such variance, local option use or building is not permitted under the terms of the present ordinance; provided, however, such use shall not be changed unless the change be made to a use permitted under this ordinance.

For purposes of verifying a non-conforming use, an applicant may not be required to provide verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application.

114.150 **EXPANSION OF NONCONFORMING USES.** A nonconforming use may be enlarged, expanded, or extended when such expansion is solely required by either legislative or economic market demands for the goods, products, or services provided, and such enlargement, expansion or extension is approved by the Planning Commission, Hearings Officer, or Planning Director through the variance proceedings set forth in Chapter 122 of the Zone Code. Any approval by the Planning Commission, Hearings Officer, or Planning Director of an application for the enlargement, expansion or extension of a nonconforming use shall be allowed only after findings are made which reflect the following considerations:

- (a) The intent and purpose of the zoning or zone change which caused the subject use to become nonconforming;
- (b) Adverse impact of the expansion of the nonconforming use on the interests sought to be protected by the zone in which the subject property is located;
- (c) The availability, including economic factors, of other property where the subject use would be a conforming and permitted use;
- (d) The availability of other appropriate remedies, including but not limited to a zone change;
- (e) The applicant's satisfaction of the criteria required for a variance.

The approval of an application under this section does not waive the status of the nonconforming use.

DRAFT -9/19/08
DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 116
ADJUSTMENTS

Revised _____
Revised 08/06/03

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116.010 **POWERS AND DUTIES.** Due to the inherent nature and limitations of an ordinance, it is not possible to encompass all the different situations arising from the various properties treated by this ordinance. Therefore, the Director, Planning Commission, Hearings Officer or Board shall have the power to grant limited adjustments to the terms of the ordinance when such adjustments are within the limitations and conditions contained in this section. These provisions shall be used sparingly within the purpose and intent of the ordinance and the limitations shall not be exceeded under any circumstances.

116.020 **CONDITIONS CRITERIA FOR GRANTING AN ADJUSTMENT.** The Director, Planning Commission, Hearings Officer or Board may permit and authorize an adjustment when it appears from the application and the facts presented that:

- (a) Practical difficulties or unnecessary hardship: that strict application of the ordinance would result in practical difficulties or unnecessary hardship;
- (b) **There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions;**

Extraordinary circumstances: that there are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to other land, buildings or uses in the same zone;
- (c) Not detrimental: that granting the application will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood containing the property of the applicant;

- (d) Health or safety not adversely affected: that granting the application under the circumstances of the particular case will not adversely affect the health or safety of persons working or residing in the neighborhood containing the property of the applicant;
- (e) Necessary for enjoyment of property rights: that the granting of the application is necessary for the preservation and enjoyment of the substantial property rights of the applicant.

116.030 LIMITS FOR ADJUSTMENTS. The Director, Planning Commission, Hearings Officer or Board may grant only the minimum adjustment necessary to relieve the hardship or practical difficulty and shall certify on the order authorizing the adjustment that such adjustment is the minimum. The adjustment shall not exceed the following limits:

- (a) Lot area: maximum possible adjustment of 2 4% of the minimum lot area required but not more than 1,000 500 square feet. **Adjustments to state mandated minimum lot sizes are prohibited.**
- (b) Percentage of lot coverage: a maximum adjustment of 2% more than permitted but not more than 500 250 square feet.
- (c) Front yard and any yard adjacent to a street: a maximum adjustment of 20 40% of the required yard front depth but in no instance shall this permit a yard depth of less than 10 feet adjacent to a street.
- (d) Side Yards: a maximum adjustment of 3 feet 4-feet but in no instance shall this permit a side yard depth of less than 4 feet for a 1 story building or less than 5 feet for a 2 or 2½ story building.
- (e) Rear Yard Depth: a maximum adjustment of either 4 feet for the ~~main~~ building, or 10 feet if a yard area equal in area to that being covered is provided at some other place on the lot other than a required yard area, but in no instance shall this permit a rear yard depth of less than 5 feet for a 1 story building, 5 feet for a 2 story building, or 7 feet for a 2½ story building.
- (f) Lot Width: a maximum of 10% of the required minimum width of 60 feet at the front building line.
- (g) Subjects not included for adjustment: the number of dwelling units permitted, parking requirements, vision clearance area and the use of property are not subjects for adjustments. ~~by the Director.~~
- (h) Fences: construction of fences with greater height or density than permitted within the required 10 foot fence setback to a property line adjacent to a street, as set forth in Section 117.080, may be approved subject to a favorable report by the County **Engineer** ~~Building Official.~~
- (i) Height: a height adjustment of not more than 10 feet may be allowed for residential accessory structures.

116.040 FILING AN APPLICATION. An application for an adjustment may be filed by one or more of the following:

- (a) The owner of the property that is the subject of the application;

- (b) The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;
- (c) A lessee in possession of the property subject to the application who submits written consent of the owner to make such application;
- (d) The appropriate local government or state agency when the application is for a public works project; or
- (e) A governmental body that has initiated condemnation procedures on the property that is subject to the application, but has not yet gained title.
- (f) A co-tenant if the property that is the subject of the application is owned by tenants in common.

The application shall be filed with the Director, in writing, on an application form provided by the Planning Division. The application shall set forth the adjustment or modification sought, the description or location of the building or premises, and the name or names of the owners of the property. The application shall contain such other information as deemed necessary by the Director, Planning Commission or Hearings Officer.

116.045 REQUIRED SIGNATURES. Applications shall include the following signatures:

- (a) Signatures of all owners of the subject property; or
- (b) The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement; or
- (c) The signature of lessee in possession of the property with the written consent of all the owners; or
- (d) The signatures of the agents of those identified in Section 116.040 (a), (b), or (c) when authorized in writing by those with the interests described in Section 116.040 (b) or (c), and all the owners of the property; or
- (e) The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners.
- (f) The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common, provided that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the Planning Division can give them notice of the decision.
- (g) Prima facie proof of ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any such owner, or when any person states that he or she is buying the property under contract, the Director, Planning Commission, Hearings Officer and the Board may accept these such statements to be true, unless the contrary be proved, and except where otherwise in this ordinance more definite and complete proof is required. Nothing herein prevents the Director, Planning Commission, Hearings Officer or Board from demanding proof that the signer is the such owner, officer, attorney in fact, or agent.

116.050 VARIANCE PROCEDURE APPLICABLE TO ADJUSTMENTS. Sections 122.070 through 122.130 of this ordinance relating to variances shall apply, where applicable, to the granting of an adjustment.

116.060 NOTICE OF DECISION AND APPEAL. Section 119.130 and 119.140 of this Ordinance, relating to Conditional Uses, shall apply, where applicable, to the granting of an Adjustment.

DRAFT – 2/22/08
DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 117
RESIDENTIAL STRUCTURES

Revised _____
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117.010 **APPLICATION OF REGULATIONS.** The regulations herein set forth shall apply to all residential zones, and to structures in any other zone used in conjunction with residences excepting properties in farm and forest zones.

117.020 **LOT COVERAGE BY ALL ACCESSORY STRUCTURES.** The lot coverage by all accessory structures, except fences in connection with uses in RS and RD zones, shall not be more than 25% of rear yard area.

117.030 **HEIGHT.**

- (a) The maximum **peak** height of any residential accessory structure ~~outside an urban growth boundary~~ shall be 9 feet at the lot line. Such maximum height may be increased 1 foot for each 1 foot of distance from the lot line to a maximum height of 35 feet. Roof drainage shall be accommodated within the confines of the property.
- (b) An accessory structure in an EFU, SA, FT or TC zone must maintain a minimum 20 foot setback from all property lines.

117.040 **FRONT YARDS AND YARDS ADJACENT TO STREETS.** Any accessory structure, except fences, which has any portion extending above grade shall observe the yard requirements the same as the dwelling, otherwise all such structures shall be at or below grade.

117.050 **SIDE YARDS, INTERIOR.** Accessory structures not attached to the main building located in an interior side yard shall be set back the same as the dwelling.

117.060 **REAR YARDS.** Within interior rear yards and portions of rear yards not abutting a street, an accessory structure may be placed on the property line except along an alley; all structures except fences shall be at least 1 foot from the alley.

117.070 **ACCESSORY STRUCTURES ATTACHED TO THE DWELLING.** Covered or enclosed accessory buildings which are attached to the dwelling shall be considered as a portion of the dwelling and shall observe the same requirements as the dwelling except for certain projections, as provided in Sections 113.090, 113.100, and 113.110. Accessory structures shall be considered as being attached to the dwelling when any portion of the accessory structure is located within 5 feet of the dwelling.

117.080 **FENCES- LOCATION, HEIGHT, AND DENSITY OF FENCES, WALLS AND HEDGES.** In any yard adjacent to a street and within 10 feet from the property line adjacent to such street, fences, walls and hedges may be up to 48 inches in height, when that portion of the fence above 24 inches does not create a vision obstruction per Marion County Department of Public Works sight distance standards. Fences located in a yard area other than above described may be up to 8 feet in height.

117.090 **MEASUREMENT OF HEIGHT OF FENCES, WALLS AND HEDGES.** All fences ~~walls and hedges~~ along a public right-of-way will be measured from and along the sidewalk, or if no sidewalk exists, from and along the curb, or if no curb exists, from and along the finished shoulder grade of the right-of-way. All other fences will be measured from and along the finished grade upon which the fence, wall or hedge is located. ~~of the property along the fence.~~

117.100 **FENCES- USE OF HAZARDOUS MATERIALS -FENCES AND WALLS.** Fences ~~and walls~~ shall not be constructed of or contain any material which will do bodily harm, such as barbed wire, electric wires, (other than stock or wildlife fences), broken glass, spikes, and any other hazardous or dangerous material.

DRAFT – 9/19/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 119
CONDITIONAL USES

Revised _____
Revised 08/06/03
Revised 12/12/02

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119.010 **GENERAL CONCEPT.** A conditional use is an activity which is basically similar to other uses permitted in the zone, but due to some of the characteristics of the conditional use, which are not entirely compatible with the zone, such use could not otherwise be permitted in the zone. Review of the proposed conditional use by the Director, Planning Commission or Hearings Officer will ensure that the use will be in consonance with the purpose and intent of the zone.

119.020 **APPLICATION.** An application for a conditional use may be filed by the following only:

- (a) The owner of the property that is the subject of the application;
- (b) The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;
- (c) A lessee in possession of the property subject to the application who submits written consent of the owner to make the application;
- (d) The appropriate local government or state agency when the application is for public works project;
or

Committee with a request for comments or suggestions regarding those features that come within the scope of their activities.

119.130 **NOTIFICATION OF DECISION.** Notice of the decision and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, the co-tenants of the subject property if the property is owned by tenants in common, affected agencies and members of the recognized Area Advisory Committee requesting information, others requesting notification, and all landowners within the required notification area.

119.140 **APPEAL.** After the Director's final action on the application, interested persons may appeal the decision no later than twelve (~~12~~ **15**) days after the decision is mailed.

119.150 **PUBLIC HEARING AND DECISION ON APPEALS.** If the Director's decision is appealed, the Hearings Officer or Planning Commission shall conduct a public hearing in accordance with Chapter 111 of the Marion County Rural Zoning Ordinance. Notice of an appeal of the Director's decision shall be mailed to the applicant, those requesting notice of a hearing and all landowners within the required notification area at least 20 days prior to the hearing date. The notice shall be consistent with the requirements in ORS 197.763(3). Failure to receive such notice by mail shall not affect the validity of the proceedings. The public hearing before the Hearings Officer or Planning Commission shall be de novo.

DRAFT – 4/24/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 120
SPECIFIC CONDITIONAL USES

Revised _____
Revised 10/06/04 Ord.#1204
Revised 07/28/04 Ord #1191
Revised 08/06/03
Revised 12/12/02

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120.010 MOBILE HOME PARKS. The Director, Planning Commission or Hearings Officer may permit a mobile home park to be located in an RM zone as a conditional use. The intent of this section is to permit, after appropriate review, and subject to minimum standards and conditions, the construction of new mobile home parks only as a form of apartment-type facilities. It is not the intent of this section to include the placement of individual mobile homes or vacation trailers on separate, individual lots, either separately or in conjunction with a dwelling or any other building in an RM zone.

- (a) **MINIMUM REQUIREMENTS.** All newly developed mobile home parks and additions to existing mobile home parks in the RM zone is subject to the minimum standards and conditions set forth in this section. The Director, Planning Commission or Hearings Officer may prescribe such additional conditions for mobile home parks in an RM zone as the particular circumstances may require for the protection of the health, safety and welfare of the residents in the vicinity of the development consistent with the intent and provisions of this ordinance.
- (1) **Density:** The maximum density of a mobile home park shall not exceed 12 mobile homes per gross acre.
- (2) **Minimum area:** No mobile home space shall contain less than 2,000 square feet and the average area of all mobile home spaces within a mobile home park shall not contain less than 3,000 square feet and no yard area, driveway, play area, service area or other area required by this ordinance shall be considered as providing any part of the required mobile home space.
- (3) **Yards:**

- (a) Adjacent to any street, there shall be a yard of at least 20 feet in depth, measured from the street right-of-way line of such street, unless such yard be adjacent to a street with a special setback line, in which case the greater requirement shall prevail.
 - (b) Adjacent to any property line, other than along a street, there shall be a yard at least 10 feet between the property line and any service building, dwelling or other main building for the first story, plus an additional 3 feet for each additional story of such building. Accessory buildings may occupy not more than 25% of such yard area and may not come closer than 5 feet of any property line or exceed 15 feet in height.
- (4) Driveways: All driveways shall be paved with an asphaltic material or concrete and shall be properly drained and shall be of a minimum width of 20 feet. In addition, if parking along the driveway is to be permitted, there shall be provided a parking lane of at least 8 feet in width for each side of the driveway on which parking is to be permitted. As a condition to permitting a mobile home park, the Director, Planning Commission or Hearings Officer may require the erection of signs prohibiting parking when sufficient parking facilities are not provided.
 - (5) Parking: There shall be provided at least 1 automobile parking space for each mobile home space, plus 1 additional automobile parking space for every 3 mobile home spaces or any portion thereof for guests, visitors, service vehicles and additional automobiles of the tenants of the mobile home park.
 - (6) Walks: Provisions shall be made for hard-surfaced, well-drained walks, not less than 30" in width, from each mobile home space to the park service building and to a paved street.
 - (7) Lighting: There shall be provisions for adequate night lighting of common driveways and walks in the mobile home park.
 - (8) Play areas: If the mobile home park accommodates children under 14 years of age, there shall be provided a separate play area restricted to that use. At least 100 square feet of play area shall be provided per mobile home space; provided, however, that no such play area, regardless of the number of mobile home spaces, shall be less than 2,500 square feet. The play area will be protected from all streets, driveways, and parking areas by a fence, or the equivalent, at least 30" in height.
 - (9) Fences: The Director, Planning Commission or Hearings Officer may require that an ornamental fence, wall or hedge be established and maintained between the mobile home park and other land use.
 - (10) Signs: Sign requirements shall be the same as for an apartment house in the RM zone.
 - (11) Street Names: If the private driveways are to be named and street addresses assigned to the individual mobile home space, they will be named and numbered in accordance with the ordinances of the county.
 - (12) Water, sewer, and surface drainage: Adequate provisions shall be made for an ample supply of safe and potable water, and adequate provisions shall be made for sewage disposal and surface drainage and plans for such must have prior approval of the Health

Department and Director of Public Works, before an RM mobile home park is approved as a conditional use by the Director, Planning Commission or Hearings Officer.

- (13) Minimum Width: No mobile home space shall be less than 30 feet in width at its driveway frontage.
 - (14) Boundaries of Space: The boundaries of each mobile home space shall be clearly defined and marked by a fence, planting or other suitable means approved by the Director, Planning Commission or Hearings Officer or by clearly visible, permanent markers at each corner of the space.
 - (15) Minimum Distances: Exclusive of trailer hitches, which shall not project beyond the mobile home space, the minimum distance between a mobile home and:
 - (a) Any other mobile home shall be 10 feet.
 - (b) Any building, except when attached to the mobile home, shall be 10 feet.
 - (c) Any property line (excluding mobile home space boundaries) shall be 10 feet.
 - (d) Any public street shall be 20 feet.
 - (e) Any common driveway or common walk (excluding those in a mobile home space) shall be 5 feet.
 - (16) Mobile Home Space Coverage: Not more than 40% of a mobile home space may be occupied by a mobile home and any other structures used in conjunction with such mobile home whether or not it is attached to the mobile home.
 - (17) Addition to Mobile Homes: Carports, cabanas, ramadas, awnings, and all other structures, whether defined herein or not, which are situated upon a mobile home space, shall conform to the requirements of the County Building Code and Health Department regulations. Such additions and structures shall be considered as a portion of the mobile home for determining the extent of lot coverage, setback lines and all other requirements for mobile homes in like manner as if such additions and structures were a part of such mobile home.
 - (18) Patio: Each mobile home space shall have a slab or patio of concrete, asphalt or flagstone or similar substance not less than 20 feet in length and 6" in width adjacent to each mobile home parking site.
 - (19) Parking of Mobile Homes: Mobile home parks in an RM zone may accommodate only mobile homes and ~~not vacation trailers except for storage.~~ **recreational vehicles** A mobile home shall not remain overnight in a mobile home park unless it is parked in a mobile home space. Not more than 1 mobile home **or recreational vehicle** will be parked at one time in a mobile home space.
- (b) EXPANSION OR ALTERATION OF MOBILE HOME PARKS. Existing mobile home parks may be expanded or altered after approval is obtained from the Director, Planning Commission or Hearings Officer. The application, filed by the owner or other party in interest, will be filed and processed in the same manner as an application for a new mobile home park. The Director, Planning Commission or Hearings Officer, in granting permission for expansion of any existing park, may require that those portions of the existing park which do not meet the minimum standards be brought to these minimum standards. The Director, Planning Commission or Hearings Officer may attach such conditions to the granting of permission to expand the mobile

home park as will satisfy the Director, Planning Commission or Hearings Officer, in its judgment that the existing park will meet the established standards.

- (c) **BUILDING CODE AND BUILDING PERMITS.** All structures within a mobile home park shall comply with the provisions of the County Building Code. Building permits shall be obtained prior to construction of any portion of the mobile home park facilities.
- (d) **TEMPORARY WAIVERS.** The Director, Planning Commission or Hearings Officer may, at the time of the approval of the mobile home park as a conditional use, grant a temporary waiver of the conditions in Section 120.010 and subsection (a) for a maximum time of six months. Such waiver may be renewed by the Director, Planning Commission or Hearings Officer on application by the owner for one additional six-month period. Any requests for a permanent waiver shall be considered a request for a Variance.
- (e) **VARYING REQUIREMENTS OF THIS AMENDMENT.** The Director, Planning Commission or Hearings Officer may, at the time of granting a mobile home park conditional use, vary one or more of the requirements of Sections 120.010 and subsection (a) in the same manner as any other provision of this ordinance may be varied as provided in Section 122.010 and subsection (c), however, when such variances are requested at the same time as the application for a conditional use is filed, such variance request may be processed concurrently with the conditional use application and will not require an additional filing fee, separate public hearing or separate notice of public hearing.

120.020 DUPLEX ON A CORNER LOT, provided:

- (a) That the lot shall have at least 7,000 square feet;
- (b) That only 1 dwelling unit of a duplex on a corner lot shall be permitted to face upon any one street, and that the second unit shall face upon the intersecting street;
- (c) That the yards adjacent to any public right-of-way shall be 20 feet in depth; and
- (d) That the rear yard may be 14 feet in depth for a one story duplex and 20 feet in depth for a two story duplex, which yard may be provided adjacent to either interior lot line.

120.030 BOAT, CAMPER, AND TRAILER STORAGE AREA OR LOT, provided:

- (a) That no sales area, retail business, or service may be operated in connection therewith, nor shall any substantial maintenance or repair of any vehicle or equipment stored thereon be conducted on the premises, whether by the owner or otherwise, unless such work be performed wholly within a building;
- (b) That the front yard and any other yard adjacent to a street shall be landscaped with an evergreen ground cover; further, that this landscaping shall be adequately and permanently maintained;
- (c) That an ornamental sight-obscuring fence, or wall having a height of at least 6 feet, or a compact evergreen hedge not less than 3 feet in height when planted and capable of reaching at least 6 feet within 3 years be placed at the front yard setback line and at the setback line of any other yard adjacent to a street, and along all other property lines, provided, however, that the Director, Planning Commission or Hearings Officer may require additional screening and landscaping

where topography or other special conditions indicate such to be necessary to adequately screen the area;

- (d) That the lot be paved in conformity with Section 118.070, with an oiled mat or graveled and maintained in a manner so that dust shall be reasonably controlled;
- (e) That lighting shall be so oriented to not shine or reflect upon abutting properties nor into the traveling lanes of any street in such a manner so as to constitute a nuisance;
- (f) That any building used in conjunction with the storage lot shall conform to all yard setbacks as for the main buildings in an RS zone, and said building shall be architecturally designed and constructed of materials compatible with the residential development of the subdivision or neighborhood; and
- (g) That the area be operated by a non-profit neighborhood homeowners association.

120.040 TEMPORARY USE OF MOBILE HOME OR RECREATIONAL VEHICLE DURING CERTAIN HARDSHIP CONDITIONS. Use of a temporary mobile home or recreational vehicle for the care of someone with a hardship may be approved as a conditional use subject to meeting the following criteria:

- (a) For the purposes of this subsection "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
- (b) A doctor of medicine or licensed psychologist shall sign a statement indicating the physical or mental condition that prevents the person(s) with the hardship from providing the basic self care needed to live on a separate lot. The statement shall also attest that the physician or licensed psychologist is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises.
- (c) Those providing the needed assistance shall be related by blood, marriage or legal guardianship and reside in another residence on the property. If evidence is presented that there is no family member able to provide the needed care the caretaker may be someone else provided the property is located in a zone other than the EFU, SA, FT or TC zones. In the EFU, SA, FT and TC zones, occupancy of the hardship mobile home or recreational vehicle is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283.
- (d) Those providing the care must show that they will be available and have the skills to provide the primary care required by the doctor or psychologist.
- (e) One of the residences shall be removed from the property within 90 days of the date the person(s) with the hardship or the care provider no longer reside on the property. In the case of a recreational vehicle it shall be rendered uninhabitable by disconnection from services. An agreement to comply with this requirement shall be signed by the property owner and the care providers. Oregon Department of Environmental Quality removal requirements also apply.
- (f) The mobile home or recreational vehicle shall to the extent permitted by the nature of the property and existing development:
 - (1) Be located as near as possible to other residences on the property;

- (2) On EFU, SA, FT and TC zoned property, be located on the portion of the property that is least suitable for farm or forest use, if it is not feasible to locate it near an existing residence;
 - (3) Not require new driveway access to the street;
 - (4) Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the County Sanitarian.
- (g) The use is intended to be temporary, shall be subject to review every year, and shall continue to meet the above criteria in order to qualify for renewal.

120.050 CUSTOM CABINET SHOP AND SALES FIRM, provided:

- (a) All activities, including finished products and materials storage, are to be conducted wholly within a building;
- (b) Loading and unloading operations are conducted throughout those sides of the building which are not abutting, adjacent to, or across a street from any residential zone;
- (c) All parking, loading and yard areas are maintained in a neat and clean manner;
- (d) Hours of operation shall be limited from 6:00 a.m. to 6:00 p.m.;
- (e) All parking and loading areas are paved with in asphaltic or comparable permanent surface;
- (f) Landscaped yard - 2% of the gross lot area shall be landscaped. Detailed landscape plans shall be submitted with the application for approval by the Planning Commission or Hearings Officer; and
- (g) Provided that the County Building Official issues a Certificate of Occupancy prior to use of the building and site, after determining that the conditions set forth herein are fully satisfied. In the event such conditions are not continuously met, the Certificate of Occupancy shall be subject to revocation upon 30 days notice.

120.070 RESERVED

120.075 CONDITIONAL HOME OCCUPATIONS: A conditional home occupation shall meet the following use and development standards:

- (a) The home occupation shall be the carried on by the resident or residents of a dwelling on the subject property as a secondary use and may employ no more than two persons ("person" includes volunteer, non-resident employee, partner or any other person).
- (b) The home occupation shall be continuously conducted in such a manner as not to create any public or private nuisance, including, but not limited to, offensive noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference. In a residential zone noise associated with the home occupation shall not violate Department of Environmental Quality or Marion County Noise Ordinance standards.

- (c) The conditional home occupation shall not significantly interfere with other uses permitted in the zone in which the property is located.
- (d) A sign shall meet the standards in **Chapter** 191.060(a) for home occupations and 191.060(F) for bed and breakfast inns.
- (e) The home occupation shall be conducted entirely within the dwelling or accessory building.
- (f) The total floor area of buildings on the subject property devoted to a home occupation shall not exceed 500 square feet in a residential zone, except in the AR zone where 1500 square feet is the maximum.
- (g) No structural alterations shall be made that would be inconsistent with future use of the buildings exclusively residential purposes.
- (h) No alteration to or use of the premises shall be made that would reduce the number of required on-site parking spaces.
- (i) All visits by suppliers or customers shall occur between the hours of 8:00 a.m. and 8:00 p.m. These limitations do not apply to a Bed and Breakfast use as defined in Chapter 110.108.
- (j) There shall be no outside storage or display of materials, equipment, or merchandise used in, or produced in connection with, the conditional home occupation.
- (k) Deliveries to or from the dwelling shall not involve a vehicle rated at more than 1 ton. There shall be no more than one commercial vehicle located on the property in conjunction with the home occupation.
- (l) Where a home occupation involves deliveries, one off-street loading space shall be provided. If visits by customers occur, two additional off-street parking spaces shall be provided if the street along the lot frontage does not provide paved area for at least two parallel parking spaces. During normal loading/unloading or customer parking periods the off-street loading and parking spaces shall be reserved exclusively for that use.
- (m) The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
- (n) Retail and wholesale sales that do not involve customers coming to the property, such as internet, telephone or mail order offsite sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

120.080 WIRELESS COMMUNICATION FACILITIES. A wireless communication facility shall meet the following use and development standards.

- (a) In addition to the standard application materials, any request for a wireless communication facility shall include the following items:
 - (1) Eight photosimulations of the proposed facility and equipment enclosure as viewed from affected residential properties and public right-of-ways at varying distances at locations

within a 1,000 foot radius of the proposed facility that are agreed upon by planning staff and the applicant prior to filing the application.

- (2) Map showing the location and service area of the proposed wireless communication facility and an explanation of the need for that facility.
- (3) Map showing the locations and service areas of other wireless communication facilities/sites operated and proposed by the applicant that are close enough to affect service.
- (4) Site/landscaping plan; showing the specific placement of the wireless communication facility on the site; showing the location of existing structures, trees, and other significant site features; showing type and locations of proposed screening; and the proposed color(s) for the wireless communication facility and equipment enclosure.
- (5) Signed agreement providing that the applicant shall remove the facility and equipment enclosure within 6 months of the date it ceases to be operational.
- (6) Lease agreement with the landowner or contract purchaser that allows the landowner or contract purchaser to enter into leases with other providers; and specifies that if the provider fails to remove the facility and equipment enclosure within 6 months of the date it ceases to be operational, the responsibility for removal falls upon the landowner or contract purchaser.
- (7) Anticipated capacity of the wireless communication facility (including number and types of antennae which can be accommodated); and the number of additional wireless communication facilities attached that may be co-located on the proposed tower.
- (8) Evaluation of the feasibility of co-location of the subject facility as an alternative to the requested permit. The feasibility study must include:
 - A. Written verification or other documentation revealing the availability and/or cooperation shown by other providers to gain access to existing sites/facilities to meet the needs of the applicant.
 - B. Compliance with the requirements of (8)A above may be demonstrated by providing evidence of mailing the following co-location request letter to all other wireless providers licensed to provide service within the county:

"Pursuant to the requirements of Section 120.080 (8)A, (wireless provider) is hereby providing you with notice of our intent to make application with Marion County to locate a freestanding wireless communication facility that would be located at _____. In general, we plan to construct a support structure of feet in height for the purpose of providing (cellular, PCS, etc.) service.

Please inform us whether you have any wireless facilities located within (distance) of the proposed facility, that may be available for possible co-location opportunities. Please provide us with this information within 15 business days after the date of this letter. Your cooperation is appreciated."

- C. Tower type and height of potential co-location facilities.
 - D. Specific reasons why co-location is or is not feasible. Reasons may include but are not limited to the following:
 - 1. A statement from a qualified radio engineer indicating whether the necessary service can or cannot be provided by co-location at the identified site(s) by the other provider(s).
 - 2. Evidence that the lessor of the site(s) identified by the other provider(s) either agrees or disagrees to co-location on their property
 - 3. Evidence that adequate site area exists or does not exist at the site(s) identified by the other provider(s) to accommodate needed equipment and meet all of the site development standards.
- (9) A narrative discussion of how the proposed facility and equipment enclosure complies with applicable use and development standards.
- (b) Notwithstanding other height limitations in this ordinance all lattice, monopole, guyed or other freestanding support structures, including antennae, shall have the following height limitations above natural grade:
 - (1) In the IUC, CC, and C zones 130 feet.
 - (2) In the AR zone 100 feet.
 - (c) Only monopole freestanding support structures shall be allowed in the AR, CC and C zones.
 - (d) Lattice, monopole, guyed or other freestanding support structures, antennae, associated enclosures and all exterior mechanical equipment, shall be surfaced so as to be nonreflective. For purposes of this requirement a galvanized metal monopole shall be considered nonreflective.
 - (e) In the AR, CC and C zones a wireless communication facility, including equipment enclosure, shall be screened by a sight obscuring fence, wall or hedge of equal or greater height than the equipment enclosure.
 - (f) Notwithstanding other setback standards in this ordinance the exterior base of a lattice, monopole, guyed or other freestanding support structure shall be separated from all dwellings and residential accessory structures, not located on the subject property, and residential zones boundaries (including the AR, CC and C zones) by a distance equal to one (1) foot greater than the total height of the support structure and antennae. A freestanding support structure may be placed closer to a residential zone boundary (including the AR, CC and C zones) where it is demonstrated that location of the proposed facility closer to the boundary will take advantage of an existing natural or artificial feature to conceal the facility or minimize its visual impacts.
 - (g) Lattice, monopole, guyed or other freestanding support structures, antennae and associated enclosures and all exterior mechanical equipment shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.

- (h) Lattice, monopole, guyed or other freestanding support structures up to 70 feet in height shall have provisions that will allow for co-location of at least one (1) additional user or wireless communication provider. Support structures exceeding 70 feet in height shall have provisions that will allow for co-location of at least two (2) additional users or wireless communication providers.
- (i) A permittee shall cooperate with other wireless communication providers and others in co-locating additional antennae on support structures. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site, provided shared use does not result in substantial technical impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive conflict or financial burden). Good faith shall include sharing technical information sufficient to evaluate the feasibility of co-location.

In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the county may require a third party technical study at the expense of either or both the applicant and permittee.
- (j) Failure to comply with the co-location requirements of this section may result in the denial of a permit request or revocation of an existing permit.
- (k) Lattice, monopole, guyed or other freestanding support structures and equipment enclosures shall be removed by the facility owner or property owner within 6 months of the date it ceases to be operational.

**DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED**

**SECTION 120.400
MINERAL AND AGGREGATE RESOURCE OPERATIONS**

Revised _____
Revised 12/12/02

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120.410 PURPOSE. The purpose of this section is to provide definitions, criteria and development standards applicable to applications for new or expanding Mineral and Aggregate Resource Operations that either (1) do not qualify as a "significant" site pursuant to OAR 660-23-180(3) **and OAR 660-23-180(4)** or (2) ~~(1996 version)~~ qualify as a "significant" site and the county determines mining should be allowed. These provisions also apply to conditional use descriptions similar to "Mineral and Aggregate Resource Operations" such as: operations conducted for mining and processing of aggregate and other minerals; mineral resource development sites; sand and gravel resource sites; mining, pits and quarry facilities.

120.420 DEFINITIONS. As used in Section 120.410 to 120.470, the following definitions apply:

- (A) Aggregate resources - ~~Naturally occurring concentrations of stone, rock, sand and gravel, decomposed granite, lime, pumice, cinders, and other naturally occurring solid materials used in road building.~~ **Crushed or uncrushed gravel, stone, rock, or sand of a quality typically used in concrete or road construction.**
- (B) **Mineral resources - Are those materials and substances described in ORS 517.750(7) that includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use but excluding materials and substances described as "aggregate resources."**
- (C) Existing site - An aggregate site that is lawfully operating, or is included on an inventory in the comprehensive plan on September 1, 1996.
- (D) Expansion area - An aggregate mining area contiguous to an existing site.

- ~~(E) Mining - The extraction and processing of mineral or aggregate resources, in the manner provided under ORS 215.298(3) (1995 edition).~~
- (E) Mining - The extraction and processing of mineral or aggregate resources, as defined in ORS 215.298(3) for farmland, and in ORS 517.750 for land other than farmland.**
- (F) Significant site - An aggregate resource site that satisfies the criteria in OAR 660-23-180(3) or 4 (1996 version) regarding location, quality, and quantity of the resource.
- (G) Conflicting use - A use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site as specified in OAR 660-23-180(5)(b) and (7).**
- (H) Protect - to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site. For purposes of OAR 660-23-180(2)(d), "protect" also means to limit or prohibit new conflicting uses within the impact area of the site.**
- (I) Minimize a conflict - To reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels), to "minimize a conflict" means to ensure conformance to the applicable standard.**
- (J) "Farmland" means land planned and zoned for exclusive farm use pursuant to Goal 3 and OAR chapter 660, division 033.**

120.425 EXEMPTIONS. The following uses, activities and facilities do not require approval from the county. Operators or land owners claiming any of these exemptions may be asked to provide a copy of an exemption certificate issued by DOGAMI.

- ~~(A) Mining and quarrying of aggregate or stone materials used on property owned by the owner of the mining and quarrying site on a non-commercial basis.~~
- (A) Excavations of sand, gravel, clay, rock, or other materials conducted by the landowner or tenant for the primary purpose of construction, reconstruction or maintenance of access roads on the same parcel or on an adjacent parcel that is under the same ownership as the parcel that is being excavated.**
- (B) Cemetery operations.
- (C) On-site construction operations within a County-approved building site.
- (D) In EFU, SA, FT, and TC zones, exploratory **or preparation to mining** excavations for mineral and aggregate resources or surface mining that involve one thousand (1,000) cubic yards or less and/or disturbance of one (1) acre or less of ground located more than 500 feet from the property boundary.
- (E) Excavation operations conducted within a road right-of-way or other easement for the primary purpose of road or utility construction, reconstruction or maintenance.

120.430 APPLICATION REQUIREMENTS. An application for a new or expanding mineral or aggregate site shall be adequate if it includes:

- (A) A Comprehensive Plan Amendment Application for an aggregate resource under OAR 660-23-180(3) that includes:**
 - (1) (A) Information regarding quantity, quality, and location sufficient to determine whether the site is significant pursuant to OAR 660-23-180(3) (1996 version); and;**
 - (2)(B) A Post Acknowledge Plan Amendment (PAPA) determination, pursuant to OAR 660-23-180(5) including:**
 - (3) (C) A conceptual site reclamation plan;**
 - (4) (D) A traffic impact assessment for the area within one mile of the entrance to the mining area;**
 - (5) (E) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area; and**
 - (6) (F) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.**
- (B) A Comprehensive Plan Amendment and Conditional Use Application for an aggregate resource under OAR 660-23-180(4) that includes:**
 - (1) Information sufficient to determine whether the aggregate resource site is significant pursuant to OAR 660-23-180(4) and information pursuant to OAR 660-23-180(6) that includes:**
 - (a) A conceptual site reclamation plan;**
 - (b) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses and the maximum amount of mined aggregate material specified under OAR 660-23-180(4)(a).**
- (C) A Conditional Use Application for sites in non-agriculture zones and not required to qualify as significant that includes:**
 - (1) A conceptual site reclamation plan unless specified as exempted;**
 - (2) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses including the specified maximum amount of mined aggregate material;**
 - (3) Information required under the appropriate zone and in 120.450(E).**

120.435 HEARING NOTICE. In lieu of the notice requirements in Sections 111.040 and 111.050 the following notice provisions apply to public hearings conducted on comprehensive plan amendment applications for establishment of a mineral and aggregate operation:

- (A) Mailed Notice. Notice of the public hearing on an application for an aggregate site shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property, at least 20 days prior to the date of the hearing.
- (B) Posted Notice. The applicant shall post a sign within the right-of-way of public roads abutting the subject property, within 100 feet of where the side lot lines of the subject property intersect the public road right-of-way. In addition, a sign shall be posted just inside the right-of-way of the portion of a public road no closer than 1500 feet from and within one-half mile of the boundary of the subject property. Signs shall be posted at least 20 days prior to the date of the public hearing, and be visible from a passing vehicle. The signs shall indicate, in letters at least four inches high, "Notice of Proposed Change in Land Use", "Mineral/Aggregate site", "(Planning Division phone number)", "Marion County Planning." The applicant shall submit a certification that the notice was posted in the prescribed manner.

120.440 ALLOWABLE USES. The following uses may be allowed. The approval shall specify which of these uses is allowed.

- (A) Mining or quarrying operations for the extraction of rock, clay, soil, sand, or gravel.
- (B) The following uses when in conjunction with a mineral and aggregate resource extraction operation:
 - (1) Processing, crushing, washing, sizing and screening of mineral and aggregate resources;
 - (2) Stockpiling of mineral and aggregate materials and earth products;
 - (3) Offices, shops or other accessory structures used for the management and maintenance of resource extraction and processing equipment;
 - (4) Sale of mineral and aggregate resources, asphalt, cement treated base, and concrete;
 - (5) Asphalt batch plants, cement treated base pug plants and/or concrete batch plants;
 - (6) Storage of equipment or machinery and maintenance facilities related to mineral and aggregate resource extraction processing or transportation equipment, provided that independent commercial storage or commercial maintenance facilities open to the general public or not directly related to resource extraction shall not be allowed unless permitted in the underlying zone;
 - (7) Transportation facilities and loading facilities related to mineral and aggregate resource mining and/or processing; and
 - (8) Other incidental mineral and aggregate resource related activities including buildings, structures and other apparatus.

120.450 REVIEW CRITERIA. The following criteria must be met in order to grant a permit approval for a mineral and aggregate operation, in addition to any criteria in the applicable zone:

- (A) The proposed uses, activities and facilities are included in Section 120.440;
- (B) A permit for mining of aggregate on farmland shall be issued only for a site included on an inventory in an acknowledged comprehensive plan as required under ORS 215.298(2);**
- ~~(B)~~**(C)** For sites that qualify as significant, ~~the county has completed~~ **under** the requirements of OAR 660-23-180(4) ~~(3)(a) through (d) (1996 version)~~ **the county has completed the requirements of OAR 660-23-180(5) (a) through (g) or;**
- ~~(C)~~**(D)** For sites that qualify as significant, ~~the county has completed~~ **under the requirements of OAR 660-23-180(4) (a) through (c), the county has completed the requirements of OAR 660-23-180(6)(a) through (d).**
- (E)** For sites that do not qualify as significant, only the following criteria apply:
 - (1) The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone;
 - (2) The proposed use, as conditioned, will not have a significant adverse effect on air or water quality;
 - (3) Adequate public and utility facilities and services to serve the use are available or will be made available prior to establishment of the use;
- ~~(D)~~ If the site is in the EFU or SA zones and ~~batching and blending mineral and aggregate into asphalt cement is proposed, this activity must be located at least two miles from a planted vineyard totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.~~
- (F) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed, pursuant to OAR 660-033-130(15).**

120.460 STANDARDS FOR DEVELOPMENT AND OPERATION. Unless specifically deleted or modified as part of the post-acknowledgment plan amendment or conditional use approval the following standards and requirements apply:

- (A) Dimensional Requirements.
 - (1) Lot Area: The minimum area shall be that area necessary to meet setback requirements.
 - (2) Setbacks for mineral and aggregate extraction shall be:
 - (a) The extraction area must be at least 100 feet from any property line;

- (b) The extraction area must be at least 500 feet from a habitable building existing on adjacent property at the time the use is established;
 - (c) When a site abuts another mineral and aggregate site, no setback for mineral and aggregate extraction is required along the common boundary line, unless such setback is determined by the county to be necessary.
 - (3) Setbacks for mineral and aggregate processing and loading shall be as follows:
 - (a) One hundred (100) feet from any property line; and
 - (b) Five hundred (500) feet from a habitable building existing on adjacent property at the time the processing operation is established;
 - (4) Setbacks for offices, shops or other accessory structures shall be regulated by the zone in which the proposed operation is located.
 - (5) Storage of overburden is allowed within setbacks. There shall be no setback for existing roads, internal truck paths or other transportation facilities. Any new roads, internal transportation or other transportation facilities shall not be located closer than 50 feet from a habitable building on adjacent property existing at the time storage commences.
 - (6) Height: The maximum height of any structure, except mineral and aggregate processing and extraction equipment, shall be eighty-five (85) feet.
 - ~~(7) Signs: One sign not exceeding thirty-two (32) square feet in area is permitted at each entrance.~~
- (B) Screening and Fencing.
- (1) Fencing shall be required only if the site is adjacent to an urban or rural residential zone. When fencing is required, it shall be of cyclone type, a minimum of six (6) feet high. Any site owner or operator may voluntarily fence a site.
 - (2) Existing deciduous and evergreen vegetation within required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained unless located within a vision clearance area or determined by the county to be a public safety hazard.
- (C) Access.
- (1) Access to sites that do not qualify as significant, the following standards apply:
 - (a) All private access roads connecting mineral and aggregate sites to public highways, roads or streets shall be paved or graveled. If graveled, the applicant shall provide a written agreement to the County to grade and treat the access road as needed during the period from June to September, or as determined in the conditional use, to reduce dust. If the access connects with a paved public road it shall be paved for a distance of 100 feet from the existing paved road.

- (b) If access from a mineral and aggregate site is by graveled public highways, roads or streets, the applicant shall provide a written agreement to the County to annually grade and treat the first two thousand (2,000) feet of such roadway, or as determined in the conditional use permit, to reduce dust impacts.
 - (c) Vehicular barriers or gates shall be required at all vehicular access points to the site. The gate shall be located no closer than 85 feet to the public right-of-way unless a lesser distance is established as part of the conditional use permit.
 - (d) The public roads used to access the site may be specified or otherwise regulated in the conditional use permit, including requirements for improvements at specific locations or on-going maintenance to address safety concerns.
- (2) For sites that qualify as significant, access requirements shall comply with OAR 660-23-180(4) ~~(5)(b)(B)~~ (1996 version).

(D) Hours of Operation.

- (1) Extraction, processing and transportation activity shall be allowed Monday through Friday between the hours of 6:00 a.m. through 6:00 p.m. Transportation activity shall be allowed Saturdays between the hours of 6:00 a.m. through 6:00 p.m. No extraction, processing or transportation activity is allowed on the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25.
- (2) Blasting shall be restricted to the hours of 9:30 a.m. to 4:30 p.m., Monday through Friday. No blasting shall occur on Saturdays, Sundays or the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25.
- (3) An owner or operator may request, and the Director may grant, an exception to provide for additional hours of operation for a mineral and aggregate extraction and processing operations when additional hours of operation are needed to alleviate a public emergency. Public emergency includes:
 - (a) Damage to public roads or structures that requires immediate repair.
 - (b) Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.

(E) Environmental Standards.

- (1) Any crusher, asphalt batch plant or concrete plant, shall have a valid DEQ permit.
- (2) Owners or operators shall present evidence of the appropriate DEQ permits prior to commencing operations.
- (3) Owners or operators of mineral and aggregate operations shall comply with the Department of Environmental Quality ("DEQ") sound levels in OAR 340-35-035 for habitable buildings on nearby property.

(F) Safety Standards.

Access roads to all mineral and aggregate resource sites shall be gated and locked when not in operation.

(G) Site Reclamation.

A site reclamation plan shall be submitted prior to the public hearing. It shall be amended to conform to any conditions of county approval and be approved by DOGAMI prior to commencement of operations. DOGAMI approval shall be evidenced by a DOGAMI surface mining operating permit.

(H) Performance Agreements.

- (1) The operator of a mineral and aggregate site shall provide the County with a letter and two copies of relevant documents that demonstrate the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. This information shall be provided to the County prior to commencing operations.
- (2) Mineral and aggregate operations shall be insured for \$100,000.00 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance or condition, and the insurance shall be kept in full force and effect during the period of such operations.

Evidence of a prepaid policy of such insurance that is effective for a period of one (1) year shall be deposited with the County prior to commencing any mineral and aggregate operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

120.470 NON-CONFORMING MINERAL AND AGGREGATE OPERATIONS. Any existing mineral and aggregate related use operating under a conditional use permit shall continue to comply with the conditions of approval, and the standards in Section 120.400 to Section 120.460 as they existed on July 1, 1992, unless the conditions or standards are removed or modified as part of obtaining a new conditional use permit. The standards in Section 120.460 do not apply to such uses.

- (A) If a surface mining operation has stopped for a period of more than one year it shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, if the following conditions apply:
- (1) The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and
 - (2) The surface mining use was not inactive for a period of 12 consecutive years or more. "Inactive" means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

- (3) The applicant shall contact the Department of Geology & Mineral Industries to determine if the surface mining operation is still active and to obtain all the required permits.

120.480 SUPPLEMENTAL PROVISIONS

- (A) Notwithstanding section 119.030, for significant sites where the county has determined there are no significant conflicts identified under the requirements of OAR 660-23-180(4)(e) ~~(1996 version)~~ **(5) or (6)** that cannot be minimized, the county shall not:
 - (1) Deny mining at the site; or
 - (2) Impose approval requirements beyond those required to assure minimum compliance with OAR 660-23-180 ~~(1996 version)~~, except with regard to mining or processing activities:
 - (a) For which the application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;
 - (b) Not requested in the application; or
 - (c) For which a significant change to the type, location, or duration of the activity shown on the application is proposed by the operator.
- (B) For a significant site, the county shall render a final local decision within 180 days of accepting an application as complete.

DRAFT – 2/22/08
~~**DELETIONS IN STRIKEOUT**~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 121
PLANNED DEVELOPMENT

Revised _____
Revised 12/12/02

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121.010 **PURPOSE.** It is the purpose of this chapter to provide a means whereby larger parcels of ground may be subdivided into residential lots with more latitude as regards site development, common areas, private streets and walkways, and open space than is possible through traditional subdivision regulations while maintaining residential densities consistent with the applicable zone; to establish standards and controls necessary to assure the community of a functional and compatible development; and to provide within residential zones the development of residential areas with increased amenities.

121.020 **DEFINITIONS.** The following terms are defined for the purposes of this Chapter and do not apply otherwise to this Ordinance.

- (a) **Planned Development.** A subdivision of land, incorporated common open spaces with each dwelling or mobile home placed on its own lot.

- (b) **Home Owners Association.** A homeowners association is an organization formed for the maintenance and operation of the open space and common areas of the planned development. The membership in the association must be automatic with the purchase of a lot or other property in the planned development. The association shall collect an assessment levied against each lot or other property which assessment shall be the principal source of funds to maintain open space and common areas, roadways, utilities and facilities. Assessments shall be enforceable as a lien against the private lots and open space.

- (c) **Open Space.** A common area designated on the final plans of the planned development, permanently set aside for the common use of the members of the home owners association,

- (c) Dwelling Setbacks from Roadways. Dwellings shall be set back minimum distance of eight feet from any adjacent roadway, and five feet from any adjacent sidewalk, provided that a vision clearance shall be maintained as provided in Chapter 110.770.
- (d) Dwelling Setbacks from Streets. A dwelling and any structure in the development other than a sign or fence, shall be at least 20 feet from a street right-of-way.
- (e) Storm Drainage. All lots shall be provided with adequate storm drainage and connected to the storm drainage system if such system is available. Such facilities shall be sufficient to safely transport through the development all volumes of water generated upstream and on the site. Where streets and associated public drainage facilities will be constructed or where connections will be made to existing public drainage facilities, all design and construction shall conform to Department of Public Works' standards. On-site detention facilities may be required.
- (f) Recreation Vehicles. Planned developments may accommodate only mobile homes and dwellings. Recreational vehicles are not allowed except for storage in a designated storage area. A recreational vehicle shall not remain overnight in a planned development unless it is parked in a designated recreational vehicle storage area.
- (g) Building Height, Location, and Lot Coverage. Except as modified by this section, all structures within a planned development shall comply with all provisions of the zone in which the development is located as to height, location, and lot coverage.
- (h) Driveways. Each lot within the development shall have direct access to a roadway or to a public street which the development abuts on both sides. The driveway shall be unobstructed area, not less than 10 feet in width, and shall be paved and well drained.
- (i) Fire Hydrants. Fire hydrants, if required, shall be provided within the roadway and on public streets in the development in conformance with the design and capacity requirements of the fire district.
- (j) On-Site Storage. Furniture, tools, equipment, building materials, or supplies belonging to the management of the development stored outdoors shall be screened. Screening shall be sight-obscuring and shall blend with the development environment.
- (k) Walkways. Provisions shall be made for hard-surfaced, well-drained walkways, not less than 30 inches in width, from each dwelling to open space, common areas, retail services, and to a street or roadway. If the walkway is adjacent to the street or roadway the curb may be included in meeting the width requirements.

DRAFT – 9/19/08
DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 122
VARIANCES

Revised _____
Revised 08/06/03
12/12/02

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122.010 POWER TO GRANT VARIANCES. Subject to the restrictions and provisions contained in this ordinance, the Director, Planning Commission, Hearings officer or Board shall have the power to vary or modify the strict application of any of the standards of this ordinance in any case where such strict application would result in practical difficulties or unnecessary hardships with reference to requirements governing: lot area, lot width, percentage of lot coverage and number of dwelling units or structures permitted on a lot, height of structures, location, yards, signs, parking and loading space, vision clearance and other standards. Variances to allow uses or new uses not otherwise allowed are prohibited. Variances to criteria and definitions are also prohibited.

122.020 CRITERIA FOR GRANTING A VARIANCE. The Director, Planning Commission, Hearings Officer, or Board may permit and authorize a variance when it appears from the application and the facts presented that:

- (a) There are unnecessary, unreasonable hardships or practical difficulties which can be relieved only by modifying the literal requirements of the ordinance; and

- (b) There are unusual circumstances or conditions applying to the land, buildings, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the same zone; however, nonconforming land uses or structures in the vicinity or violations of land use regulations or standards on the subject property shall not in themselves constitute such circumstances or conditions; and
- (c) The degree of variance from the standard is the minimum necessary to permit development of the property for the proposed use; and
- (d) The variance will not have a significant adverse affect on property or improvements in the neighborhood of the subject property; and
- (e) The variance will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity; and
- (f) The variance will maintain the intent and purpose of the provision being varied.

122.030 LIMITING VARIANCES. The Director, Planning Commission or Hearings Officer may impose such limitations, conditions and safeguards as it may deem appropriate so that the spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice be done. The Director, Planning Commission or Hearings Officer may limit the time or duration of a variance. If the variance is granted the applicant will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval. A violation of any such condition or limitation shall constitute a violation of this ordinance.

122.040 FILING OF APPLICATION. An application for a variance may be filed by one or more of the following:

- (a) The owner of the property that is the subject of the application;
- (b) The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;
- (c) A lessee in possession of the property subject to the application who submits written consent of the owner to make such application;
- (d) The appropriate local government or state agency when the application is for public works project; or
- (e) A governmental body that has initiated condemnation procedures on the property that is subject to the application, but has not yet gained title.
- (f) A co-tenant if the property that is the subject of the application is owned by tenants in common.

The application shall be filed with the Director in writing on an application form provided by the Planning Division. The application shall set forth the variance or modification sought, the description or location of the building or premises, the name or names of the owners of the property. The application shall contain such other information as deemed necessary by the Director, Planning Commission or Hearings Officer.

122.045 REQUIRED SIGNATURES. Applications shall include the following signatures:

- (a) Signatures of all owners of the subject property; or
- (b) The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement; or
- (c) The signatures of lessee in possession of the property with the written consent of all the owners; or
- (d) The signatures of the agents of those identified in Section 122.040 (a), (b), or (c) when authorized in writing by those with the interests described in Section 122.040 (b) or (c), and all the owners of the property; or
- (e) The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners.
- (f) The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common, provided that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the Planning Division can give them notice of the decision.
- (g) Prima facie proof of ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any such owner, or when any person states that he **or she** is buying the property under contract, the Director, Planning Commission, Hearings Officer and the Board may accept such **these** statements to be true, unless the contrary be proved, and except where otherwise in this ordinance more definite and complete proof is required. Nothing herein prevents the Director, Planning Commission, Hearings Officer or Board from demanding proof that the signer is such **the** owner, officer, attorney in fact, or agent.

122.050 DIRECTOR REVIEW. The provisions of this Chapter and other provisions of this ordinance notwithstanding, the Director shall have the power to decide applications for all variances and impose conditions consistent with this ordinance. The Director shall also have the power to forward an application to the Hearings Officer or Planning Commission for the initial decision. In such case, the review body shall conduct a public hearing on the application pursuant to Section 122.060.

The Director may, any time prior to the decision being final, reconsider the decision and issue a new or modified decision.

122.052 APPLICATION REVIEW. The Director shall decide whether the variance is approved or denied based on the Marion County Comprehensive Plan and applicable criteria in the Marion County Rural Zoning Ordinance. This administrative decision shall be final unless an appeal is taken as provided below.

122.054 INFORMATION FROM AFFECTED AGENCIES. Upon receipt of an application under 122.050, a summary of the application shall be distributed to the Public Works Department, Assessor's

Office, Building Inspector, other affected agencies and the recognized Area Advisory Committee, with a request for comments or suggestions regarding those features that come within the scope of their activities.

122.056 NOTIFICATION OF DECISION. Notice of the decision and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, the co-tenants of the subject property if the property is owned by tenants in common, affected agencies and members of the recognized Area Advisory Committee requesting notification, others requesting notification, and all landowners within the required notification area.

122.058 APPEAL. After the Director's final action on the application, interested persons may appeal the decision no later than ~~12~~ **15** days after the decision is mailed.

122.060 PUBLIC HEARING AND NOTICE OF AN APPEAL. If the Director's decision is appealed, the Hearings Officer or Planning Commission shall conduct a public hearing in accordance with Chapter 111 of the Marion County Rural Zoning Ordinance. Notice of an appeal of the Director's decision shall be mailed to the applicant, those requesting notice of a hearing and all landowners within the required notification area at least 20 days prior to the hearing date. The notice shall be consistent with the requirements in ORS 197.763(3). Failure to receive such notice by mail shall not affect the validity of the proceedings. The public hearing before the Hearings Officer or Planning Commission shall be de novo.

122.065 DECISION OF THE PLANNING COMMISSION OR HEARINGS OFFICER. The Planning Commission or Hearings Officer shall render its decision on an application for a variance after the conclusion of a hearing and the Director or Hearings Officer shall mail a notice of the decision to the applicant and shall file a copy of the notice with the Board. The Director or Hearings Officer shall also mail notice of any decisions to any person or agency who, in writing, requested such notification before the decision was rendered.

122.070 CALL UP TO THE BOARD. The Board may call up any action of the Director, Planning Commission or Hearings Officer in granting or denying a variance. Such action of the Board shall be taken at the meeting where notice of the decision is presented. When the Board takes such action the Director's, Planning Commission's or Hearings Officer's records pertaining to the variance in question shall be submitted to the Board by the Director or Hearings Officer and such call up shall stay all proceedings in the same manner as the filing of a notice of appeal.

122.080 EFFECTIVE DATE OF VARIANCE. Variances granted by the Director, Planning Commission or Hearings Officer under the provisions of this ordinance shall not be effective until ~~12~~ **15** days after the mailing of the notice of decision provided, however, in case call up of the proceedings has been requested by the Board or an appeal has been taken as herein provided, the variance shall not be effective until the Planning Commission, Hearings Officer or Board has acted on the call up or appeal.

122.090 VARIANCE RIGHT MUST BE EXERCISED TO BE EFFECTIVE. Variances granted under this ordinance shall be effective only when the exercise of the right granted there under shall be commenced within 12 months from the effective date of that variance, unless a longer period be specified or thereafter allowed by the Director, Planning Commission, Hearings Officer, or Board. In case the right has not been exercised, or extension obtained, the variance shall be void. A written request for an extension of time filed with the Director prior to the expiration of the variance shall extend the running of the variance period until the Director, Planning Commission, Hearings Officer or Board has acted on the request.

122.100 CESSATION OF VARIANCE. Discontinuance of the exercise of any right heretofore or hereafter authorized by any variance for a continuous period of 6 months shall be deemed an abandonment of such variance, and the property affected thereby shall be subject to all the provisions and regulations of this ordinance applicable to the district or zone in which such property is located at the time of such abandonment.

122.110 TRANSFER OF VARIANCE. Any valid variance granted pursuant to this ordinance is transferable unless otherwise provided at the time of the granting of such variance.

122.120 APPEAL TO THE BOARD

- (a) An appeal may be taken to the Board by any person, firm, or corporation, or by an officer, department, board of commission of any public corporation or political subdivision of the State of Oregon aggrieved or affected by the decision of the Planning Commission or Hearings Officer on an application for a variance. An appeal must be filed with the County Clerk within ~~12~~ **15** days from the date of mailing of notice of the decision of the Planning Commission or Hearings Officer.

The appeal shall be filed in duplicate and one copy thereof shall be forwarded immediately by the Clerk to the Board. The appeal shall state wherein the Planning Commission or Hearings Officer failed to conform to the provision of the Ordinance.

- (b) When an appeal is filed it shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of such appeal by the Board.
- (c) The Board shall review the action of the Planning Commission or Hearings Officer and may refer the matter back to the Planning Commission or Hearings Officer for further consideration, in which case the Planning Commission or Hearings Officer shall conduct such further investigation if it is deemed advisable and report its findings to the Board. The Board may summarily, after considering the application and appeal and finding that the facts therein stated do not warrant any further hearings, affirm the action of the Planning Commission or Hearings Officer and deny the appeal. If the Board is of the opinion that the facts in the case warrant further action, the Board shall give notice of the time and place of such hearing in the same manner as set forth in Section 111.030. After the hearing, the Board may reverse or affirm or may impose such conditions as the facts warrant and may grant a variance, and its decision or determination shall be final. Any hearing may be continued from time to time.
- (d) If the Board exercises its authority, pursuant to Section 110.765, to make the initial determination on a land use application, the decision of the Board is final and appealable only to the Oregon Land Use Board of Appeals.

122.130 RESUBMISSION OF VARIANCE APPLICATION. No application which has been denied wholly or in part by the Director, Planning Commission, Hearings Officer or by the Board shall be resubmitted for a period of 1 year from such denial, unless consent for resubmission be given by the Director, 2/3 of the members of the Planning Commission, the Hearings Officer or the Board.

DRAFT – 9/22/08
DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 125
LIMITED USES

Revised _____
Revised 10/06/04
Ord.#1204
Revised
07/28/04
Revised
12/12/02

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PURPOSE. The purpose of the limited use section is to provide specific requirements for permitted uses that are considered limited due to their nature and activities.

125.010 TEMPORARY USE OF MOBILE HOME DURING CONSTRUCTION. The Building Official may grant a temporary permit for the use and occupancy of a mobile home by the applicant for the length of time that the homeowner is constructing a house on the same premises on which the mobile home is to be located. Such permit shall be granted for a period of 1 year, and may be renewed for a maximum period of 1 additional year, by the County Building Official. As a condition of granting such a permit, the Building Official shall require that an agreement be signed by the applicant stating that he is fully aware of the terms of such temporary use.

Any additional extension of time beyond that allowed by the Building Official shall be at the sole discretion of the Director, Planning Commission or Hearings Officer after proceedings are held in the same manner as provided for variances and such requests shall be considered as requests for a variance from the terms of the Zoning Ordinance.

125.020 SUBDIVISION OR PLANNED DEVELOPMENT PRE-CUTTING AND ASSEMBLY FACILITY. Subdivision or planned development pre-cutting and assembly facility, including permanent structures which are to be converted to a permitted use, temporary building and structures and related outdoor storage area, may be permitted by the Building Official provided:

- (a) The Building Official issues a permit for such specific purpose.
- (b) That at least 80% of the production of said facility is used within the development or subdivision.
- (c) The facility has a finished appearing exterior and the site is maintained in a neat and trim condition and all portions of said facility are screened from all residential and commercial areas with such landscaping as may be necessary.
- (d) That all signs ~~not exceed 32 square feet total combined area when attached to a building or 24 square feet when free-standing.~~ **comply with the requirements of Chapter 191.**
- (e) That the term of such permit for each approved Planned Development phase or recorded addition to a subdivision shall not exceed 3 years for the permit which may be renewed once for an additional 2 year period.

Additional periods may be granted by the Director, Planning Commission or Hearings Officer under the variance procedure when the applicant can show good cause for such delay and such site is not detrimental to the area.

- (f) When necessary, due to a complaint or by reason of closeness to residential uses, the Building Official may limit the hours of operation of said facility.
- (g) Failure to continuously comply with these conditions and any conditions on the permit shall automatically void the permit.
- (h) When the development or subdivision is complete, the property shall be restored to its residential condition and use.

125.050 MOBILE HOME ON A LOT IN THE RS ZONE. A single family mobile home on a lot in the RS zone shall meet the following use and development standards. The mobile home shall:

- (a) Be manufactured after June 15, 1976 and exhibit the U.S. Housing and Urban Development Department (HUD) certification label pursuant to OAR 918-500-450 (2); and
- (b) Be multi-sectional (double-wide or larger) and enclose a space of not less than 1,000 square feet; and
- (c) Have a pitched roof with a minimum nominal height of 3 feet for each 12 feet in width; and
- (d) Be placed on an excavated and backfilled foundation enclosed at the perimeter; and
- (e) Have a garage or carport for at least one vehicle located on the same lot; and
- (f) Vertical rolled goods siding is not allowed; and
- (g) Have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single-family dwellings

constructed under the State building code as defined in ORS 455.010. Evidence demonstrating that the mobile home meets "Super Good Cents" energy efficiency standards is deemed to satisfy the exterior thermal envelope requirement. Additional evidence shall not be required.

125.060 FUEL OIL DISTRIBUTION FIRMS. ~~Provided:~~ A fuel oil distribution firm shall meet the following use and development standards:

- (a) All fuel oil and motor fuels are stored in an underground location.
- (b) All vehicles of the firm which are parked overnight on the premises are kept wholly within a completely enclosed building.
- (c) All driveways, parking and boarding areas are paved with asphalt or concrete surfacing and which areas are adequately graded and drained.
- (d) The storage of all merchandise, materials, equipment and accessories is consistently and continuously maintained wholly within a completely enclosed building.
- (e) The sales and services of any furnaces may be conducted only as an incidental and secondary use, provided further that there is not sheet metal shop operated in connection therewith.
- (f) That there be a yard 3 feet in depth adjacent to any residential zone, which yard shall be contained with a compact evergreen hedge, planted with materials at least 3 feet in height and which shall be capable of attaining a height of at least 6 feet, which hedge shall be maintained in a neat condition.

125.070 MOBILE HOME TOWING SERVICE OFFICE. A mobile home towing service office shall meet the following use and development standards:

- (a) Mobile home towing service, office and overnight stopover point permitted, provided that not more than 4 mobile homes and/or the towing tractors remain for more than 48 hours at any one time on the site.
- (b) That all portions of the property which are to be used for the parking of automobiles and trucks and mobile homes are paved.
- (c) That a permit and approval has been obtained from the Marion County Director of Public Works regarding the number, size of driveways and the direction of ingress and egress to each driveway.
- (d) That no mobile home or trailer is stored for any purpose on this site.
- (e) The office may be a mobile unit provided that said mobile unit meets the requirements of the County Building Official. That there be no operation of this activity during darkness or movement of units on holidays and weekends. That there will be no repair or service of trucks on this property.
- (f) That there will be no repair or service of trailers or mobile homes on this site.

125.080 RETAIL BUILDING MATERIALS SALES FIRM. A retail building materials sales firm shall meet the following use and development standards:

- (a) All sales are at retail to the general public.
- (b) All activities, including storage, are conducted wholly within an enclosed building.
- (c) Loading and unloading operations are conducted through those sides of the building which are not abutting, adjacent to or across a street from any residential zone.
- (d) All parking and loading areas are paved with an asphaltic or comparable surface.
- (e) All parking, loading and yard areas are continuously maintained in a neat and clean manner.
- (f) Storage of merchandise or warehousing or merchandise is limited to that amount and kind which will be sold through the retail sales at the site of such storage.
- (g) Provided that the County Building Official issues a "Certificate of Occupancy" **final inspection** prior to use of the building and site, after determining that the conditions set forth herein are fully satisfied. In the event such conditions are not continuously met, the ~~Certification of Occupancy use~~ shall be subject to revocation upon 30 days' notice, **and enforcement action.**

125.090 RESERVED

125.100 LIMITED HOME OCCUPATIONS. A limited home occupation shall meet the following use and development standards:

- (a) The home occupation shall be carried on solely by the resident or residents of a dwelling on the subject property as a secondary use. No employees living off the premises are allowed.
- (b) The home occupation shall be continuously conducted in such a manner as not to create any public or private nuisance, including, but not limited to, offensive noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference. In a residential zone noise associated with the home occupation shall not violate Department of Environmental Quality or Marion County Noise Ordinance standards.
- (c) No sign or display on the premises is allowed that will indicate from the exterior of the dwelling or attached garage that the premises is used for any purpose other than a dwelling.
- (d) The home occupation shall be conducted entirely within the dwelling or any attached garage.
- (e) The total floor area devoted to a home occupation shall not exceed 500 square feet.
- (f) No structural alterations shall be made to the dwelling or attached garage that would be inconsistent with future use of the building exclusively as a dwelling.
- (g) No alteration to or use of the premises shall be made that would reduce the number of required on-site parking spaces.

- (h) No visits by suppliers or customers shall occur.
- (i) All products made on or sold from the premises shall be disposed of by delivery from the premises to the homes or business of customers.
- (j) There shall be no outside storage or display of materials, equipment, or merchandise used in, or produced in connection with, the limited home occupation.
- (k) The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
- (l) There shall be no more than one commercial vehicle located on the property in conjunction with the home occupation.
- (m) In order to establish a new home occupation the property owner, and any lessee of the dwelling, shall sign an agreement that:
 - (1) Acknowledge the requirements of this Section;
 - (2) Agrees that the home occupation will be discontinued or brought into strict conformance with the requirements of this Section upon notification from the Community Development Department of any violation of this Section.

125.110 WIRELESS COMMUNICATION FACILITIES ATTACHED. A wireless communication facility attached shall meet the following use and development standards:

- (a) In addition to the standard application materials, any request for a wireless communication facility attached shall include the following items:
 - (1) Eight photosimulations of the proposed facility and equipment enclosure as viewed from affected residential properties and public right-of-ways at varying distances at locations within a 1,000 foot radius of the proposed facility that are agreed upon by planning staff and the applicant prior to filing the application.
 - (2) Map showing the location and service area of the proposed wireless communication facility attached and an explanation of the need for that facility.
 - (3) Map showing the locations and service areas of other wireless communication facilities/sites operated and proposed by the applicant which are close enough to affect service.
 - (4) Site/landscaping plan; showing the specific placement of the wireless communication facility attached on the site; showing the location of existing structures, trees, and other significant site features; and indicating type and locations of proposed screening; and the proposed color(s) for the wireless communication facility attached and equipment enclosure.
 - (5) Signed agreement providing that the applicant shall remove the facility and equipment enclosure within 6 months of the date it ceases to be operational.

- (6) Lease agreement with the landowner or contract purchaser that allows the landowner or contract purchaser to enter into leases with other providers; and specifies that if the provider fails to remove the facility and equipment enclosure within 6 months of the date it ceases to be operational, the responsibility for removal falls upon the landowner or contract purchaser.
 - (7) A narrative discussion of how the proposed facility and equipment enclosure complies with applicable use and development standards.
- (b) Notwithstanding other height limitations in this Ordinance, Omni-directional (whip) antennae not exceeding 20 feet in height and directional/parabolic antennae not exceeding 7 feet in diameter or width and 15 feet in height may be attached or located on existing structures.
 - (c) Antenna and associated equipment enclosures shall be surfaced in a non-reflective color or screened to match the structure on which it is located. An equipment enclosure may be setback from the edge of a roof by a distance at least equal to its height in lieu of screening.
 - (d) Equipment enclosures shall be located within the building or structure on which it is located wherever possible, otherwise, equipment enclosures in residential zones and the AR, CC and C zones shall be screened by a sight obscuring fence, wall or hedge of equal or greater height than the equipment enclosure.
 - (e) A wireless communication facility attached and equipment enclosures shall be removed by the facility owner or property owner within 6 months of the date it ceases to be operational.
 - (f) Antennae shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.
 - (g) In residential zones and the AR zone a wireless communication facility attached shall not be attached to buildings which are designed or used for single family residential use or as residential accessory structures.
 - (h) Wireless communication facility attached, when not located on an existing lattice tower, monopole or guyed tower shall be located and screened to minimize views from existing dwellings and public right-of-ways in a manner that is architecturally compatible with the building or structure on which it is located.

125.120 WIRELESS COMMUNICATION FACILITIES. A wireless communication facility shall meet the following use and development standards:

- (a) In addition to the standard application materials, any request for a wireless communication facility shall include the following items:
 - (1) Eight photosimulations of the proposed facility and equipment enclosure as viewed from affected residential properties and public right-of-ways at varying distances at locations within a 1,000 foot radius of the proposed facility that are agreed upon by planning staff and the applicant prior to filing the application.

- (2) Map showing the location and service area of the proposed wireless communication facility and an explanation of the need for that facility.
- (3) Map showing the locations and service areas of other wireless communication facilities/sites operated and proposed by the applicant that are close enough to affect service.
- (4) Site/landscaping plan; showing the specific placement of the wireless communication facility on the site; showing the location of existing structures, trees, and other significant site features; showing type and locations of proposed screening; and the proposed color(s) for the wireless communication facility and equipment enclosure.
- (5) Signed agreement providing that the applicant shall remove the facility and equipment enclosure within 6 months of the date it ceases to be operational.
- (6) Lease agreement with the landowner or contract purchaser that allows the landowner or contract purchaser to enter into leases with other providers; and specifies that if the provider fails to remove the facility and equipment enclosure within 6 months of the date it ceases to be operational, the responsibility for removal falls upon the landowner or contract purchaser.
- (7) Anticipated capacity of the wireless communication facility (including number and types of antennae which can be accommodated); and the number of additional wireless communication facilities attached that may be co-located on the proposed tower.
- (8) Evaluation of the feasibility of co-location of the subject facility as an alternative to the requested permit. The feasibility study must include:
 - A. Written verification or other documentation revealing the availability and/or cooperation shown by other providers to gain access to existing sites/facilities to meet the needs of the applicant.
 - B. Compliance with the requirements of (8)A above may be demonstrated by providing evidence of mailing the following co-location request letter to all other wireless providers licensed to provide service within the county:

"Pursuant to the requirements of Section 120.080 (8)A, (wireless provider) is hereby providing you with notice of our intent to make application with Marion County to locate a freestanding wireless communication facility that would be located at _____. In general, we plan to construct a support structure of _____ feet in height for the purpose of providing (cellular, PCS, etc.) service.

Please inform us whether you have any wireless facilities located within (distance) of the proposed facility, that may be available for possible co-location opportunities. Please provide us with this information within 15 business days after the date of this letter. Your cooperation is appreciated."

- C. Tower type and height of potential co-location facilities.
 - D. Specific reasons why co-location is or is not feasible. Reasons may include but are not limited to the following:
 - 1. A statement from a qualified radio engineer indicating whether the necessary service can or cannot be provided by co-location at the identified site(s) by the other provider(s).
 - 2. Evidence that the lessor of the site(s) identified by the other provider(s) either agrees or disagrees to co-location on their property.
 - 3. Evidence that adequate site area exists or does not exist at the site(s) identified by the other provider(s) to accommodate needed equipment and meet all of the site development standards.
- (9) A narrative discussion of how the proposed facility and equipment enclosure complies with applicable use and development standards.
- (b) Notwithstanding other height limitations in this ordinance all lattice, monopole, guyed or other freestanding support structures shall be limited to a total height, including antennae, of 150 feet above natural grade.
 - (c) Lattice, monopole, guyed or other freestanding support structures, antennae, associated enclosures and all exterior mechanical equipment, shall be surfaced so as to be nonreflective. For purposes of this requirement a galvanized metal monopole shall be considered nonreflective.
 - (d) The wireless communication facility including equipment enclosures shall be fenced by a 6 foot high fence, wall or hedge.
 - (e) Notwithstanding other setback standards in this ordinance the exterior base of a lattice, monopole, guyed or other freestanding support structure shall be separated from all dwellings and residential accessory structures, not located on the subject property, and residential zones boundaries (including the AR, CC and C zones) by a distance equal to one (1) foot greater than the total height of the support structure and antennae. A freestanding support structure may be placed closer to a residential zone boundary (including the AR, CC and C zones) where it is demonstrated that location of the proposed facility closer to the boundary will take advantage of an existing natural or artificial feature to conceal the facility or minimize its visual impacts.
 - (f) Lattice, monopole, guyed or other freestanding support structures, antennae and associated enclosures and all exterior mechanical equipment, shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.
 - (g) Lattice, monopole, guyed or other freestanding support structures up to 70 feet in height shall have provisions that will allow for co-location of at least one (1) additional user or wireless communication provider. Support structures exceeding 70 feet in height shall have provisions

that will allow for co-location of at least two (2) additional users or wireless communication providers.

- (h) A permittee shall cooperate with other wireless communication providers and others in co-locating additional antennae on support structures. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site, provided such shared use does not result in substantial technical impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive conflict or financial burden). Good faith shall include sharing technical information sufficient to evaluate the feasibility of co-location.

In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the county may require a third party technical study at the expense of either or both the applicant and permittee.

- (i) Failure to comply with the co-location requirements of this section may result in the denial of a permit request or revocation of an existing permit.
- (j) Lattice, monopole, guyed or other freestanding support structure and equipment enclosure shall be removed by the facility owner or property owner within 6 months of the date it ceases to be operational.

DRAFT – 2/22/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 123
ZONE CHANGE PROCEDURE

Revised _____
Revised 12/12/02

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123.010 AMENDMENTS. A zone change is a reclassification of any lot, parcel, or area from one zone or district to another. Such change shall be by an ordinance enacted by the Board after proceedings have been accomplished in accordance with this ordinance.

123.020 INITIATION OF A ZONE CHANGE.

- (a) The Board may initiate a zone change only as provided below:
- (1) The Board may initiate a zone change proposed for some governmental, educational, religious, or philanthropic purpose; or
 - (2) The Board may initiate a zone change that is legislative when a majority of all property owners in the area proposed to be changed have signed a notarized statement requesting initiation of the zone change. Under this provision, the applicants shall make application consistent with Section 119.020 and 119.025 and pay the appropriate fee.
 - (3) When the Board initiates a zone change, it shall do so by resolution. The resolution may be referred to the Planning Commission, Hearings Officer, or Planning Director.
 - (4) The Board may exercise its authority to initially determine the zone change, pursuant to the provisions of Section 110.765 of this ordinance. If the Board so elects, it shall hold a public hearing pursuant to Chapter 111 of this ordinance. If the Board refers the zone change to the Planning Commission or Hearings Officer, the Planning Commission or Hearings Officer shall hold a public hearing

and make a recommendation to the Board, who may in its discretion, hold a public hearing on the change.

- (b) The Planning Commission or Hearings Officer may initiate a zone change only as provided below:
 - (1) The Planning Commission or Hearings Officer may initiate a zone change that is in the public interest and will be of general benefit;
 - (2) When the proceedings are initiated by the Planning Commission or Hearings Officer, the Director shall fix a date for hearing before the Planning Commission or Hearings Officer and give notice of the hearing as provided in Chapter 111.
 - (3) After the hearing, the Planning Commission or Hearings Officer shall refer its recommendation to the Board.
- (c) A quasi-judicial zone change may be initiated by a property owner(s) consistent with the application requirements of Sections 119.020 and 119.025.

123.030 **HEARING BEFORE THE PLANNING COMMISSION OR HEARINGS OFFICER.** Except in those cases where the Board summons the application for initial determination pursuant to Section 110.765 of this ordinance, the Planning Commission or Hearings Officer shall hold a public hearing as prescribed in Chapter 111 on the application for zone change. After concluding its hearings, the Planning Commission or Hearing Officer shall prepare a report setting forth a summary of facts and conditions involved in the reclassification and submit the same, together with its recommendation to the Board and to the petitioner.

123.040 **HEARING BEFORE THE BOARD.** The Board shall hold a public hearing on any application for which the Board has summoned for initial determination pursuant to Section 110.765 of this ordinance. In all other cases, the Board may in its discretion hold a public hearing on the application. All public hearings shall be held pursuant to Chapter 111 of this ordinance.

123.050 **FINAL ACTION BY THE BOARD.** Any zone change or reclassification of property shall be by ordinance which shall be passed by the Board. Any denial of a proposed zone change shall be by order. Whenever any premises are reclassified as to zone, or a new zone established, or boundary lines of a zone changed, the official zoning map shall be changed as provided in Section 110.660.

123.060 **CRITERIA.** Approval of a zone change application or initiated zone change shall include findings that the change meets the following criteria:

- (a) The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and
- (b) The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and

8. Special locations for truck loading, parking, access routes, or any outdoor activity that could impact adjacent property;
 9. Administrative review of development plans to ensure that conditions of approval have been satisfied; and
 10. Financial contributions to public agencies to offset increased costs for providing services or facilities related to the intensification of the use of the property.
- (c) The following limits and requirements apply to conditions imposed pursuant to this section:
- (1) Conditions shall be stated with specificity; shall be reasonably related to the public health, safety, and welfare; and shall be designed to reasonably effectuate their intended purpose.
 - (2) Conditions that would have the effect of limiting use of the subject property to one particular owner, tenant, or business shall not be imposed, except as authorized under a limited use overlay zone. Conditions shall not be so restrictive that they may not reasonably be complied with by other occupants who might devote the property to the same or a substantially similar use.
 - (3) If the dedication of street right-of-way or street improvements are required, provision of dedication, improvements or funding shall be deferred until a building permit or certificate of occupancy **final inspection** is required.
- (d) Enforcement. Unless otherwise specified, conditions relate to the development of the property and are not enforceable until development is imminent. No building permit shall be issued on property subject to conditional zoning without a determination that all conditions are satisfied. Compliance is a continuing requirement applicable to subsequent building permits unless the use of the land has been changed and the Director finds that the conditions no longer apply. Extensions of time for compliance with conditions may be granted by the Director, Hearings Officer, Planning Commission, or Board of Commissioners upon a finding that no negative impacts on the public or nearby landowners will occur and there are extraordinary circumstances justifying the extension.

123.080 ACKNOWLEDGMENT OF RESOLUTION OF INTENT TO REZONE.

The County shall acknowledge and allow for the completion of any zone change for which a valid resolution of intent to rezone exists, pursuant to the requirements of the resolution.

- (c) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and
- (d) The other lands in the County already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and
- (e) If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

123.070 CONDITIONAL ZONING.

- (a) Purpose and Criteria: A zone change allowing more intensive use of property may be conditioned to require provisions for buffering or provision of off-site public facilities. In order to impose conditions on a zone change, findings must be adopted showing that the use of the property will be intensified and that the conditions:
 - 1. Are reasonably related to development allowed in the proposed zone or to the specific development proposed on the subject property; and
 - 2. Will serve a public purpose such as mitigating the negative impacts of allowed uses on adjacent properties; and
 - 3. Are based upon policies or standards in the Comprehensive Plan or other standards adopted by the Board of Commissioners or by State and Federal agencies.
- (b) Scope of Conditions: Conditions that could be imposed and satisfy the criteria in section (a) include, but are not limited to:
 - 1. Granting a right-of-way for public roads, including easements, etc;
 - 2. Improvement of private or public roads, including bike paths, curbs, and sidewalks;
 - 3. Provision of storm drainage facilities;
 - 4. Extension of public sewer and water service, including over-sizing to permit development on other lands;
 - 5. Provision of fire suppression facilities and equipment;
 - 6. Provision of transit and traffic control facilities;
 - 7. Special building setbacks, orientation, landscaping, fencing, berming, and retention of natural vegetation;

DRAFT – 9/22/08
DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 126
PERMITTED USES GENERALLY

Revised _____
Revised 03/29/06 Ord #1227
Revised 10/06/04 Ord #1204
Revised 07/28/04
Revised 08/06/03
Revised 12/12/02

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126.010 USES PERMITTED IN ALL ZONES. The following uses, facilities and activities whether primary, accessory, secondary or temporary, are permitted in all zones subject to compliance with the requirements in Chapters 110, 112, 113, 114, 116, 117, 118, 120, 121, 176, 177, 178, 179, and 191, except when specifically prohibited or when a conditional use is required in the applicable primary or overlay zones:

- (a) Public rights-of-way and easements existing at the time of adoption of this Ordinance, including public streets, roads and utilities located therein, except as provided in SA, EFU, FT and TC zones.
- (b) Except in SA, EFU, FT and TC zones, expansion and realignment of existing right-of-way and easements, including improvement and construction of streets, roads and utilities in conformance with the applicable comprehensive plan and the standards of the Department of Public Works. Street right-of-way shall not be expanded to a greater width than twice the special setback in Chapter 112 unless the expansion is necessary to include cut and fill slopes and turn lanes at intersections.
- (c) Except in SA, EFU, FT and TC zones, establishment of new public right-of-way and easements, including construction of streets, roads and utilities in conformance with the applicable comprehensive plan, the standards of the Department of Public Works, and the County Subdivision and Partitioning Ordinance. Street right-of-way shall not be greater in width than twice the special setback in Chapter 112 unless the greater width is necessary to include cut and fill slopes and turn lanes at intersections.
- (d) Railroad tracks and related structures and facilities located within existing rights-of-way controlled by railroad companies. Also, except in SA, EFU, FT and TC zones, expansion and realignment of railroad right-of-ways. Railroad right-of-way shall not be greater in width than necessary to accommodate rail supporting structure and drainage facilities.

- (e) Use of non-geothermal groundwater, natural or man-made waterways and impoundments, and related structures and facilities for supply associated with permitted uses.
- (f) Creation, restoration, or enhancement of wetlands as defined in ORS 197.015 (22).
- (g) Condominium buildings.

126.020 PERMITTED SECONDARY AND ACCESSORY STRUCTURES AND USES. The following secondary and accessory uses and structures shall be permitted on a lot or parcel with a primary use and are subject to the limitations and requirements in Chapters 110, 112, 113, 114, 116, 117, 118, 120, 121, and the requirements in any applicable overlay zone:

- (a) The following accessory structures and uses are permitted on a lot in any zone in conjunction with a permitted dwelling unit or mobile home:
 - (1) Decks and patios (open, covered, or enclosed);
 - (2) Storage building for: firewood, equipment used in conjunction with dwelling and yard maintenance; personal property (except vehicles) not in conjunction with any commercial or industrial business other than a home occupation;
 - (3) Vegetable gardens, orchards and crop cultivation for personal use, including greenhouses. No sale of produce is permitted.
 - (4) Sauna;
 - (5) Hobby shop;
 - (6) Shelter for pets;
 - (7) Fallout shelters;
 - (8) Swimming pools and hot tubs;
 - (9) Guest facilities not in a primary dwelling unit provided:
 - (A) Only one guest facility is allowed per contiguous property ownership; and
 - (B) Total combined maximum floor area shall not exceed 600 square feet, including all levels and basement floor areas; and
 - (C) No kitchen facilities are allowed, including no refrigerator or freezer, stove, oven, or other cooking facilities; and
 - (D) All water, sewer, electricity and natural gas services for the guest facility shall be extended from the primary dwelling services; no separate meters for the guest facility shall be allowed; and
 - (E) The guest facility shall be located within 100 feet of the primary use dwelling on the same property measured from the closest portion of each structure; and
 - (F) The guest facility shall use the same septic system as the primary use dwelling, except when a separate system is required by the Building Inspection Division due to site constraints, or failure of the existing system, or where the size or condition of the existing system precludes its use, additional drain lines may be added to an existing system, when appropriate; and
 - (G) The guest facility shall not be occupied **as a dwelling unit** for more than 120 days in any calendar year; and
 - (H) The guest facility shall not have an address.
 - (10) Rooming or boarding of up to 2 persons in a dwelling unit;

- (11) Pets, provided a conditional use permit is required in the RS and AR zones if there are more than 10 mammals over 4 months old. No birds or furbearing animals, other than pets, and no live stock, poultry, or beekeeping are permitted in RS zones.
 - (12) One recreational vehicle space subject to the requirements in Section 126.040;
 - (13) Additional kitchens in a dwelling unit provided all kitchens in the dwelling unit are used by only one family;
 - (14) Offering to sell 5 or less vehicles owned by the occupants of the dwelling unit in any calendar year;
 - (15) Garages and carports for covered vehicle parking;
 - (16) Child foster home;
 - (17) Sleeping quarters for domestic employees of the resident of the dwelling unit or mobile home;
 - (18) Bed and Breakfast establishments in AR zones provided they do not include more than 4 lodging rooms and may employ no more than two persons ("person" includes volunteers, non-resident employee, partner or any other person).
 - (19) Ham radio facilities.
- (b) Fences are a permitted accessory or secondary use in all zones subject to the requirements in Chapter 117.
 - (c) Transit stop shelters and school bus stop shelters are a permitted secondary use in all zones. Shelters shall not be located within a required vision clearance area.
 - (d) Parking of vehicles in a structure or outdoors is a permitted accessory use in conjunction with a dwelling in any zone provided:
 - (1) The vehicles are owned by the occupant of the lot or domestic employees of the occupant; and
 - (2) Vehicles parked outdoors in a residential zone may be parked in a space within the front yard meeting the requirements for required parking in Section 118; or, they may be parked elsewhere on the lot where accessory buildings are permitted provided the parking area is screened by a 6 foot high sight-obscuring fence, wall or hedge if the vehicle is parked within 100 feet of another lot in a residential zone. On a lot in the RS zone not more than three vehicles shall be parked within require yards adjacent to streets; and
 - (3) Vehicles parked on a lot or parcel ~~in a residential zone~~ shall be for the personal use of the occupants of the dwelling. One vehicle used in conjunction with a home occupation or other employment may be parked on the lot provided that in the RS zone the vehicle shall be parked in an enclosed structure if it is rated at more than 1 ton capacity.
 - (e) Portable classrooms and dormitories for students are a permitted accessory use in conjunction with elementary and secondary schools (as defined in Chapter 110).
 - (f) Except in SA, EFU, FT and TC zones, a parsonage in conjunction with a religious organization.
 - (g) Parking of vehicles in a structure or outdoors is a permitted accessory or secondary use in the CC, C, IUC, ID and I zones provided:
 - (1) The vehicles are owned by the occupant of the lot;

- (2) If vehicles are stored outdoors, the parking area shall be an all-weather surface, and be enclosed by a 6 foot high sight-obscuring fence, wall, hedge or berm; and
 - (3) If vehicles are parked outdoors, the vehicles shall be operational, and used in conjunction with the primary use of the lot. If more than 5 vehicles are parked outdoors on the lot the parking area shall be screened by a 6 foot high sight-obscuring fence, wall or hedge if located within 100 feet of a lot in a residential zone and from streets.
- (h) Drop stations are permitted in CC, C, IUC, and I zones.
 - (i) Retail sales or offices in a building in conjunction with a use in an industrial zone provided:
 - (1) The floor area of the retail sales or offices shall not be more than 30% of the floor area of the industrial use;
 - (2) The development requirements are met for the accessory use as if it was a primary use; and
 - (3) The accessory use shall be located on the same lot as the primary use and the building shall be owned or leased by the industrial business owner.
 - (j) **Except in SA, EFU, FT and TC zones,** Accessory and secondary uses not otherwise permitted may be allowed as a conditional use provided the use is consistent with the definition of accessory or secondary and is compatible with the purpose of the zone and land uses on adjacent lots.

126.030 PERMITTED TEMPORARY USES. The following temporary uses shall be permitted subject to the following limitations and requirements and the requirements in applicable overlay zones:

- (a) Storage of a mobile home on a lot for not more than 1 year, unless extensions are granted, where the mobile home is or has been a permitted use and the mobile home is offered for sale. The mobile home shall not be used for sleeping, eating or restroom purposes.
- (b) Garage sales and yard sales in any zone in conjunction with a dwelling, and auctions in Commercial and Industrial zones, provided there are not more than 3 sales in a calendar year with each sale not to exceed 3 consecutive days. All display of merchandise to remain on private property.
- (c) One recreational vehicle space on a lot or parcel without a dwelling in the AR, SA, FT and TC zones subject to the requirements in Section 126.040, except subsections (b) and (c). In addition, the space shall:
 - (1) Not be occupied for more than 120 days in any calendar year; and
 - (2) Satisfy all development standards and requirements applied to a non-resource related dwelling in the applicable zone.
- (d) A real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for sale or lots or dwelling units that remain available for sale to the public.
- (e) Temporary uses that do not meet the limitations identified in this Section and other temporary uses not addressed herein may be approved as a conditional use as provided in Chapter 119 subject to meeting the following criteria:

- (1) The temporary use is compatible with the purpose of the zone and adjacent land uses.
 - (2) The temporary use will have adequate public services to maintain the public health and safety.
 - (3) The operator of the temporary use has signed an agreement with the Planning Division regarding termination of the use consistent with the time limitations established in the conditions of approval.
- (f) Mobile asphalt batching plant provided:
- (1) The use is for a single paving project and the use will not exceed 90 days; and
 - (2) The use will not involve permanent installations or structures, will not leave any residue on the property, involves no change in the land or buildings and makes no permanent impact on the surrounding area.

126.040 RECREATIONAL VEHICLE SPACES. Recreational vehicle spaces shall meet the following use and development standards. Long-term storage of a recreational vehicle must comply with the requirements for accessory uses and structures.

- (a) The space shall have an all-weather surface and be drained to prevent standing water.
- (b) A space shall not be located closer than 10 feet to any other spaces, any building, dwelling, mobile home, street or roadway boundary and not closer than 10 feet to any property line.
- (c) If the space is occupied by an occupied recreational vehicle for more than 120 days in any calendar year, the space shall be located in a **mobile home park or** recreational vehicle park.
- (d) The space shall not be located in any required off-street parking space or required yard areas.
- (e) Unless located in a recreational vehicle park no permanent electrical or gas connections are permitted.
- (f) Unless located in a recreational vehicle park the space shall not be rented or leased for consideration.

DRAFT – 9/22/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 128
AR ACREAGE RESIDENTIAL ZONE

Revised _____
Revised 03/29/06 Ord # 1227
Revised 12/12/02

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128.010 PURPOSE. The purpose and intent of the Acreage Residential zone is to provide appropriate regulations governing the division and development of lands designated Rural Residential in the Marion County Comprehensive Plan. Acreage Residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite. It is the intent that residential sites are provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.

128.020 PERMITTED USES. Within an AR (ACREAGE RESIDENTIAL) zone no building, structure or premises shall be used or arranged except for the following purposes:

- (a) Single family dwelling.
- (b) Farm use, including the sale of produce that is raised on the premises.
- (c) Planned developments.
- (d) Playgrounds and parks operated by governmental agencies.
- (e) Public and private utility facility and public buildings such as fire stations, sheriff and police substations.
- (f) Private wind powered electrical generating facilities provided setback of ½ the height of the tower is provided.

128.060 DEVELOPMENT STANDARDS. The following standards apply to development in an AR zone.

- (a) Maximum Height:
 - (1) Dwellings - 35 feet
 - (2) Farm related structures on farm parcels - none
 - (3) Non-residential and non-farm structures - 35 feet unless they are in conjunction with conditional uses allowed in Section 128.030, and a greater height is requested and approved as part of the conditional use permit.
- (b) Minimum Setbacks: Except as required in Section 128.050(a), the following setback requirements shall be implemented for all new structures other than farm-exempt buildings, signs and fences:
 - (1) Rear Yard - A minimum of 20 feet.
 - (2) Side Yard - A minimum of 10 feet, except for lots or parcels of one-half acre or smaller created prior to January 1, 1994, in which case the side yard setback shall be five (5) feet. In the case of a corner lot any side yard adjacent to a street shall be not less than 20 feet.
 - (3) Front Yard - A minimum of 20 feet. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (See Section 112).

128.070 MINIMUM LOT SIZE AND DENSITY. The minimum lot size for subdivisions and partitioning is 2 acres. When a numerical suffix has been applied to the AR zone, the minimum lot size shall conform to the numerical designation. The minimum lot size shall also apply to planned developments.

DRAFT -2/22/08
DELETIONS IN STRIKEOUT
CHAPTER 132
RD (DUPLEX RESIDENTIAL) ZONE

Revised 03/29/06 Ord # 1227
— Revised 4/97

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~~132.010 USE.~~ Within any RD (Duplex Residential) zone no building, structure, or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

- ~~(a) Any use permitted in an RS zone;~~
- ~~(b) Two (2) family dwelling unit in a single structure;~~
- ~~(c) A private garage or parking area for not more than three (3) motor vehicles for each dwelling unit on the same lot with or within the dwelling to which it is accessory and in which garage no business or industry is conducted;~~
- ~~(d) Limited home occupations, (See Limited Use, Section 125.100).~~
- ~~(e) Wireless communication facilities, attached (See Limited Use, Section 125.110).~~

~~132.020 TRANSITIONAL USES.~~ The regulations concerning transitional uses in an RD zone shall be the same as in an RS zone.

~~132.030 CONDITIONAL USES.~~ When authorized under the procedure provided for conditional uses in this ordinance, the following uses will be permitted in an RD zone:

- ~~(a) Public and semi-public use buildings and structures:
 - ~~(1) Churches;~~
 - ~~(2) Community or neighborhood club buildings, swimming pools and other allied facilities, when erected by a non-profit community club for the improvement of the zone or social recreation of the members;~~
 - ~~(3) Radio and TV facilities without antennae and support structures;~~~~

DRAFT – 2/22/08
DELETIONS IN STRIKEOUT
CHAPTER 133
RL (LIMITED MULTI-FAMILY RESIDENTIAL) ZONE

Revised 03/29/06 – Ord #1227
 Revised 4/97

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133.080	Lot Area and Width	3

~~**133.010 USE.** Within any RL, Limited Multi-Family Residential, zone, no building, structure, or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged, except for one or more of the following uses:~~

- ~~(a) Any use permitted in an RD zone;~~
- ~~(b) Unlimited number of dwelling units including:

 - ~~(1) Apartment houses;~~
 - ~~(2) Court apartment;~~
 - ~~(3) Churches;~~
 - ~~(4) Community or neighborhood clubs;~~
 - ~~(5) Kindergarten or day nursery.~~~~
- ~~(c) Limited home occupations, (See Limited Use, Section 125.100).~~
- ~~(d) Wireless communication facilities attached (See Limited Use, Section 125.100).~~

~~**133.020 TRANSITIONAL USES.** Transitional uses shall be permitted in an RL zone where the side of a lot abuts upon any business zone or industrial zone, provided that such transitional use does not extend across a street or alley and in no case more than 165 feet from the boundary of the less restricted zone which it adjoins, as follows:~~

- ~~(a) Public parking areas when developed as prescribed in Chapter 118;~~
- ~~(b) Outdoor plant nursery.~~

~~**133.030 CONDITIONAL USES.** When authorized under the procedure provided for conditional uses in this ordinance, the following uses will be permitted in an RL zone:~~

- (a) — Planned development;
- (b) — Dormitories;
- (c) — Sorority and fraternity houses;
- (d) — Student homes;
- (e) — Boarding houses (also see accessory uses);
- (f) — Rooming houses;
- (g) — Homes for the aged;
- (h) — Retirement homes;
- (i) — Rest homes;
- (j) — Mobile home parks;
- (k) — Nursing homes;
- (l) — Sanitariums;
- (m) — Boat, camper and trailer storage area or lot (see Specific Conditional Uses, Section 120.030);
- (n) — Schools, elementary and secondary (as defined in Chapter 110);
- (o) — Group care home;
- (p) — Temporary use of mobile home during certain hardship conditions (see Specific Conditional Uses, Section 120.040);
- (q) — Solid waste disposal sites (see Specific Conditional Uses, Section 120.310 to 120.380);
- (r) — Conditional home occupation (other than those home occupations listed in Section 125.100) (see Specific Conditional Uses, Section 120.075).

133.040 HEIGHT. In an RL zone, no building or structure except a single family dwelling on a separate deeded lot shall exceed one story or 20 feet in height. Single family dwellings shall not exceed 35 feet or 2 1/2 stories. When approved by the Planning Commission or Hearings Officer as a conditional use, churches and public and semi public buildings, where permitted, may be built to a height not to exceed 70 feet or 6 stories, provided any such building sets back from every street and lot line one foot for each foot of height of the building in excess of 35 feet; in addition to other yard and setback requirements herein specified.

133.050 SIDE AND REAR YARDS.

- (a) — There shall be a side yard and a rear yard on every lot in an RL zone, which yards shall have a minimum depth of 6 feet; provided there shall be added to the side yard and rear yard minimum requirements aforesaid, one foot for each multiple of 15 feet or portion thereof, that the length of that side of the building measures over 30 feet. Notwithstanding Section 110.610 the rear yard in an RL zone shall be measured from the property line.
- (b) — In lieu of subsection (a) above, side and rear yards may be provided which will allow placement of portions of a main building with offsets and jogs at varying yard depths, provided the said yards shall conform to the following conditions:
 - (1) — The minimum yard depth for any continuous wall between offsets and jogs shall be computed and provided as in (a) above for that portion of the wall between offsets and jogs; provided the total yard area equals that which would have been otherwise provided in (a) above, which area shall be determined by multiplying the length of the yard times the depth of the yard.
 - (2) — The minimum yard depth for any portion of a building shall be six feet.

(c) — Notwithstanding the provisions of subsections (a) and (b) of this section, any side yard or rear yard adjacent to a street shall have a minimum yard depth of 20 feet. No parking shall be allowed within 10 feet of the street property line; provided, however, in no case shall parking be allowed in a required rear yard abutting the parallel or approximately parallel street of a through lot. For the purposes of this subsection, through lot shall be defined as a lot having frontage on two parallel or approximately parallel streets.

(d) — The yard depth between two or more main buildings on the same lot shall be equal to that side yard depth measured to an assumed property line drawn between the buildings. The yard depth between the assumed property line and the building shall be not less than as provided in (a) above.

~~133.060 FRONT YARD.~~ In an RL zone, there shall be a minimum front yard of 20 feet. No parking shall be allowed in the required minimum front yard.

~~133.070 LANDSCAPED YARDS.~~

(a) — In an RL zone the following landscaped yard shall be provided for residential uses other than single and two-family dwellings:

(1) — For each dwelling unit with 1 or less bedrooms — 300 square feet;

(2) — For each dwelling unit with 2 bedrooms — 400 square feet;

(3) — For each dwelling unit with 3 bedrooms — 500 square feet;

(4) — For each dwelling unit with more than 3 bedrooms — 500 square feet plus 100 square feet for each additional bedroom in each unit.

(b) — In an RL zone all required yards adjacent to a street shall be landscaped, save that portion devoted to off street parking. Such landscaping may be counted in fulfilling the requirements of (a) above.

~~133.080 LOT AREA AND WIDTH.~~ In an RL zone the minimum requirements for lot area shall be 6,000 square feet for a single family dwelling. The minimum lot area requirements for other residential uses shall be 5,000 feet plus additional lot area computed as follows:

(a) — For the first through fifth unit:

(1) — For each dwelling unit with 1 or less bedroom — 750 square feet;

(2) — For each dwelling unit with 2 bedrooms — 1,000 square feet;

(3) — For each dwelling unit with 3 or more bedrooms — 1,200 square feet;

(b) — For sixth dwelling unit and each succeeding dwelling unit, the following additional lot area shall be required:

(1) — For each dwelling unit with 1 or less bedrooms, one story — 1,250 square feet;

- ~~(2) — For each dwelling unit with 2 bedrooms, one story — 1,675 square feet;~~
- ~~(3) — For each dwelling unit with 3 or more bedrooms, one story — 2,150 square feet.~~
- ~~(c) — No main building or group of main buildings shall occupy more than 40% of the lot area, and no detached accessory structure may occupy more than 25% of any side or rear yard, except that covered or enclosed parking structures limited to one story in height shall be excluded from these coverage provisions.~~
- ~~(d) — Every lot in an RL zone shall have a minimum width of 50 feet at the front building line. The minimum lot area requirements for buildings other than dwellings shall be of an area not less than the sum of the area occupied by the building or buildings, and the area required for yards herein, or 5,000 square feet, whichever is greater.~~

RL LIMITED MULTI-FAMILY RESIDENTIAL DISTRICT

Lot Area Requirements

Base 5,000 square feet

<u>UNITS</u>	<u>SQ. FT. PER UNIT</u>	<u>ONE BEDROOM ADD</u>	<u>SQ. FT. PER UNIT</u>	<u>TWO BEDROOM ADD</u>	<u>SQ. FT. PER UNIT</u>	<u>THREE BED. ADD</u>
1	750	5,750	1,000	6,000	1,200	6,200
2	750	6,500	1,000	7,000	1,200	7,400
3	750	7,250	1,000	8,000	1,200	8,600
4	750	8,000	1,000	9,000	1,200	9,800
5	750	8,750	1,000	10,000	1,200	11,000
6	1,250	10,000	1,675	11,675	2,150	13,150
7	1,250	11,250	1,675	13,350	2,150	15,300
8	1,250	12,500	1,675	15,025	2,150	17,450
9	1,250	13,750	1,675	16,700	2,150	19,600
10	1,250	15,000	1,675	18,375	2,150	21,750
11	1,250	16,250	1,675	20,050	2,150	23,900
12	1,250	17,500	1,675	21,725	2,150	26,050
13	1,250	18,750	1,675	23,400	2,150	28,200
14	1,250	20,000	1,675	25,075	2,150	30,350
15	1,250	21,250	1,675	26,750	2,150	32,500
16	1,250	22,500	1,675	28,425	2,150	34,650
17	1,250	23,750	1,675	30,100	2,150	36,800
18	1,250	25,000	1,675	31,775	2,150	38,950
19	1,250	26,250	1,675	33,450	2,150	41,100
20	1,250	27,500	1,675	35,125	2,150	43,250
21	1,250	28,750	1,675	36,800	2,150	45,400
22	1,250	30,000	1,675	38,475	2,150	47,550
23	1,250	31,250	1,675	40,150	2,150	49,700
24	1,250	32,500	1,675	41,825	2,150	51,850
25	1,250	33,750	1,675	43,500	2,150	54,000
26	1,250	35,000	1,675	45,175	2,150	56,150
27	1,250	36,250	1,675	46,850	2,150	58,300
28	1,250	37,500	1,675	48,525	2,150	60,450
29	1,250	38,750	1,675	50,200	2,150	60,600
30	1,250	40,000	1,675	51,875	2,150	64,750

DRAFT – 9/22/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 134
RM (MULTI-FAMILY RESIDENTIAL) ZONE

Revised _____
Revised 03/29/06 Ord #1227
Revised 4/97

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134.070	Landscaped Yards	3
134.080	Lot Area and Width	3

134.010 USE. Within any RM, Multi-Family Residential, zone no building, structure, or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged, except for one or more of the following uses:

(a) — ~~Any use permitted in an RL zone;~~

(b) — ~~Unlimited number of dwelling units including:~~

- (1) — ~~Dormitories;~~
- (2) — ~~Sorority and fraternity houses;~~
- (3) — ~~Student homes;~~
- (4) — ~~Boarding houses (also see accessory uses);~~
- (5) — ~~Rooming houses;~~
- (6) — ~~Homes for the aged;~~
- (7) — ~~Retirement homes;~~
- (8) — ~~Rest homes;~~
- (9) — ~~Nursing homes;~~
- (10) — ~~Sanitariums;~~
- (11) — ~~Apartment houses;~~
- (12) — ~~Court apartments;~~
- (13) — ~~Churches;~~
- (14) — ~~Community or neighborhood clubs;~~
- (15) — ~~Kindergartens or day nurseries;~~
- (16) — ~~Group care home.~~

(a) Detached single family dwelling on a lot.

(b) Duplex, multiple family dwelling.

- (c) Combination of permitted attached or detached dwellings on a lot.
- (d) Child care home or facility.
- (e) Group care home.
- (f) Residential home or facility.
- (g) Nursing home.
- (h) Rooming house.
- (i) Religious organization.
- (j) Membership organization.
- (k) Any apartment or boarding house housing more than 25 families may have therein a newsstand, barber shop, beauty parlor, food shop, and dining rooms when conducted and entered only from within the building.
- (l) Beauty shop, where no assistants are employed;
- (m) A private garage or parking area for not more than three (3) motor vehicles for each dwelling unit on the same lot with or within the dwelling to which it is accessory and in which garage no business or industry is conducted;
- (n) Radio and TV facilities without antennae and support structures;
- (o) Playgrounds, parks;
- (p) Public buildings and structures, such as libraries or fire stations;
- (q) Public utility structures and buildings such as pump stations and reservoirs, electric substations, when they comply with all yard and setback requirements;
- (r) Subdivision or planned development pre-cutting and assembly facility (See Limited Use, Section 125.020);
- (s) Subdivision or planned development sales office or development office (See Limited Use, Section 125.030).
- (t) Mobile home (see Limited Use, Section 125.050).
- (u) Limited home occupations, (see Limited Use, Section 125.100);
- (v) Wireless communication facilities attached (see Limited Use, Section 125.110).

134.020 TRANSITIONAL USES. Transitional uses shall be permitted in an RM zone where the side of a lot abuts upon any business zone or industrial zone, provided that such transitional use does not extend across a street or alley and in no case more than 165 feet from the boundary of the less restricted zone which it adjoins, as follows:

- (a) Public parking areas when developed as prescribed in Chapter 118;
- (b) Outdoor plant nursery.

134.030 CONDITIONAL USES. When authorized under the procedure provided for conditional uses in this ordinance, the following uses will be permitted in an RM zone:

- (a) Planned development;
- (b) Mobile home parks;
- (c) Boat, camper and trailer storage area or lot (see Specific Conditional Uses, Section 120.030);
- (d) Schools elementary and secondary (as defined in Chapter 110);
- (e) Educational Institution as defined in section 110.210, and including those in SIC 822.
- (f) Fraternal or lodge buildings;
- (g) Temporary use of mobile home during certain hardship conditions (see Specific Conditional Uses, Section 120.040);
- (h) Solid waste disposal sites (see Specific Conditional Uses, Section 120.310 to 120.380);
- (i) Conditional home occupation (other than those home occupations listed in Section 125.100) (see Specific Conditional Uses, Section 120.075).

134.040 HEIGHT. In an RM zone, no building or structure shall exceed 35 feet or 2 1/2 stories in height, except churches religious organization and public and semi-public buildings, where permitted, may be built to a height not to exceed 70 feet or 6 stories, provided any such building sets back from every street and lot line 1 foot for each foot of height of the building in excess of 35 feet, in addition to other yard and setback requirements herein specified.

134.050 SIDE AND REAR YARDS.

(a) There shall be a side yard and a rear yard on every lot in an RM zone, which yards shall have a minimum depth as follows:

- (1) One (1) story - 6 feet
- (2) Two (2) stories - 7 feet
- (3) Two and one-half stories (2 1/2) - 8 feet

Provided there shall be added to the side yard and rear yard minimum requirements aforesaid, one foot for each multiple of 15 feet or portion thereof, that the length of that side of the building measures over 30 feet. Notwithstanding Section 110.610 the rear yard in an RM zone shall be measured from the property line.

(b) In lieu of subsection (a) of this section, side and rear yards may be provided which will allow placement of portions of a main building with offsets and jogs at varying yard depths, provided the said yards shall conform to the following conditions:

- (1) The minimum yard depth for any continuous wall between offsets and jogs shall be computed and provided as in subsection (a) of this section for that portion of the wall between offsets and jogs; provided the total yard area equals that which would have been otherwise provided in said subsection (a) which area shall be determined by multiplying the length of the yard times the depth of the yard.
- (2) The minimum yard depth for any portion of a building shall be six feet for a one story, 7 feet for two story, and 8 feet for a two and one-half story building.

(c) Notwithstanding the provisions of subsections (a) and (b) any side or rear yard adjacent to a street shall have a minimum yard depth of 20 feet. No parking shall be allowed within 10 feet of the street property line; provided, however, in no case shall parking be allowed in a required rear yard abutting the parallel or approximately parallel street of a through lot. For the purposes of this subsection, through lot shall be defined as a lot having frontage on two parallel or approximately parallel streets.

(d) The yard depth between two or more main buildings on the same lot shall be equal to that side yard depth measured to an assumed property line drawn between the buildings. The yard depth between the assumed property line and the building shall be not less than as provided in (a) of this section.

134.060 FRONT YARD. In an RM zone, there shall be a minimum front yard of 20 feet. No parking shall be allowed in the required minimum front yard.

134.070 LANDSCAPED YARDS.

- (a) In an RM zone the following landscaped yard shall be provided for residential uses other than single and two family dwellings:
 - (1) For each dwelling unit with 1 or **fewer** less bedrooms - 300 square feet;
 - (2) For each dwelling unit with 2 bedrooms - 400 square feet;
 - (3) For each dwelling unit with 3 bedrooms - 500 square feet;
 - (4) For each dwelling unit with more than 3 bedrooms - 500 square feet plus 100 square feet for each additional bedroom in each unit.
- (b) In an RM zone all required yards adjacent to a street shall be landscaped, save that portion devoted to off-street parking. Such landscaping may be counted in fulfilling the requirements of subsection (a).

134.080 LOT AREA AND WIDTH. In an RM zone the minimum requirements for lot area shall be 6,000 square feet for a single family dwelling. The minimum lot area requirements for other residential uses shall be 5,000 square feet additional lot area computed as follows:

- (a) For the first through fifth unit:
 - (1) For each dwelling unit with 1 or **fewer** less bedrooms - 750 square feet;
 - (2) For each dwelling unit with 2 bedrooms - 1,000 square feet;
 - (3) For each dwelling unit with 3 or more bedrooms - 1,200 square feet;
- (b) For sixth dwelling unit and each succeeding dwelling unit, the following additional lot area shall be required:
 - (1) For each dwelling unit with 1 or **fewer** less bedrooms:
 - One (1) story - 1,250 square feet;
 - Two (2) story - 1,000 square feet
 - (2) For each dwelling unit with 2 bedrooms:
 - One (1) story - 1,675 square feet;
 - Two (2) story - 1,300 square feet;
 - (3) For each dwelling unit with 3 or more bedrooms:
 - One (1) story - 2,150 square feet;
 - Two (2) story - 1,700 square feet.
- (c) No main building or group of main buildings shall occupy more than 40% of the lot area, and no detached accessory structure may occupy more than 25% of any side or rear yard, except that covered or enclosed parking structure limited to one story in height shall be excluded from these coverage provisions.
- (d) Every lot in an RM zone shall have a minimum width of 50 feet at the front building line. The minimum lot area requirements for buildings other than dwellings shall be of an area not less than the sum of the area occupied by the building or buildings, and the area required for yards herein, or 5,000 square feet, whichever is greater.

RM MULTI-FAMILY RESIDENTIAL DISTRICT
 Lot Area Requirements
 Two-Story

UNITS	ONE		TWO		THREE	
	SQ. FT. PER UNIT	BEDROOM ADD	SQ. ST. PER UNIT	BEDROOM ADD	SQ. FT. PER UNIT	BEDROOM ADD
1	750	5,750		6,000		6,200
2	750	6,500		7,000		7,400
3	750	7,250		8,000		8,600
4	750	8,000		9,000		9,800
5	750	8,750		10,000		11,000
6	1,000	9,750	1,300	11,300	1,700	12,700
7	1,000	10,750	1,300	12,600	1,700	14,400
8	1,000	11,750	1,300	13,900	1,700	16,100
9	1,000	12,750	1,300	15,200	1,700	19,500
10	1,000	13,750	1,300	16,500	1,700	19,500
11	1,000	14,750	1,300	17,800	1,700	21,200
12	1,000	15,750	1,300	19,100	1,700	22,900
13	1,000	16,750	1,300	20,400	1,700	24,600
14	1,000	17,750	1,300	21,700	1,700	26,300
15	1,000	18,750	1,300	23,000	1,700	28,000
16	1,000	19,750	1,300	24,300	1,700	29,700
17	1,000	20,750	1,300	25,600	1,700	31,400
18	1,000	21,750	1,300	26,900	1,700	33,100
19	1,000	22,750	1,300	28,200	1,700	34,800
20	1,000	23,750	1,300	29,500	1,700	36,500
21	1,000	24,750	1,300	30,800	1,700	38,200
22	1,000	25,750	1,300	32,100	1,700	29,900
23	1,000	26,750	1,300	33,400	1,700	41,600
24	1,000	27,750	1,300	35,700	1,700	43,200
25	1,000	28,750	1,300	37,200	1,700	45,000
26	1,000	29,750	1,300	38,500	1,700	46,700
27	1,000	30,750	1,300	39,800	1,700	48,400
28	1,000	31,750	1,300	41,100	1,700	50,100
29	1,000	32,750	1,300	42,400	1,700	51,800
30	1,000	33,750	1,300	43,700	1,700	53,500

DRAFT – 9/22/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 136
EXCLUSIVE FARM USE ZONE

Revised _____ Ord#
Revised 10/06/04 Ord#1204
08/06/03
12/12/02

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136.010 **PURPOSE.** The purpose of the Exclusive Farm Use (EFU) zone is to provide areas for continued practice of commercial agriculture. It is intended to be applied in those areas composed of tracts that are predominantly high-value farm soils as defined in OAR 660-033-020 (8). These areas are generally well suited for large scale farming. It is also applied to small inclusions of tracts composed predominantly of non-high value farm soils to avoid potential conflicts between commercial farming activities and the wider range of non-farm uses otherwise allowed on non-high value farmland. Moreover, to provide the needed protection within cohesive areas it is sometimes necessary to include incidental land unsuitable for farming and some preexisting residential acreage.

To encourage large scale farm operations the EFU zone consolidates contiguous lands in the same ownership when required by a land use decision. It is not the intent in the EFU zone to create, through land divisions, small scale farms. There are sufficient small parcels in the zone to accommodate those small scale farm operations that require high value farm soils. Subdivisions and planned developments are not consistent with the purpose of this zone and are prohibited.

To minimize impacts from potentially conflicting uses it is necessary to apply to non-farm uses the criteria and standards in OAR 660-033-130 and in some cases more restrictive criteria are applied to ensure that adverse impacts are not created.

Non-farm dwellings generally create conflicts with accepted agricultural practices. Therefore, the EFU zone does not include the lot of record non-farm dwelling provisions in OAR 660-033-130 (3). The

provisions limiting non-farm dwellings to existing parcels composed on Class IV-VIII soils [OAR 660-033-130 (4)] are included because the criteria adequately limit applications to a very few parcels and allow a case by case review to determine whether the proposed dwelling will have adverse impacts. The EFU zone is intended to be a farm zone consistent with OAR 660 Division 033 and ORS 215.283.

136.020 **PERMITTED USES.** Within an EFU zone no building, structure or premise shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

- (a) Farm uses (see farm use definition).
- (b) The propagation or harvesting of a forest product.
- (c) Buildings, other than dwellings, customarily provided in conjunction with farm use.
- (d) Reserved.
- (e) Alteration, restoration, or replacement of a lawfully established dwelling with filing of the Declaratory Statement in Section 136.100 (c), when the dwelling:
 - (1) Has a deterioration **"Percentage Good"** rating of 40 percent or more ~~in good condition~~ in the current County Assessor's records.
 - (2) In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable non-residential use within three months of the occupancy of the replacement dwelling.
 - (3) In the case of replacement of a manufactured dwelling, the unit to be replaced is a manufactured home as defined in ORS 446.003 [manufactured after June 15, 1976].
 - (4) If the dwelling to be replaced is located on a portion of the lot or parcel not zoned EFU, SA (Special Agriculture) or FT (Farm Timber), the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement of dwellings have changed to allow the siting of another dwelling.
- (f) Operations for the exploration for 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 customary production equipment for an individual well adjacent the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732.
- (g) Operations for the exploration for minerals as defined by ORS 517.750.

- (h) Widening of roads ~~within existing rights-of-way in conformance with the transportation element of the comprehensive plan~~, including public road and highway projects as follows:
 - (1) Climbing and passing lanes within the street right-of-way existing as of July 1, 1987.
 - (2) Reconstruction or modification of public streets, including the placement of utility facilities overhead and in the subsurface of public roads and highways along public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels result.
 - (3) Temporary public street detours that will be abandoned and restored to original condition or use at such time as no longer needed.
 - (4) Minor betterment of existing public street 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 streets.
- (i) Creation of, restoration of, or enhancement of wetlands.
- (j) On-site filming and activities accessory to filming, as defined in Section 136.140(a), if the activity would involve no more than 45 days on any site within a one-year period.

136.030 DWELLINGS PERMITTED SUBJECT TO STANDARDS. The following dwellings may be established in the EFU zone with filing of the Declaratory Statement in Section 136.100 (c), subject to approval by the Director, based on satisfaction of the standards and criteria listed for each type of dwelling pursuant to the procedures in Section 110.680.

Primary Farm Dwellings

- (a) A single-family dwelling customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:
 - (1) It is located on high-value farmland, as defined in Section 136.140(d) and satisfies following standards:
 - (A) There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term “farm operation” means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.
 - (B) The subject tract produced in the last two years or three of the last five years at least \$80, 000 in gross annual income from the sale of farm products. In determining gross annual income from the sale of farm products. ~~In determining gross income,~~ the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented shall be counted.
 - (C) The subject tract is currently employed for the farm use that produced the income required in paragraph (B) of this subsection; or

- (D) The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in paragraph (B) of this subsection; or
- (2) It is **not** located on high-value farmland, as defined in Section 136.140(d) and satisfies the following standards:
- (A) There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term “farm operation” means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.
 - (B) The subject tract produced at least \$40,000 in gross annual income from the sale of the farm products in the last two or three of the last five years. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented shall be counted.
 - (C) The subject tract is currently employed for the farm use that produced the income required in paragraph (B) of this subsection.
 - (D) The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in paragraph (B) of this subsection; or
- (3) It is **not** located on high-value farmland, as defined in Section 136.140 (d) and satisfies the following standards:
- (A) There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term “farm operation” means all lots or parcels of land in the same ownership that are a used by the farm operator for farm use.
 - (B) The parcel on which the dwelling will be located is at least 160 acres.
 - (C) The subject tract is currently employed for farm use, as defined in ORS 215.203.
 - (D) The dwelling will be occupied by a person or person who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale.
- (4) It is in conjunction with a commercial dairy farm as defined in this Chapter and if:
- (A) The subject tract will be employed as a commercial dairy as defined; and
 - (B) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and
 - (C) Except as permitted by ORS 215.283 (1)(p) (1999 Edition), (Seasonal Farmworker Housing), there is no other dwelling on the subject tract; and

- (D) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm activities necessary to the operation of the commercial dairy farm; and
 - (E) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and
 - (F) The Oregon Department of Agriculture has approved the following:
 - (1) A permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and
 - (2) A producer license for the sale of dairy products under ORS 621.072.
- (5) The applicant had previously operated a commercial farm use and if:
- (A) Within the previous two years, the applicant owned and operated a farm or ranch operation that earned the gross farm income in the last five years or four of the last seven years as required by Section 136.030(a)(1) or (2), whichever is applicable.
 - (B) The subject lot or parcel on which the dwelling will be located is:
 - (1) Currently employed for the farm use, as defined in this ordinance, that produced in the last two years or three of the last five years the gross farm income required by Section 136.030(a) (1) or (2), whichever is applicable, and
 - (2) At least the size of the applicable minimum lot size in this chapter; and
 - (a) Except as permitted in ORS 215.283(1)(p)(1999 Edition) (Seasonal Farmworker Housing) there is no other dwelling on the subject tract; and
 - (b) The dwelling will be occupied by a person or persons who produced the commodities, that grossed the income in subsection (a) of this section;
 - (c) In determining the gross income required by subsections (a) and (b) (A) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract, and only gross income from land owned not leased or rented, shall be counted.
- (6) **All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:**

“It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling.”

These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions are located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.

Secondary Farm Dwellings

- (b) Secondary (accessory) dwellings customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:
- (1) The primary dwelling and the proposed dwelling will each 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 uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.
 - (2) There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.
 - (3) The proposed dwelling will be located:
 - (A) On the same lot or parcel as the primary farm dwelling; or
 - (B) On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or
 - (C) On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the County Clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (1) of this section; or
 - (D) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm operation 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 farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

- (E) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (4) below, whichever is applicable.
- (4) The primary farm dwelling to which the proposed dwelling would be accessory satisfies the following criteria:
- (A) On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and produced at least \$40,000 gross annual income from the sale of farm products in the last two or three of the last five years; or
 - (B) On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and produced at least \$80,000 in gross annual income from the sale of farm products in the last two or three of the last five years; or
 - (C) The primary dwelling is located on a commercial dairy farm as defined in this Chapter; and
 - (1) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and
 - (2) The Oregon Department of Agriculture has approved a permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and
 - (3) Producer License for the sale of dairy products under ORS 621.072.
 - (D) In determining the gross income in paragraphs (a) and (b) of this subsection, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
- (5) The dwelling will be consistent with the Fish and Wildlife Habitat policies of the Comprehensive Plan if located in a designated big game habitat area.
- (6) Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable state building code, and a deed restriction filed with the County Clerk requiring removal of the manufactured home or removal, demolition or conversion to a non-residential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.
- (c) A secondary single-family dwelling on real property used for farm use subject to the following standards:
- (1) A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator’s

spouse, which means grandparent, step grandparent, grandchild, parent, stepparent, child, **stepchild**, brother, sister, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.

- (2) The farm operator shall continue to play the predominant role in management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.
- (3) A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.
- (4) For purposes of this subsection, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in Sections 136.030(a)(1)(b), and the parcel where the dwelling is proposed contains a minimum of 80 acres.
- (5) **All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions: It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling. These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions are located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.**

Dwelling Alteration and Replacement

- (d) Alteration, restoration, or replacement of a lawfully established dwelling with filing of the Declaratory Statement in Section 136.100(c), other than as permitted in Section 136.020(e), when the dwelling.
 - (1) Has intact exterior walls and roof structure;
 - (2) Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;
 - (3) Has interior wiring for interior lights;
 - (4) Has a heating system; and
 - (5) In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable non-residential use within three months of the occupancy of the replacement dwelling.

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

(6)(7) If the dwelling to be replaced is located on a portion of the lot or parcel not zoned EFU, SA or FT the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel.

The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling.

136.040 USES PERMITTED SUBJECT TO STANDARDS. The following uses may be permitted in the EFU zone subject to approval of the request by the Planning Director, based on satisfaction of the standards and criteria specified for each use, pursuant to Section 110.680.

Farm Stand

(a) Farm stand subject to the following standards:

(1) Structures shall be designed used for the 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.

(a) As used in this section, “farm crops or livestock” includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another produce but not prepared food items.

(b) As used in this section, “local agricultural area” is limited to the State of Oregon.

(2) The sale of incidental retail items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand is permitted provided the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand.

- (3) Farm stand shall 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.

Winery

- (b) Winery, as defined in Section 136.140(h). The winery shall include only the sale of:
 - (1) Wines produced in conjunction with the winery.
 - (2) Items directly related to wine, the sales of which are incidental to the sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.

Churches Religious Organizations and Cemeteries

- (c) **Churches Religious organization** and cemeteries in conjunction with **churches religious organizations** subject to the following:
 - (1) New **churches religious organizations** may not be established on high-value farmland. Existing **churches religious organizations** and cemeteries in conjunction with **churches religious organizations** may be maintained, enhanced, or expanded on the same tract wholly within a farm zone.
 - (2) No new **churches religious organizations**, and cemeteries in conjunction with **churches religious organizations**, may be established within three miles of an urban growth boundary of a city unless an exception is approved pursuant to OAR Chapter 660, Division 004.

Public and Private Schools

- (d) Public or private schools, including all building essential to the operation of a school, subject to the following:
 - (1) New schools may not be established on high-value farmland. Existing schools may be maintained, enhanced, or expanded on the same tract wholly within a farm zone.
 - (2) No new school may be established within three miles of an urban growth boundary of a city unless an exception is approved pursuant to OAR Chapter 660, Division 004.

Filming Activities

- (e) On-site filming and activities accessory to filming, and defined in Section 136.140(a), if the activity:
 - (1) Involves filming or activities accessory to filming for more than 45 days; or
 - (2) Involves erected of sets that would remain in place longer than any 45 day period.
 - (3) The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Facilities for Processing Farm Crops

- (f) A facility for processing of farm crops, or the production of biofuel as defined in ORS 315.141, subject to the following:
- (1) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility.
 - (2) The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use.
 - (3) The processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits siting of the processing facility.
 - (4) Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.

Model Aircraft

- (g) A site for the takeoff and landing of model aircraft, including such building or facilities as may reasonably be necessary subject to the following:
- (1) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility pre-existed the use.
 - (2) The site shall not include an aggregate surface or hard area surface unless the surface pre-existed the use.
 - (3) As used in this section "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 controlled by radio, lines or design by a person on the ground.

Wildlife Habitat Conservation

- (h) A wildlife habitat conservation and management plan on a lot or parcel subject to the following:
- (1) The lot or parcel contains an existing legally established dwelling; or
 - (2) Approval for the dwelling is obtained under provisions contained in Sections 136.030(a), (d) or 136.050(a).
 - (3) The dwelling is situated on a legally created lot or parcel existing on November 4, 1993.
 - (4) The lot or parcel is not predominantly composed of soils rated Class I or II, when not irrigated, or rated Prime or Unique by the Natural Resource Conservation Service, or any combination of such soils.

Other Uses

- (i) Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the EFU zoning order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors as found in OAR 660-33-130(16):
 - (1) Technical and engineering feasibility;
 - (2) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for Exclusive Farm Use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
 - (3) Lack of available urban and non-resource lands;
 - (4) Availability of existing right-of-way;
 - (5) Public health and safety; and
 - (6) Other requirements of state and federal agencies.
 - (A) Costs associated with any of the factors listed 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.
 - (B) The owner of a utility facility approved under this section shall be responsible for restoring, to its former condition as nearly as possible, 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 upon a contractor the responsibility for restoration.
 - (C) The applicant shall address the requirements of 136.060(a).
 - (D) In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an Exclusive Farm Use Zone shall be subject to the provisions of OAR 660-011-0060.
 - (E) The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.
- (j) Parking of not more than seven log trucks on a tract when the use will not:
 - (1) Force a significantly change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.

- (2) Significantly increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use.
- (k) Fire service facilities providing rural fire protection services.
- (l) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.
- (m) Utility facility service lines. Utility facility service lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:
 - (1) A public right-of-way;
 - (2) Land immediately adjacent to a public right-of-way, provided the written consent of all adjacent property owners has been obtained; or
 - (3) The property to be served by the utility.
- (n) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251 the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an Exclusive Farm Use Zone under this division.

136.050 **CONDITIONAL USES.** The following uses may be permitted in an EFU zone subject to obtaining a conditional use permit and satisfying the criteria in Section 136.060(a), and any additional criteria, requirements, and standards specified for the use:

- (a) Single-family dwelling or manufactured home not in conjunction with farm use, subject to the criteria and standards in Sections 136.060(b), 136.070 and 136.100.
- (b) Temporary residence for hardship purposes subject to the requirements of Section 120.040 with filing of the Declaratory Statement in Section 136.100(c).
- (c) Reserved.
- (d) Portable or temporary facility for primary processing of forest products subject to Section 136.060(e).
- (e) The following commercial uses:
 - (1) Home occupations, including bed and breakfast inns, subject to the criteria in Section 136.060(c) with filing of a Declaratory Statement in Section 136.100(c).
 - (2) Commercial activities in conjunction with farm use, **including the processing of farm crops into biofuel not permitted under Section 136.040(f)**, except the processing of farm crops pursuant to Section 136.040(f), and subject to Section 136.060(d), but including a winery not permitted under Section 136.040(b).

- (3) Expansion of a lawfully established dog kennel with filing of the Declaratory Statement in Section 136.100(c).
- (4) Room and board arrangements for a maximum of five unrelated persons in existing dwellings with filing of the Declaratory Statement in Section 136.100(c).
- (5) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission.
- (6) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(7) Composting Facilities

- (a) Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.
- (b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (a) or that require a permit from the Department of Environmental Quality under OAR 340-093-0050. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(f) The following mining and processing activities:

- (1) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 215.298 520.005 and Section 120.400.
- (2) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298 and Section 120.400.
- (3) Processing, as defined by ORS 517.750, or aggregate into asphalt or portland cement subject to Section 120.400 and 136.060(h).
- (4) Processing of other mineral resources and other subsurface resources subject to Section 120.400.

- (g) The following utility use:
 - (1) Commercial utility facilities for the purpose of generating power for public sale, subject to Section 136.060(f).
 - (2) Transmission towers over 200 feet in height.
- (h) Personal-use airports for airplanes and helicopter pads, including associated hanger, maintenance and service facilities as defined in ORS 215.283(2)(h).
- (i) The following recreation uses:
 - (1) Expansion of a lawfully established private park, playground, hunting and fishing preserve or campground subject to Section 136.060(g) with filing of the Declaratory Statement in Section 136.100(c).
 - (2) Expansion of a lawfully established community center, operated primarily by and for residents of the local rural community, where the land and facilities are owned and operated by a governmental agency or non-profit community organization with filing of the Declaratory Statement in Section 136.100(c).
 - (3) Public parks, open spaces, and playgrounds including only those uses specified under OAR 660-034-035 or OAR 660-034-0040, whichever is applicable, ~~OAR 660-033-100(10)~~, and consistent with ORS 195.120 and with filing of the Declaratory Statement in Section 136.100(c).
 - (4) Expansion of a lawfully established golf course on the same tract consistent with definitions in Section 136.140(c), and with filing of the Declaratory Statement in Section 136.100(c).
 - (5) Living history museum subject to 136.060(i), and with filing of the Declaratory Statement in Section 136.100(c).
- (j) Expansion of a lawfully established solid waste disposal site together with facilities and buildings for its operation.
- (k) The following transportation uses:
 - (1) Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.
 - (2) Reconstruction or modification of public streets involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
 - (3) Improvement of public street 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.

- (4) Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 012.
- (l) A replacement dwelling to be used in conjunction with farm use with filing of the Declaratory Statement in Section 136.100(c), if the existing dwelling is listed in the Comprehensive Plan Inventory and the National Register of Historic Places as historic property as defined in ORS 358.480.
- (m) Residential home or adult foster home, as defined in ORS 197.660 and section 110.477, in an existing dwelling with filing of the Declaratory Statement in Section 136.100(c).
- (n) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135 as provided for in ORS 215.283(2).**

136.060 **CONDITIONAL USE REVIEW CRITERIA.** The uses identified in Section 136.050 shall satisfy criteria in the applicable subsections below.

- (a) The following criteria apply to all conditional uses in the EFU zone:
 - (1) The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.
 - (2) Adequate fire protection and other rural services are, or will be, available when the use is established.
 - (3) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.
 - (4) Any noise associated with the use will not have a significant adverse impact on nearby land uses.
 - (5) The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

Non-farm Dwellings

- (b) The following additional criteria apply to non-farm dwelling requests:
 - (1) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in Section 136.130.

- (2) The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993 in any way that enables the lot or parcel to meet the criteria for non-farm dwelling.
- (3) The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings on other lots or parcel in the area similarly situated shall be considered. To address this standard, the following information shall be provided:
 - (A) Identify a study area for the cumulative impact analysis. The study area shall include at least 2000 acres or a smaller area not less than 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;
 - (B) 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 non-farm dwellings that could be approved under Section 136.050(a), including identification of predominant soil classifications and parcels created prior to January 1, 1993. 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 provision;
 - (C) Determine whether approval of the proposed non-farm dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern. **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, lease farmland, acquire waste 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.

Home Occupations

- (c) Notwithstanding Sections 119.270 and 120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:
 - (1) A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation (“person” includes volunteer, non-resident employee, partner or any other person).

- (2) It shall be operated substantially in:
 - (A) The dwelling; or
 - (B) Other buildings normally associated with uses permitted in the zone in which the property is located.
- (3) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
- (4) A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.
- (5) A sign shall meet the standards in **Chapter** 191. ~~060(a) for home occupations and 191.060(F) for bed and breakfast inns.~~
- (6) The **property**, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
- (7) Retail and wholesale sales that do not involve customers coming to the property, such as internet, telephone or mail order offsite sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

(d) **Commercial Activities in Conjunction with Farm Use:**

- (1) The commercial activity must be primarily a customer or supplier of farm uses.
- (2) The commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates.
- (3) The agricultural and commercial activities must occur together in the local community to satisfy the statute.
- (4) The products and services provided must be “essential to the practice of agriculture.”

Forest Products Processing Facility

- (e) A portable or temporary facility for the primary processing of forest products is subject to the following criteria and limitations:
 - (1) The use shall not seriously interfere with accepted farming practices.
 - (2) The use shall be compatible with farm uses described in ORS 215.203(2).
 - (3) The use may be approved for a maximum one-year period, which is renewable.
 - (4) The primary processing of forest product, as used in this section, means the use of a chipper, stud mill, or other similar facility for initial treatment of a forest product in order

to enable its shipment to market. Forest products, as uses in this section, means timber grown upon a tract where the primary processing facility is located.

Power Generation Facility

- (f) Power generation facilities shall be subject to the following criteria:
- (1) The facility will not be located on a portion of the subject property that is comprised of soils that are irrigated and classified prime, unique, Class I or Class II, or not irrigated and classified prime, unique Class I or Class II.
 - (2) Will not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR 660, Division 004; or
 - (3) The facility will be located on a portion of the subject property not comprised of the soils identified in subsection (1) of this section and will not preclude more than 20 areas from use as a commercial agriculture enterprise unless an exception is taken pursuant to ORS 197.732 and OAR 660, Division 004.

Private Parks and Campgrounds

- (g) Private parks, playground, hunting and fishing preserves, and campground expansions shall meet the following criteria:
- (1) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.
 - (2) It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.
 - (3) A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.
 - (4) A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:
 - (A) No more than one-third or a maximum of 10 campsites, whichever is smaller may include yurts;
 - (B) The yurt shall be located on the ground or on a wood floor with no permanent foundation.
 - (5) Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

- (6) It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.
- (7) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

Other Uses

- (h) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. "Planted vineyard" means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.
- (i) Living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an Exclusive Farm Use Zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary.

As used in this paragraph:

- (1) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and
- (2) "Local historical society" means the local historical society recognized by the County Board of Commissioners and organized under ORS Chapter 65.

136.070 NON-FARM DWELLING REQUIREMENTS. The following regulations shall apply to non-farm dwellings. ~~approved pursuant to Section 136.050(a).~~

- (a) Special Setbacks:
 - (1) Dwellings. A special dwelling setback of 200 feet from any abutting parcel in arm use or timber production is required.
 - (2) Accessory buildings. A special setback of 100 feet is required for buildings accessory to a dwelling from any abutting parcel in farm use or timber production.
 - (3) Adjustments. The special setbacks in (1) and (2) may be reduced if it is determined that a lesser setback will prevent activities associated with the dwelling or accessory building from seriously interfering with farming or forest practices as provided in Section 110.680.
 - (4) The special setback in (1) shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 to 195.336 nor should the special setback in (1) prohibit a claimant's application for homesites under ORS 195.300 to 195.336.
- (b) Fire Hazard Reduction: As a condition of approval for any non-farm dwelling located closer than 200 feet to timber, the owner shall be required to maintain a primary and secondary fuel-free break

area in accordance with the provision in “Recommended Fire Siting Standards for Dwellings and Structures for Dwellings and Structures and Fire Safety Design Standards for Roads” dated March 1, 1991 and published by the Oregon Department of Forestry.

- (c) Prior to issuance of any residential building permit for an approved non-farm dwelling under Section 136.050(a), evidence shall be provided that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359 (1)(b), ORS 321.842(1)(A) and 321.716 ~~308.370 or 308.765 or ORS 321.352, 321.730 and 321.815~~. A parcel that has been disqualified under this section shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.

136.080 EXISTING DWELLINGS AND OTHER STRUCTURES. For the purpose of regulating dwellings and structures at the time the EFU zone is applied, the following regulations shall apply.

- (a) Legally established dwellings existing when the EFU zone is applied shall be considered in conformance with the EFU zone and may be repaired, altered, enlarged or replaced pursuant to Sections 136.020(e) or 136.030(d).
- (b) Legally established structures accessory to a dwelling, farm or forest use, or other authorized use, existing when the EFU zone is applied shall be considered in conformance with the EFU zone and may be repaired, altered, or enlarged unless conditions applied to the use require that changes to the structure be reviewed.
- (c) Notwithstanding Section 114.070, if a **legally established** non-resource use exists in the EFU zone and is unintentionally destroyed by fire, other casualty or natural disaster, the use may be reestablished to its previous nature and extent, but the reestablishment shall satisfy other building codes, ordinance and permit requirements. Efforts to Such reestablishment the use shall commence within one year of destruction of the use or structure.

136.090 MINIMUM PARCEL SIZE, DIVISIONS OF LAND, AND PROPERTY LINE ADJUSTMENTS. The following regulations apply when property line adjustments and partitioning of land within an EFU zone subject to the provisions of Chapter 172 are proposed:

- (a) Minimum Parcel Size for Newly Created Parcels:
 - (1) Farm Parcels: The minimal parcel size for new farm parcels shall be calculated as follows:
 - (A) All parcels wholly or in part within 500 feet of the subject parcel shall be identified.
 - (B) The average (mean) size of all parcels larger than 40 acres identified in paragraph (A) of this subsection shall be determined.
 - (C) The acreage size calculated in paragraph (B) of this subsection, rounded to the nearest 10 acres, is the minimum parcel size unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.

- (a) Maximum Height:
 - (1) Dwellings - 35 feet.
 - (2) Farm related structures on farm parcels - none.
 - (3) Non-residential and non-farm structures - 35 feet unless they are in conjunction with conditional uses allowed in Section 136.050, and a greater height is requested and approved as part of the conditional use permit.
- (b) Minimum Setbacks: Except as required in Section 136.070(a), the following setback requirements shall be implemented for all new structures other than farm-exempt buildings, signs and fences:
 - (1) Rear Yard - A minimum of 20 feet.
 - (2) Side Yard - A minimum of 20 feet, except for lots or parcels of one-half acre or smaller created prior to January 1, 1994, in which case the side yard setback shall be five (5) feet.
 - (3) Front Yard - A minimum of 20 feet. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (See Section 112).
- (c) Declaratory Statement. For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering the following declaratory statement into the chain of the lot(s) or parcel(s):

“The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and I/We acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices I/We will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937”.

136.110. CONTIGUOUS OWNERSHIP.

- (a) After June 29, 1994 it shall be a condition of approval that a new deed be recorded consolidating all contiguous lands in the same ownership when such contiguous lots or parcels are included in the application and must be considered in order for the application to meet the applicable criteria and standards. Consolidation shall be accomplished prior to exercising the rights granted in the land use decision and obtaining building permits, or concurrent with filing of a partitioning plat or property line adjustment survey.
- (b) Where a land-use action prior to June 29, 1994 required that contiguous lots or parcels be considered a single lot or parcel, they shall continue to be considered a single lot or parcel for land use purposes.

136.120 PERMIT EXPIRATION DATES.

- (a) Notwithstanding other provisions of this ordinance, a discretionary decision, except for a land division, approving a proposed development in the EFU zone expires two years from the date of the final decision if the development action is not initiated in that period. The Director may grant an extension period of up to 12 months if:
 - (1) An applicant makes a written request for an extension of the development approval period.
 - (2) The request is submitted to the county prior to expiration of the approval period.
 - (3) The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.
 - (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
- (b) Approval of an extension granted under this section is not land-use decision described in ORS 197.015 and is not subject to appeal as a land use decision.
- (c) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.
- (d) If a permit is approved for a proposed residential development in the EFU zone, the permit shall be valid for four years. For the purposes of this subsection, “residential development” only includes the dwellings provided for under 136.020(e), 136.030(d) and 136.050(a).
- (e) An extension of a permit consistent with (d) above and with Section 136.120(a)(1 through 4) and where applicable criteria for the decision have not changed shall be valid for two years.

136.130 CONSIDERATION OF SOIL CLASSIFICATION CHANGES FOR NON-FARM DWELLINGS. For purposes of approving an application for a dwelling not in conjunction with farm use under Section 136.050(a), the soil class, soil rating, or other soil designation of a specific lot or parcel may be changed if the property owner submits a report from a consulting soils scientist whose credentials may have been certified as acceptable to the State Department of Agriculture that the soil class, soil rating, or other soil designation should be changed, and the report satisfies the most recent requirements in the Oregon Administrative Rules for acceptable soils reports.

136.140 DEFINITION OF TERMS USED IN THIS CHAPTER. The following terms apply to Chapter 136 and have no relevance to the same term used in other chapters of this ordinance unless specifically stated.

- (a) Filming Activities - On-site filming and activities accessory to on-site filming includes filming and site preparation, construction of sets, staging, makeup and support services customarily provided for on-site filming. Production of advertisements, documentaries, feature film, television services and other film production that rely on the rural qualities of an EFU zone in more than an incidental way. It does not include facilities for marketing, editing and other such activities that are allowed only as a home occupation or construction of new structures that require a building permit.
- (b) Commercial dairy farm – A dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by Section 136.030(a)(1) or (2).

(c) Golf Course - An area of land with highly maintained natural turf laid out for the 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. A “golf course” means a nine (9) or 18 hole regulation golf course, or golf tournament, consistent with the following:

- (1) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes.
- (2) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes.
- (3) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course and conforms to the following:
 - (A) An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course include parking, maintenance buildings, cart storage and repair, practice range or driving range, clubhouse, restrooms, lockers and showers, food and beverage service, pro-shop, and a practice or beginners course.
 - (B) Accessory uses to a golf course do not include sporting facilities unrelated to golf such as tennis courts, swimming pools, or weight rooms, wholesale or retail operations oriented to the non-golfing public; or housing.
 - (C) A use is accessory to a golf course only when limited in size and orientation to serve the needs of persons and their guests who patronize the golf course to golf.
 - (D) Commercial activities such as food and beverage service and pro-shop are accessory to a golf course only when located in the clubhouse.
 - (E) Accessory uses may include one or more food and beverage service facilities to addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designated for or include structures for banquets, public gatherings or public entertainment.**

(d) High-value farmland - A tract composed predominantly of:

- (1) Soils rated Class I or II, prime, or unique, either irrigated or not irrigated;
- (2) The following Class III soils: Chehalem (CeC), Concord (Co), Hullt (HuD), Jory (JoD), Nekia (NeC, NeD, NkC), Salkum (SkD), Silverton (SuD), and Woodburn (WuD);
- (3) The following Class IV soils: Bashaw (Ba), Camas (Ca), Courtney (Cu), Dayton (Da), and Jory (JoE).

- (e) 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, cultivating or harvesting of seasonal agricultural crops or in forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, pre-commercial thinning and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash and other related activities.
- (f) Tract - One or more contiguous lots or parcels under the same ownership.
- (h) Winery - As authorized under Section 136.040(b), a winery is a facility that produces and sells wine and has a maximum annual production of:
 - (1) Less than 50,000 gallons and owns an on-site vineyard of at least 15 acres, owns a contiguous vineyard of at least 15 acres, has a long-term contract for the purchase of all the grapes from at least 15 acres of vineyard contiguous to the winery, or obtains grapes from any combination of these sites; or
 - (2) At least 50,000 gallons and owns an on-site vineyard of at least 40 acres, owns a contiguous vineyard of at least 40 acres, has a long-term contract for the purchase of all the grapes from at least 40 acres of vineyard contiguous to the winery, or obtains grapes from any combination of these sites.

DRAFT – 9/24/08
DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 138
TC (TIMBER CONSERVATION) ZONE

Revised _____ Ord#
Revised 10/06/04 Ord. #1204
12/12/02

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138.010 PURPOSE. The purpose of the Timber Conservation (TC) zone is to conserve forest lands by maintaining the forest land base and to protect the forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

The TC zone is intended to be applied in areas where the soils are predominantly forest site Class I through VI and where the existing land use pattern is predominantly large commercial forest ownerships managed as commercial timber. It is necessary to the continuation of the commercial forest enterprises that contiguous ownerships be consolidated into larger parcels better suitable for large scale management. Subdivisions and planned developments are not consistent with the purpose and intent of this zone and are prohibited.

The TC zone places primary emphasis on forest use but compatible uses are also allowed. These include uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment. Also included are locationally dependent uses such as communication towers, and mineral and aggregate resources. The TC zone is intended to be applied in areas designated Forest Lands in the Marion County Comprehensive Plan and to implement the State Forest Lands Goal and OAR 660 Division 006.

138.020 PERMITTED USES. Within a TC zone no building, structure or premise shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

- (a) Farm Uses (see Farm Use definition).
- (b) Buildings, other than dwellings, customarily provided in conjunction with farm or forest use.
- (c) Forest operations or forest practices including, but not limited to, reforestation, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash pursuant to ORS 527 (Forest Practices Act).
- (d) Temporary forest labor camp.
- (e) Alteration, restoration, or replacement of a lawfully established dwelling with filing of the Declaratory Statement in Section 138.060(b), when the dwelling:
 - (1) Has a deterioration **“Percentage Good”** rating of ~~40~~ 50 percent or more in good condition in the current County Assessor’s records.
 - (2) In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the occupancy of the replacement dwelling.
 - (3) In the case of replacement of a manufactured dwelling, the unit to be replaced is a manufactured home as defined in ORS 446.003 [manufactured after June 15, 1976].
 - (4) In the case of replacement, the replacement dwelling shall be situated in the same location as the existing dwelling.
- (f) Temporary on-site structures which are auxiliary, as defined in Section 138.120(a), to and used during the term of a particular forest operation pursuant to ORS 527.
- (g) Physical alteration to the land auxiliary, as defined in Section 138.120(a), to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities pursuant to ORS 527.
- (h) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
- (i) Local distribution lines (e.g. electric, telephone, natural gas) and accessory equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.
- (j) Temporary portable facility for the primary processing of forest products.

- (k) Exploration for mineral and aggregate resources as defined in ORS Chapter 517.
- (l) Private hunting and fishing operations without any lodging accommodations.
- (m) Towers and fire stations for forest fire protection.
- (n) Widening of roads ~~within existing rights-of-way in conformance with the transportation element of the Comprehensive Plan~~, including public road and highway projects as follows:
 - (1) Climbing and passing lanes within the street right-of-way existing as of July 1, 1987.
 - (2) Reconstruction or modification of public streets, including the placement of utility facilities overhead and in the subsurface of public roads and highways along public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels result.
 - (3) Temporary public street detours that will be abandoned and restored to original condition or use at such time as no longer needed.
 - (4) Minor betterment of existing public street 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 streets.
- (o) Water intake facilities, canals and distribution lines for farm irrigation and ponds.
- (p) Caretaker dwelling for public park or **public** fish hatchery.
- (q) Uninhabitable structures accessory to fish and wildlife enhancement.
- (r) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.
- (s) Destination resorts reviewed and approved pursuant to the destination resort siting requirements in ORS 197.435 to ORS 197.465 and State Land Use Goal 8.
- (t) Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.

138.030 DWELLINGS PERMITTED SUBJECT TO STANDARDS. The following dwellings may be established in the TC zone, subject to approval by the Director, based on satisfaction of the standards and criteria listed for each type of dwelling, pursuant to the procedures in Section 110.680.

Lot-of-Record Dwellings

- (a) A single family dwelling, subject to the Special Use and Siting Requirements in Section 138.060, may be allowed on a lot or parcel provided:
- (1) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner:
 - (A) Since prior to January 1, 1985; or
 - (B) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel prior to January 1, 1985.
 - (C) "Owner", as the term is used in this section, 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, step child, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.
 - (2) The tract on which the dwelling will be sited does not include a dwelling. Tract means all contiguous lands in the same ownership.
 - (3) 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.
 - (4) The subject tract is composed of soils not capable of producing 5,000 cubic foot per year of commercial tree species. [See definitions in Section 138.120(b) and (c)].
 - (5) The subject tract is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and be either paved or surfaced with rock, and shall not be:
 - (A) A United States Bureau of Land Management road; or
 - (B) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.
 - (6) The proposed dwelling is not prohibited by, and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.837.
 - (7) The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

- (8) The remaining portions of the tract and the subject lot or parcel are consolidated into a single lot or parcel when the dwelling is allowed.

Template Dwelling

- (b) A single family dwelling, subject to the Special Use and Siting Requirements in Section 138.060, may be allowed on a lot or parcel provided:
- (1) The tract on which the dwelling will be sited does not include a dwelling. Tract means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.
 - (2) No dwellings are allowed on other lots or parcels that make up the tract, and the other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.
 - (3) The lot or parcel is:
 - (A) Predominantly composed of soils that are capable of producing 0 to 49 cubic feet per acre per year of wood fiber, and there are within a 160 acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993 and **all or part of** at least three dwellings that existed on January 1, 1993 and continue to exist; or
 - (B) Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160 acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993 and **all or part of** at least three dwellings that existed on January 1, 1993 and continue to exist; or
 - (C) Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160 acre square centered on the center of the subject tract all or part of at least eleven other lots or parcels that existed on January 1, 1993 and **all or part of** at least three dwellings that existed on January 1, 1993 and continue to exist; and
 - (D) If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160 acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and

If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160 acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160 acre rectangle; or

(E) If the tract abuts a road that existed on January 1, 1993 and (D) does not apply the measurements may be made using a 160 acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.

(F) Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.

(4) The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.836 7.

(5) The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

Large Parcel Dwelling

(c) A single family dwelling, subject to the Special Use and Siting Requirements in Section 138.060 may be allowed provided:

(1) The lot or parcel on which the dwelling will be located was created before January 1, 1994 or is a consolidated parcel comprised entirely of contiguous lots or parcels that were created before January 1, 1994.

(2) The lot or parcel contains at least 160 acres in the TC zone.

(3) The lot or parcel on which the dwelling will be sited does not include a dwelling.

(4) The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.837.

(5) The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

Dwelling Alteration and Replacement

(d) Alteration, restoration or replacement of a lawfully established dwelling with filing of the Declaratory Statement in Section 138.060(b), other than as permitted in Section 138.020(e), when the dwelling:

- (1) Has intact exterior walls and roof structure;
- (2) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (3) Has interior wiring for interior lights;
- (4) Has a heating system; and
- (5) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the occupancy of the replacement dwelling.
- (6) In the case of replacement, the replacement dwelling shall meet siting requirements set forth on Section 138.060(a)(2) or (3).
- (7) **For the case in which the applicant has requested a deferred replacement permit, the dwelling to be replaced shall be removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of consideration. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.**

138.035 USES PERMITTED SUBJECT TO STANDARDS.

Wildlife Habitat Conservation

- (a) A wildlife habitat conservation and management plan on a lot or parcel subject to the following:
 - (1) The lot or parcel contains an existing legally established dwelling; or
 - (2) Approval for the dwelling is obtained under provisions contained in Sections 138.030(a), (b), or (c).
 - (3) The dwelling is situated on a legally created lot or parcel existing on November 4, 1993.
 - (4) The lot or parcel is not predominantly composed of soils rated Class I or II, when not irrigated, or rated Prime or Unique by the Natural Resources Conservation Service, or any combination of such soils.

138.040 CONDITIONAL USES. The following uses may be permitted in a TC zone subject to obtaining a conditional use permit and satisfying the criteria in Section 138.050(a) and any additional criteria, requirements and standards specified in this section.

- (a) Temporary residence for hardship purposes pursuant to Section 120.040, subject to the siting standards and requirements in Sections 138.060(a) and (b).
- (b) Home occupations, including bed and breakfast inns, subject to Section 138.050(b) with the filing of the Declaratory Statement in 138.060(b).
- (c) The following uses supporting forest operations:
 - (1) Log scaling and weigh stations.
 - (2) Permanent logging equipment repair and storage.
 - (3) Forest management research and experimentation facilities, as defined in ORS 526.215 or where accessory to a forest operation.
 - (4) Permanent facility for primary processing of forest products.
- (d) The following mining and processing activities:
 - (1) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520, and not otherwise permitted under Section 138.020(r), (e.g. compressors, separators and storage serving multiple wells).
 - (2) Mining and processing of aggregate as defined in ORS Chapter 517 subject to Section 120.400.
 - (3) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.
- (e) The following utility uses:
 - (1) Water intake facilities, related treatment facility, pumping stations, and distribution lines.
 - (2) Television, microwave and radio communication facilities and transmission towers.
 - (3) Power generation facility provided an exception is taken under OAR 660, Division 004 if it precludes more than 10 acres from commercial forest use.
 - (4) Aids to navigation and aviation.
 - (5) New electric transmission lines-within a right-of-way not greater than 100 feet wide as specified in ORS 772.210.

- (6) New distribution lines (e.g. gas, oil, geothermal)-within a right-of-way 50 feet or less in width.
- (f) Expansion of a legally established existing airport.
- (g) The following recreation uses:
 - (1) Private parks and campgrounds subject to Section 138.050 (c) with filing of the Declaratory Statement in Section 138.060(b).
 - (2) Private seasonal accommodations for fee hunting or fishing operations subject to Section 138.050(d) with filing of the Declaratory Statement in Section 138.060(b).
 - (3) Public parks and playgrounds including only those uses specified under OAR 660-034-035 **or OAR 660-034-0040, whichever is applicable**, and consistent with ORS 195.120 and with filing of the Declaratory Statement in Section 138.060(b).
 - (4) A “youth camp” may be established in compliance with OAR 660-006-0031. The purpose is for the establishment of a youth camp that is generally self-contained and located on a parcel suitable to limit potential impacts on nearby and adjacent land and to be compatible with the forest environment. This ordinance applies to youth camps established after July 12, 1999 and shall meet the criteria in Section 138.050 (e).
- (h) Disposal site for solid waste for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operations.
- (i) Reservoirs and water impoundments with filing of the Declaratory Statement in Section 138.060(b).
- (j) Firearms training facility as provided in ORS 197.770.
- (k) The following transportation uses:
 - (1) Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.
 - (2) Reconstruction or modification of public streets involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
 - (3) Improvement of public street 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.

- (4) Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 4 and any applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 012.
- (l) Fire stations for rural fire protection.
- (m) Cemeteries.

138.050 CONDITIONAL USE REVIEW CRITERIA. The uses identified in Section 138.040 shall satisfy the criteria in the applicable subsections below.

- (a) The following criteria apply to all conditional uses in the TC zone:
 - (1) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.
 - (2) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.
 - (3) Adequate fire protection and other rural services are or will be available when the use is established.
 - (4) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, and air and water quality.
 - (5) Any noise associated with the use will not have a significant adverse impact on nearby land uses.
 - (6) The use will not have a significant adverse impact on potential water impoundments identified in the comprehensive plan, and not create significant conflicts with operations included in the comprehensive plan inventory of significant mineral and aggregate sites.

Home Occupations

- (b) Notwithstanding Sections 110.270 and 120.075, home occupations, including the parking of vehicles in conjunction with home occupation and/or bed and breakfast inns, are subject to the following criteria:
 - (1) A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the

home occupation (“person” includes volunteer, non-resident employee, partner or any other person).

- (2) It shall be operated substantially in:
 - (A) the dwelling; or
 - (B) other buildings normally associated with uses permitted in the zone in which the property is located.
- (3) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
- (4) A home occupation shall not be authorized in structures accessory to resource use.
- (5) A sign shall meet the standards in **Chapter** 191. .060(a) for home occupations and 191.060(F) for bed and breakfast inns.
- (6) The **property**, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
- (7) Retail and wholesale sales that do not involve customers coming to the property, such as internet, telephone or mail order offsite sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

Private Parks and Campgrounds

- (c) Private parks and campgrounds shall meet the following criteria:
 - (1) Campgrounds in private parks shall only be those allowed by this subsection.
 - (2) Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.
 - (3) It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.
 - (4) A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation and other natural features between campsites.

- (5) A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:
 - (A) No more than one-third or a maximum of 10 campsites, whichever is smaller may include yurts;
 - (B) The yurt shall be located on the ground or on a wood floor with no permanent foundation.
- (6) Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.
- (7) It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.
- (8) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

Temporary Accommodations for Fishing or Hunting

- (d) Private seasonal accommodations for fishing or fee hunting shall meet the following criteria:
 - (1) Accommodations shall be limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.
 - (2) Only minor incidental and accessory retail sales are permitted.
 - (3) Accommodations are occupied temporarily for the purpose of:
 - (A) Hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; or
 - (B) Fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission, and are located within 1/4 mile of fish bearing Class I waters.
 - (C) Accommodations shall comply with the Special Use and Site Requirements in Section 138.060, except (e).

(e) **Youth Camps:**

- (1) Youth camps shall be owned and leased and operated by a state or local government or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience for persons 21 years of age or younger. Youth camps do not include any manner of juvenile detention center or facility.

- (2) The number of overnight camp participants that may be accommodated shall be determined by the Board, or its designee, based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. A youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff, except the Board, or its designee, may allow up to eight (8) nights during the calendar year when the number of overnight participants may exceed the total number of over-night participants.

Overnight stays for adult programs primarily for individuals over twenty-one years of age, not including staff, shall not exceed 10% of the total camper nights offered by the youth camp.

- (3) A campground as described in Section 138.040 (g) (1) and (2) shall not be established in conjunction with a youth camp.
- (4) A youth camp shall not be allowed in conjunction with an existing golf course and a youth camp shall not interfere with the exercise of legally established water rights on adjacent properties.
- (5) The youth camp shall be located on a lawful parcel that provides a forested setting to ensure outdoor experience without depending upon the use of adjacent public and private land. This determination shall be based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp, as well as, the number of overnight participants and type and number of proposed facilities. The parcel shall be a minimum of 40 acres with suitable protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural setback from roads and adjacent public and private property shall be 250 feet unless the Board, or its designee, sets a different setback based upon the following criteria that may be applied on a case-by-case basis:
 - (A) The proposed setback will prevent conflicts with commercial resource management practices, and will prevent a significant increase in safety hazards associated with vehicular traffic; and will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.
- (6) The parcel shall be suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1)
 - (f). Prior to granting final approval, the Board or its designee shall verify that a proposed youth camp will not result in the need for a sewer system.
- (7) A youth camp may provide for the following facilities:

- (A) Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding or swimming that can be provided in conjunction with the site's natural environment. Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use.
 - (B) Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the Board or its designee may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants.
 - (C) Bathing and laundry facilities except that they shall not be provided in the same building as sleeping quarters and up to three camp activity buildings, not including primary cooking and eating facilities.
 - (D) Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals.
 - (E) Administrative, maintenance and storage buildings; permanent structure for administrative services, first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the applicant, and covered areas that are not fully enclosed.
 - (F) An infirmary may provide sleeping quarters for the medical care provider, (e.g. doctor, registered nurse, emergency medical technician, etc).
 - (G) A caretaker's residence may be established in conjunction with a youth camp prior to or after the effective date of this rule, if no other dwelling exists on the subject property.
- (8) A proposed youth camp shall comply with the following safety requirements in OAR 660-006-0035 and shall have a fire safety protection plan developed for each youth camp that includes, fire prevention measures; on-site pre-suppression and suppression measures; and the establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.
- (A) Except as determined under subsection (B) and (C) of this section, a youth camp's on-site fire suppression capability shall at least include a

1,000 gallon mobile water supply that can access all areas of the camp; and a 30-gallon-per-minute water pump and an adequate amount of hose and nozzles; and a sufficient number of fire-fighting hand tools; and trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

- (B) An equivalent level of fire suppression facilities may be determined by the Board or its designee. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by the Oregon Department of Forestry and not served by a local structural fire protection provider.
- (C) The provisions for on-site fire suppression may be waived by the Board or its designee if the youth camp is located in an area served by a structural fire protection provider and that provider informs the Board in writing that on-site fire suppression at the camp is not needed.

138.060 SPECIAL USE AND SITING REQUIREMENTS. The following regulations apply to new and replacement dwellings, structures accessory to a dwelling, and may also be applied as a condition of approval for other uses in Section 138.040.

(a) **Special Siting Requirements:**

- (1) Dwellings and structures shall comply with the special requirements in (2) or (3) below. Compliance with the provisions in (2) and Section 138.060(b), (f) and (g) satisfies the criteria in (3) below. Alternative sites that meet the criteria in (3) may be approved as provided in Section 110.680.
- (2) Siting standards for dwellings and other buildings.
 - (A) Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.
 - (B) The special setback in (A) shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 to 195.336 nor should the special setback in (A) prohibit a claimant's application for homesites under ORS 195.300 to 195.336.**
 - (C) The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.

- (3) Review criteria for alternative sites. Sites for dwellings or buildings that do not meet the siting requirements in (2) may be approved if the proposed site will meet the following criteria:
 - (A) The site will have the least impact on nearby or adjoining forest or agricultural lands;
 - (B) The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
 - (C) The amount of agricultural and forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
 - (D) The risks associated with wildfire are minimized.
- (b) **Declaratory Statement.** For all dwellings, and other uses deemed appropriate, the property owner shall be required to sign and allow the entering the following declaratory statement into the chain of title for the lot(s) or parcel(s):

“The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.”

(c) **Domestic Water Supply.**

- (1) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).
- (2) Evidence of a domestic water supply means verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.
- (3) If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report upon completion of the well.

- (d) **Road Access.** As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the

Bureau of Land Management, or the U.S. Forest Service then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(e) **Tree Planting.**

- (1) Prior to issuance of a building or siting permit for the dwelling on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.
- (2) At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.

(f) **Fire Protection.**

- (1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.
- (2) If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be approved pursuant to the procedures set forth in Section 110.680 subject to the requirements of paragraph (3) of this subsection.
- (3) Alternative means of fire protection may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions.
 - (A) If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use.
 - (B) Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posed along the access route to indicate the location of the emergency water source.

(g) **Fire Hazard Reduction.**

- (1) The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991 and published by the Oregon Department of Forestry.
- (2) The dwelling shall have a fire retardant roof.
- (3) The dwelling shall not be sited on a slope of greater than 40 percent.
- (4) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

(h) **Road and Drainage standards.**

- (1) Public road access to structures of more than 200 square feet in area or a dwelling shall comply with Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the Board of County Commissioners April 11, 1990.
- (2) Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 sq. ft. in area or a dwelling shall meet the requirements in ~~Marion County Fire District #1 Ordinance 1996.1, Appendix A-7,~~ **of the local fire protection district or forest protection district** except that the county maximum grade standard for a private road is 15%. A greater grade may be approved by the Fire District or, if the site is not in a fire district, by the State Dept. of Forestry.
- (3) Drainage standards for private roadways shall be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.

138.070 EXISTING DWELLINGS AND OTHER STRUCTURES. For the purposes of regulating dwellings and structures existing at the time the TC zone is applied, the following regulations shall apply.

- (a) Legally established dwellings existing when the TC zone is applied shall be considered in conformance with the TC zone and may be repaired, altered, enlarged or replaced pursuant to Sections 138.020(e) or 138.030(d).
- (b) Legally established structures accessory to a dwelling or a farm or forest use and existing when the TC zone is applied shall be considered in conformance with the TC zone and may be repaired, replaced, altered, or enlarged. New structures shall be permitted if accessory to a legally established dwelling existing when the TC zone is applied.
- (c) Notwithstanding Section 114.070, if a **legally established** non-resource use exists in the TC zone and is unintentionally destroyed by fire, other casualty or natural disaster,

the use may be reestablished to its previous nature and extent, but the reestablishment shall satisfy other building codes, ordinances and permit requirements. **Efforts to** ~~Such reestablishment~~ **the use** shall commence within one year of destruction of the use or structure.

138.080 MINIMUM PARCEL SIZE, DIVISIONS OF LAND, AND PROPERTY LINE ADJUSTMENTS. The following regulations shall apply when property line adjustments and partitioning of land within a TC zone subject to the provisions of Chapter 172 are proposed:

(a) Minimum Parcel Sizes For Newly Created Parcels.

- (1) The minimum parcel size is 80 acres, except as provided in subsection (2) below.
- (2) A new parcel less than 80 acres may be approved as follows:
 - (A) For a permitted use listed in Sections 138.020 (r), (s), and (t); or
 - (B) For a conditional use listed in Sections 138.040 (c) (1) and (2); d (1); (e) (1 through 4); (g) (1) and (3); (h); (i); (j); (l) and (m).
 - (C) Criteria applicable to the use shall apply to the parcel.
 - (D) The parcel shall not be approved before the use is approved.
 - (E) The parcel containing the use described in (A) or (B) shall be the minimum size necessary to accommodate the use.
 - (F) The original parcel was less than 80 acres.

(3) A division of land to create two parcels for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels may be approved as follows:

- (A) A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:**
 - (i) If the parcel contains a dwelling or another use allowed under ORS chapter 215, the parcel must be large enough to support continued residential use or other allowed use of the parcel; or**
 - (ii) If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under provisions contained in Sections 138.030(a), (b), or (c), based on the size and configuration of the parcel.**

(B) Before approving a proposed division of land under this section, the governing body of a county or its designee shall require as a condition of approval that the provider of public parks or open space, or the not-for-profit land conservation organization, present for recording in the deed records for the county in which the parcel retained by the provider or organization is located an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:

- (i) Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone or mixed farm and forest zone except park or conservation uses; and**
- (ii) Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.**

(C) If a proposed division of land under this section results in the disqualification of a parcel for a special assessment or the withdrawal of a parcel from designation as riparian habitat, the owner must pay additional taxes before the county may approve the division.

(b) Property Line Adjustments.

- (1) Parcels larger than 80 acres may not be reduced to below 80 acres.
- (2) Parcels smaller than 80 acres may be reduced or enlarged provided:
 - (A) If the tract does not include a dwelling and does not qualify for a dwelling under Sections 138.030(a) or (b), any reconfiguration after November 4, 1993 cannot in any way enable the lot or parcel to meet the criteria for a new dwelling under Sections 138.030(a) or (b).
 - (B) Except as provided in (C) a lot or parcel that is reduced will be better suited for management as part of a commercial forest or agricultural operation; and, if capable of producing 5,000 cubic feet per year of commercial tree species will not be reconfigured so that the cubic feet per year capability of the lot or parcel is reduced.
 - (C) A lot or parcel may be reduced to the minimum size necessary for the use if the lot or parcel:
 - (i) Was approved as a non-farm or non-forest parcel, or
 - (ii) Is occupied by an approved non-farm or non-forest dwelling, or

- (iii) More than half of the parcel is occupied by a use in Sections 138.020 or 138.040 other than a dwelling or farm or forest use, or
- (iii) The lot or parcel is occupied by a dwelling established before January 1, 1994 and is not capable of producing 5,000 cubic feet per year of commercial tree species [see Section 138.120(b) for definitions].

(D) A property line adjustment may not be used to:

- (i) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;**
- (ii) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or**
- (iii) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.**

138.090 DEVELOPMENT STANDARDS. The following standards apply to all development in the TC zone.

- (a) Maximum Height:
 - (1) Dwellings - 35 feet.
 - (2) Resource related structures on parcels in farm or forest use - none.
 - (3) Non-residential and non-resource related structures - 35 feet unless they are in conjunction with conditional uses allowed in Section 138.040 and greater height is approved as part of the conditional use permit.
- (b) Minimum Setbacks: Except as required in Section 138.060(a), the following setback requirements shall be implemented for all new structures, other than signs and fences:
 - (1) Rear Yard - A minimum of 20 feet.

- (2) Side Yard - A minimum of 20 feet except for lots or parcels of .5 acre or less created prior to January 1, 1994 in which case the side yard setback shall be 5 feet.
- (3) Front Yard - A minimum of 20 feet. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (see Section 112).

138.100 CONTIGUOUS OWNERSHIP.

- (a) After June 29, 1994, it shall be a condition of approval that a new deed be recorded consolidating all contiguous lands in the same ownership when such contiguous lots of parcels are included in the application and must be considered in order for the application to meet the applicable criteria and standards. Consolidation shall be accomplished prior to exercising the rights granted in the land use decision and obtaining building permits, or concurrent with filing of a partitioning plat or property line adjustment survey.
- (b) Where a land-use action prior to June 29, 1994 required that contiguous lot or parcels be considered a single lot or parcel, they shall continue to be considered a single lot or parcel for land use purposes.

138.110 PERMIT EXPIRATION DATES.

- (a) Notwithstanding other provisions of this ordinance, a discretionary decision, except for a land division, approving a proposed development in the TC zone expires two years from the date of the final decision if the development action is not initiated in that period. The Director may grant an extension period of up to 12 months if:
 - (1) An applicant makes a written request for an extension of the development approval period.
 - (2) The request is submitted to the county prior to expiration of the approval period.
 - (3) The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.
 - (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
- (b) Approval of an extension granted under this section is not a land-use decision described in ORS 197.015 and is not subject to appeal as a land-use decision.
- (c) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

- (d) If a permit is approved for a proposed residential development in the TC zone, the permit shall be valid for four years. For the purposes of this subsection, “residential development” only includes the dwellings provided for under 138.020 (e) and 138.030.
- (e) An extension of a permit consistent with (d) above and with Section 138.110 (a) (1 through 4) and where applicable criteria for the decision have not changed shall be valid for two years.

138.120 DEFINITION OF TERMS USED IN THIS CHAPTER. The following terms apply only to Chapter 138 and have no relevance to the same term used in other chapters of this ordinance unless specifically stated.

- (a) Auxiliary - For the purposes of Section 138.020(f) and (g), a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest’s entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- (b) Commercial tree species - Trees recognized under rules adopted under ORS 527.715 for commercial production.
- (c) Cubic Foot Per Year Per Tract - The average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the Natural Resources Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue Western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. ~~of the United States Department of Agriculture.~~ Where such NRCS data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry’s Technical Bulletin entitled “Land Use Planning Notes Number 3 dated April 1998” and be approved by the Oregon Department of Forestry.

DRAFT – 9/25/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 139
FT (FARM/TIMBER) ZONE

Revised _____ Ord # _____
Revised 10/06/04 Ord.#1204
Revised 08/06/03
Revised 12/12/02

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139.010 PURPOSE. The Farm/Timber (FT) zone is intended to be applied in areas where the soils are suitable for farm or forest uses as defined in the Forest Lands Goal, and where the existing land use pattern is a mixture of agricultural ownerships, forest management units and some acreage homesites. The farm operations range widely in size and often include an area managed as a woodlot or a small timber tract. The forest management units range from small timber tracts managed by the owner resident to commercial forest ownerships managed as commercial timber. The mixture of farm and forest use and the range in size of management units present no significant conflicts and allow optimum resource production from areas with variable terrain and soils. These areas are a transition between the large farm operations in the EFU zones and the large almost exclusively commercial timber tracts in the TC zones. It is not deemed practical or necessary to the continuation of the forest and farm uses that contiguous ownerships be consolidated into large parcels suitable for large scale management.

This zone allows the flexibility in management needed to obtain maximum resource production for these lands. It places equal emphasis on farming and timber production. Subdivisions and planned developments are not consistent with the purpose and intent of this zone and are prohibited. The FT zone is intended to be applied in areas designated Farm/Timber in the Marion County Comprehensive Plan and to comply with statewide Goals 3 and 4.

139.020 PERMITTED USES. Within an FT zone no building, structure or premise shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

- (a) Farm uses (see Farm Use definition)
- (b) Buildings, other than dwellings, customarily provided in conjunction with farm use.
- (c) Forest operations or forest practices including, but not limited to, reforestation, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash pursuant to ORS 527 (Forest Practices Act).
- (d) Temporary forest labor camp.
- (e) Alteration, restoration, or replacement of a lawfully established dwelling with filing of the Declaratory Statement in Section 139.070(b), when the dwelling:
 - (1) Has a deterioration **“Percentage Good”** rating of 40 percent or more ~~in good condition~~ in the current County Assessor’s records.
 - (2) In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the occupancy of the replacement dwelling;
 - (3) In the case of replacement of a manufactured dwelling, the unit to be replaced is a manufactured home as defined in ORS 446.003 [manufactured after June 15, 1976].
 - (4) If the lot or parcel was predominantly devoted to farm use on January 1, 1993, and the dwelling to be replaced is located on a portion of the lot or parcel not zoned FT or EFU the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling.
 - (5) If the lot or parcel was predominantly devoted to forest use on January 1, 1993, the replacement dwelling shall be situated in the same location as the existing dwelling.
- (f) Temporary on-site structures auxiliary, as defined in Section 139.130(a), to and used during the term of a particular forest operation pursuant to ORS 527.
- (g) Physical alteration to the land auxiliary, as defined in Section 139.130(a), to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities pursuant to ORS 527.
- (h) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources, including creation, restoration, or enhancement of wetlands.

- (i) Local distribution lines (e.g. electric, telephone, natural gas) and accessory equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.
- (j) Exploration for mineral and aggregate resources as defined in ORS Chapter 517.
- (k) Private hunting and fishing operations without any lodging accommodations.
- (l) Towers and fire stations for forest fire protection.
- (m) Widening of roads ~~within existing rights-of-way in conformance with the transportation element of the comprehensive plan~~, including public road and highway projects as follows:
 - (1) Climbing and passing lanes within the street right-of-way existing as of July 1, 1987.
 - (2) Reconstruction or modification of public streets, including the placement of utility facilities overhead and in the subsurface of public roads and highways along public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels result.
 - (3) Temporary public street detours that will be abandoned and restored to original condition or use at such time as no longer needed.
 - (4) Minor betterment of existing public street 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 streets.
- (n) Water intake facilities, canals and distribution lines for farm irrigation and ponds.
- (o) Caretaker residences for public park or public fish hatchery.
- (p) Uninhabitable structures accessory to fish and wildlife enhancement.
- (q) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.
- (r) Reserved.
- (s) On-site filming and activities accessory to filming, as defined in Section 139.130(b), if the activity would involve no more than 45 days on any site within a one-year period.

139.030 DWELLINGS PERMITTED SUBJECT TO STANDARDS. The following dwellings may be established in the FT zone, with filing of the Declaratory Statement in Section 139.070(b), subject to approval by the Director, based on satisfaction of the standards and criteria listed for each type of dwelling, pursuant to the procedures in Section 110.680. Sections (a) through (d) provide criteria for siting a dwelling based on the predominant use of the tract on January 1, 1993 for forest land. Sections (e) through (i) list criteria for siting a dwelling based on the predominant use of the tract on January 1, 1993 for farm use.

Lot-of-Record Dwellings

- (a) A single-family dwelling, subject to the Special Use and Siting Requirements in Section 139.070, may be allowed on a lot or parcel predominantly devoted to forest use on January 1, 1993, provided:
- (1) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner:
 - (A) Since prior to January 1, 1985; or
 - (B) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel prior to January 1, 1985.
 - (C) "Owner", as the term is used in this section only, 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 business entity owned by any one or combination of these family members.
 - (2) The tract on which the dwelling will be sited does not include a dwelling. Tract means all contiguous lands in the same ownership.
 - (3) 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.
 - (4) The subject tract is composed of soils not capable of producing 5,000 cubic foot per year of commercial tree species. [See definitions in section 139.130 (h) and (i).]
 - ~~(A) Commercial tree species—Trees recognized under rules adopted under ORS 527.715 for commercial production.~~
 - ~~(B) Cubic Foot Per Year Per Tract—The average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture. Where NRCS data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data and be approved by the Department of Forestry.~~
 - (5) The subject tract is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and be either paved or surfaced with rock, and shall not be:
 - (A) A United States Bureau of Land Management road; or
 - (B) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

- (6) The proposed dwelling is not prohibited by, and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.837.
- (7) The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.
- (8) The remaining portions of the tract and the subject lot or parcel are consolidated into a single lot or parcel when the dwelling is allowed.

Template Dwellings

- (b) A single-family dwelling, subject to the Special Use and Siting Requirements in Section 139.070, may be allowed on a lot or parcel predominantly devoted to forest use on January 1, 1993, provided:
 - (1) The tract on which the dwelling will be sited does not include a dwelling. Tract means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.
 - (2) No dwellings are allowed on other lots or parcels that make up the tract, and the other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.
 - (3) The lot or parcel is:
 - (A) Predominantly composed of soils that are capable of producing 0 to 49 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993, and **all or part of** at least three dwellings that existed on January 1, 1993 and continue to exist; or
 - (B) Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993, and **all or part of** at least three dwellings that existed on January 1, 1993 and continue to exist; or
 - (C) Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160 acre square centered on the center of the subject tract all or part of at least eleven other lots or parcels that existed on January 1, 1993, and **all or part of** at least three dwellings that existed on January 1, 1993 and continue to exist; and
 - (D) If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160 acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and

If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160 acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160 acre rectangle; or

- (E) If the tract abuts a road that existed on January 1, 1993 and (D) does not apply, the measurements may be made using a 160 acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.
 - (F) Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.
- (4) The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.836~~7~~.
 - (5) The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

Large Parcel Dwellings

- (c) A single-family dwelling, subject to the Special Use and Siting Requirements in Section 139.070, may be allowed on a lot or parcel predominantly devoted to forest use on January 1, 1993, provided:
 - (1) The lot or parcel on which the dwelling will be located was created before January 1, 1994 or is a consolidated parcel comprised entirely of contiguous lots or parcels that were created before January 1, 1994.
 - (2) The lot or parcel contains at least 160 acres in the FT or TC zone, or a combination of these zones.
 - (3) The tract on which the dwelling will be sited does not include a dwelling.
 - (4) The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including Sections 110.830 through 110.837.
 - (5) The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

Dwelling Alteration and Replacement

- (d) Alteration, restoration or replacement of a lawfully established dwelling with filing of the Declaratory Statement in Section 139.070(b), other than as permitted in Section 139.020(e), when the dwelling:
 - (1) Has intact exterior walls and roof structure;

- (2) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (3) Has interior wiring for interior lights;
- (4) Has a heating system; and
- (5) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the occupancy of the replacement dwelling.
- (6) In the case of replacement, the replacement dwelling shall meet siting requirements set forth on Section 139.070(a)(2) or (a)(3).

Primary Farm Dwellings

- (e) A single-family dwelling, subject to the Special Use and Siting Requirements in Section 139.070, customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:
 - (1) It is located on high-value farmland, as defined in Section 139.130(e) on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:
 - (A) There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.
 - (B) The subject tract produced in the last two years or three of the last five years at least \$80,000 in gross annual income from the sale of farm products. The cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented shall be counted.
 - (C) The subject tract is currently employed for the farm use that produced the income required in paragraph (B) of this subsection.
 - (D) The dwelling will be occupied by a person or persons who produced the commodities which generated the income in paragraph (B) of this subsection; or
 - (2) It is not located on high-value farmland, as defined in Section 139.130 (e) on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:
 - (A) There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.
 - (B) The subject tract produced at least \$40,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining

gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented shall be counted.

- (C) The subject tract is currently employed for the farm use that produced the income required in paragraph (B) of this subsection.
 - (D) The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in paragraph (B) of this subsection; or
- (3) It is not located on high-value farmland, as defined in Section 139.130 (e) on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:
- (A) There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.
 - (B) The parcel on which the dwelling will be located is at least 160 acres.
 - (C) The subject tract is currently employed for farm use, as defined in ORS 215.203.
 - (D) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale.
- (4) It is in conjunction with a commercial dairy farm as defined in this Chapter and if:
- (A) The subject tract will be employed as a commercial dairy as defined; and
 - (B) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and
 - (C) Except as permitted by ORS 215.283 (1)(p) (1999 Edition), (Seasonal Farmworker Housing), there is no other dwelling on the subject tract; and
 - (D) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm activities necessary to the operation of the commercial dairy farm; and
 - (E) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and
 - (F) The Oregon Department of Agriculture has approved the following:

- (1) A permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and
 - (2) A Producer License for the sale of dairy products under ORS 621.072.
- (5) The applicant had previously operated a commercial farm use and if:
- (A) Within the previous two years, the applicant owned and operated a farm or ranch operation that earned the gross farm income in the last five years or four of the last seven years as required by Section 139.030 (e) (1) or (2), whichever is applicable;
 - (B) The subject lot or parcel on which the dwelling will be located is:
 - (1) Currently employed for the farm use, as defined in this Ordinance, that produced in the last two years or three of the last five years the gross farm income required by Section 139.030 (e) (1) or (2), whichever is applicable; and
 - (2) At least the size of the applicable minimum lot size in this Chapter; and
 - (3) Except as permitted in ORS 215.283(1)(p)(1999 Edition) (Seasonal Farmworker Housing), there is no other dwelling on the subject tract; and
 - (4) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (a) of this section;
 - (5) In determining the gross income required by subsections (A) and (b)(1) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract, and only gross income from land owned, not leased or rented, shall be counted.
- (6) All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions: It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling. These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions are located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.

Secondary Farm Dwellings

- (f) Secondary (accessory) dwellings, subject to the Special Use and Siting Requirements in Section 139.070, customarily provided in conjunction with farm use, on a lot or parcel predominantly devoted to farm use on January 1, 1993, when:

- (1) The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-around 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.
- (2) There is no other dwelling on lands in the FT, SA or EFU zones owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.
- (3) The proposed dwelling will be located:
 - (A) On the same lot or parcel as the primary farm dwelling; or
 - (B) On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or
 - (C) On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction is filed with the County Clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (1) of this section; or
 - (D) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm operation 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 farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or
 - (E) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (4) below, whichever is applicable.
- (4) The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:
 - (A) On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and produced at least \$40,000 in gross annual income from the sale of farm products in the last two or three of the last five years; or
 - (B) On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and produced at least \$80,000 in gross annual income from the sale of farm products in the last two or three of the last five years; or

- (C) The primary dwelling is located on a commercial dairy farm as defined in this Chapter; and
 - (1) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and
 - (2) The Oregon Department of Agriculture has approved a permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and
 - (3) Producer License for the sale of dairy products under ORS 621.072.
- (D) In determining the gross income in paragraphs (A) and (B) of this subsection, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
- (5) The dwelling will be consistent with the Fish and Wildlife Habitat policies of the Comprehensive Plan if located in a designated big game habitat area.
- (6) Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable state building code, and a deed restriction (removal agreement) is filed with the county clerk requiring the removal of the manufactured home, or removal, demolition or conversion to a non-residential use, if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.
- (g) A secondary single-family dwelling on real property used for farm use since at least January 1, 1993, subject to the Special Use and Siting Requirements in Section 139.070, and subject to the following standards:
 - (1) A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator’s spouse, which means grandparent, step-grandparent, grandchild, parent, stepparent, child, brother, sister, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.
 - (2) The farm operator shall continue to play the predominant role in management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.
 - (3) A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.
 - (4) For purposes of this subsection, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in Sections 139.030(e)(1)(B), and the parcel where the dwelling is proposed contains a minimum of 80 acres.

- (5) All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions: It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling. These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions are located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.

Lot-of-record Dwellings

- (h) A lot-of-record dwelling on a lot or parcel predominantly devoted to farm use on January 1, 1993, subject to the Special Use and Siting Requirements in Section 139.070, and subject to the following standards and criteria:
- (1) The lot or parcel on which the dwelling will be sited was lawfully created and acquired and owned continuously by the present owner:
 - (A) Since prior to January 1, 1985; or
 - (B) By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.
 - (C) "Owner", as the term is used in this section only, 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 business entity owned by any one or combination of these family members.
 - (2) The tract on which the dwelling will be sited does not include a dwelling; and
 - (3) 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; and
 - (4) 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; and
 - (5) The request is not prohibited by, and complies with, the Comprehensive Plan and other provisions of this ordinance, including but not limited to floodplain, greenway, and big game habitat area restrictions; and
 - (6) The proposed dwelling will not:
 - (A) Exceed the facilities and service capabilities of the area.
 - (B) Create conditions or circumstances contrary to the purpose of the FT zone.

- (7) A lot-of-record dwelling approval may be transferred one time only by a person who has qualified under this section to any other person after the effective date of the land-use decision; and
- (8) The County Assessor shall be notified that the county intends to allow the dwelling; and
- (9) The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in Section 139.130(e); or
- (10) The lot or parcel on which the dwelling will be sited is high-value farmland as defined in Section 139.130 (e) (2) or (3) and:
 - (A) Is twenty-one acres or less in size; and
 - (B) The tract on which the dwelling is to be sited is not a flaglot and is:
 - (1) bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or
 - (2) bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. No more than two of the four dwellings may be within an urban growth boundary; or
 - (C) The tract on which the dwelling is to be sited is a flaglot and is:
 - (1) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are small than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The Board, or its designee, must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:
 - (2) “Flaglot” means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.
 - (3) “Geographic center of the flaglot” means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.
- (11) The lot or parcel on which the dwelling is to be sited is high-value farmland as defined in Section 139.130 (e) (1) and:
 - (A) The hearings officer 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. For the purposes of this section, this criterion asks 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 demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use; and
- (2) The use will not force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm or forest use; and
- (3) The dwelling will not materially alter the stability of the overall land use pattern in the area. To address this standard, the following information shall be provided:
 - (a) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm 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;
 - (b) 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 non-farm/lot-of- record dwellings that could be approved under Sections 139.030(H) and 139.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. 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 provision;

- (c) 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, 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.

- (B) The county shall provide notice of the application for a dwelling allowed under this subsection to the Oregon Department of Agriculture.

Dwelling Alteration and Replacement

- (i) Alteration, restoration or replacement of a lawfully established dwelling with filing of the Declaratory Statement in Section 139.070(B), other than as permitted in Section 139.020(e), when the dwelling:

- (1) Has intact exterior walls and roof structure.
- (2) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system.
- (3) Has interior wiring for interior lights.
- (4) Has a heating system.
- (5) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the occupancy of the replacement dwelling.

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

- (6)(7)** If the dwelling to be replaced is located on a portion of the lot or parcel not zoned FT, SA or EFU, the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for

the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling.

139.040 USES PERMITTED SUBJECT TO STANDARDS. The following uses may be permitted in the FT zone subject to approval of the request by the Director, based on satisfaction of the standards and criteria specified for each use, pursuant to the procedures in Section 110.680.

Farm Stand

- (a) Farm stand subject to the following standards:
- (1) Structures shall be designed and used for the 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.
 - (a) **As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another produce but not prepared food items.**
 - (b) **As used in this section, "local agricultural area" is limited to the State of Oregon.**
 - (2) The sale of incidental retail items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand is permitted provided the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand.
 - (3) Farm stand shall 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.

Winery

- (b) Winery, as defined in Section 139.130(g). The winery shall include only the sale of:
- (1) Wines produced in conjunction with the winery.
 - (2) Items directly related to wine, the sales of which are incidental to the sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.

Churches Religious Organizations and Cemeteries

- (c) Churches **religious organizations** and cemeteries in conjunction with churches **religious organizations** subject to the following:

- (1) New churches religious organizations may not be established on high-value farmland. Existing churches religious organizations and cemeteries in conjunction with churches religious organization, wholly within a farm use zone, may be maintained, enhanced, or expanded on the same tract.
- (2) A new church religious organization may not be established within three miles of an urban growth boundary of a city unless an exception is approved pursuant to OAR Chapter 660, Division 004.

Public and Private Schools

- (d) Public or private schools, including all buildings essential to the operation of a school, subject to the following:
 - (1) New schools may not be established on high-value farmland. Existing schools, wholly within a farm use zone, may be maintained, enhanced, or expanded on the same tract.
 - (2) No new school may be established within three miles of an urban growth boundary of a city unless an exception is approved pursuant to OAR Chapter 660, Division 004.

Filming Activities

- (e) On-site filming and activities accessory to filming, as defined in Section 139.130(b), if the activity:
 - (1) Involves filming or activities accessory to filming for more than 45 days; or
 - (2) Involves erection of sets that would remain in place longer than any 45 day period.
 - (3) The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Facility for the Processing of Farm Crops.

- (f) A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141, subject to the following:
 - (1) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility,
 - (2) The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use.
 - (3) The processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits siting of the processing facility.
 - (4) Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.

Model Aircraft

- (g) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary subject to the following:
 - (1) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility pre-existed the use.
 - (2) The site shall not include an aggregate surface or hard area surface unless the surface pre-existed the use.
 - (3) As used in this section, "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 controlled by radio, lines or design by a person on the ground.

Wildlife Habitat Conservation

- (h) A wildlife habitat conservation and management plan on a lot or parcel subject to the following:
 - (1) The lot or parcel contains an existing legally established dwelling; or
 - (2) Approval for the dwelling is obtained under provisions contained in Sections 139.030(e), (h), or 139.050(a).
 - (3) The dwelling is situated on a legally created lot or parcel existing on November 4, 1993.
 - (4) The lot or parcel is not predominantly composed of soils rated Class I or II, when not irrigated, or rated Prime or Unique by the Natural Resources Conservation Service, or any combination of such soils.

Other Uses

- (i) Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is "necessary" if it must be situated in the FT zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an FT zone due to one or more of the following factors as found in OAR 660-33-130(16):
 - (1) Technical and engineering feasibility;
 - (2) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for Farm/Timber in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
 - (3) Lack of available urban and nonresource lands;

- (4) Availability of existing rights-of-way;
- (5) Public health and safety; and
- (6) Other requirements of state and federal agencies.
 - (A) Costs associated with any of the factors listed 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.
 - (B) The owner of a utility facility approved under this section shall be responsible for restoring, to its former condition as nearly as possible, 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.
 - (C) The applicant shall address the requirements of 139.060 (a).
 - (D) In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in a Farm/Timber Zone shall be subject to the provisions of OAR 660-011-0060.
 - (E) The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.
- (j) Parking of not more than seven log trucks on a tract when the use will not:
 - (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.
 - (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (k) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249, and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in the Farm/Timber Zone under this division.

139.050 CONDITIONAL USES. The following uses may be permitted in an FT zone subject to obtaining a conditional use permit and satisfying the criteria in Section 139.060(a) and any additional criteria, requirements and standards specified for the use.

- (a) Single family dwelling or mobile home not in conjunction with farm uses on a lot or parcel predominantly devoted to farm use on January 1, 1993, meeting the criteria and standards in Sections 139.060(b) and 139.070.
 - (b) Temporary residence for hardship purposes per Section 120.040, meeting the standards and requirements in Section 139.070.
 - (c) The following uses supporting forest operations:
 - (1) Log scaling and weigh stations.
 - (2) Permanent logging equipment repair and storage.
 - (3) Forest management research and experimentation facilities as defined in ORS 526.215 or where accessory to a forest operation.
 - (4) Temporary portable facility for the primary processing of forest products, subject to Section 139.060(i).
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- (d) The following commercial uses:
 - (1) Home occupations, including bed and breakfast inns, subject to Section 139.060 (c) and the requirements in Section 139.070(b).
 - (2) Commercial activities in conjunction with farm use, **including the processing of farm crops into biofuel not permitted under Section 136.040(f),** except the processing of farm crops pursuant to Section 139.040(f) and subject to Section 139.060 (l), but including a winery not permitted under Section 139.040 (b).
 - (3) Dog kennels, including the breeding, kenneling and training of greyhounds for racing, in conjunction with a dwelling occupied by the kennel operator, subject to Section 139.060(e) and the requirements in Section 139.070(b).
 - (4) Room and board arrangements for a maximum of five unrelated persons in an existing dwelling, subject to the requirements in Section 139.070(b).
 - (5) **The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission.**
 - (6) **A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.**
 - (7) **Composting Facilities**
 - (a) **Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm.**

Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (a) or that require a permit from the Department of Environmental Quality under OAR 340-093-0050. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(e) The following mining and processing activities:

- (1) Operations for the exploration for and production of oil, gas and geothermal resources as defined by ORS 520.005 and ORS 522.005, including the placement and operation of compressors, separators and storage serving multiple wells and other customary production equipment otherwise permitted in this chapter.
- (2) Operations conducted for mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298 and Section 120.400.
- (3) Processing as defined in ORS 517.750 of aggregate into asphalt or portland cement subject to the standards in Sections 139.060(d) and 120.400.
- (4) Processing of other mineral resources and other subsurface resources subject to Section 120.400.
- (5) Temporary asphalt and concrete batching plants as accessory uses to specific highway projects.

(f) The following utility uses:

- (1) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.
- (2) Television, microwave and radio communication facilities and transmission towers over 200 feet in height.
- (3) Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than:
 - (A) 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR Chapter 660, Division 004.
 - (B) 12 acres from use as a commercial agricultural enterprise on high-value farmland unless an exception is taken pursuant to OAR Chapter 660, Division 004.

- (C) 20 acres from use as a commercial agricultural enterprise on farmland that is not high-value unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004.
- (4) Aids to navigation and aviation.
- (5) New electric transmission lines with right of way widths of up to 100 feet specified in ORS 772.210.
- (6) New distribution lines (gas or oil, for example) with right of way widths up to 50 feet.
- (g) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities as defined in ORS 215.283 (2)(h).
- (h) The following recreation uses:
 - ~~(1) Private parks, playgrounds and campgrounds, subject to Section 139.060(e) and (f), and subject to Section 139.070(b).~~
 - (2) Private seasonal accommodations for fee hunting or fishing operations, subject to Section 139.060(e) and (g), and subject to Section 139.070 (b).
 - (3) Destination resorts reviewed and approved pursuant to the destination resort siting requirements in ORS 197.435 to ORS 197.465 and State Land Use Goal 8, subject to Sections 139.060(e) and 139.070(b).
 - (4) Community centers, operated primarily by and for residents of the local rural community, where the land and facilities are owned and operated by a governmental agency or a nonprofit community organization, subject to Section 139.070(b).
 - (5) Public parks, open spaces, and playgrounds including only those uses specified under OAR 660-034-035 or OAR 660-034-0040, whichever is applicable, and ~~OAR 660-033-0100 (10)~~ with filing of the Declaratory Statement in Section 137.100 (c) and consistent with ORS 195.120 and subject to 139.070 (b).
 - (6) Golf courses, as defined in Section 139.130(d) and subject to the requirements of Section 139.060(h) and subject to Section 139.070(b).
 - (7) A “youth camp” may be established in compliance with OAR 660-006-0031. The purpose is for the establishment of a youth camp that is generally self-contained and located on a parcel suitable to limit potential impacts on nearby and adjacent land and to be compatible with the forest environment. This ordinance applies to youth camps established after July 12, 1999, and shall meet the criteria in Section 139.060 (j).
 - (8) Living history museum on a lot or parcel where the predominant use of the tract on January 1, 1993 was farm use, subject to Section 139.060(k), with the filing of a Declaratory Statement in Section 139.070 (b).
- (i) Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, or for which the Department of Environmental Quality

has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation, subject to Sections 139.060(e) and 139.070(b).

- (j) Reservoirs and water impoundments, subject to Section 139.070(b).
- (k) Firearms training facility as provided in ORS 197.770.
- (l) The following transportation uses:
 - (1) Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.
 - (2) 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.
 - (3) 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.
 - (4) Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 012.
- (m) Fire stations for rural fire protection.
- (n) The propagation, cultivation, maintenance and harvesting of aquatic species.
- (o) A residential home or adult foster home, as defined in ORS 197.660 and section 110.477, in an existing dwelling, subject to the requirements in Section 139.070(b).
- (p) A replacement dwelling to be used in conjunction with farm use if the existing dwelling is listed in the Comprehensive Plan Inventory and the National Register of Historic Places as historic property as defined in ORS 358.480 and subject to the requirements in Section 139.070(b).
- (q) Expansion of an existing, legally established, airport.

139.060 CONDITIONAL USE REVIEW CRITERIA. The uses identified in Section 139.050 shall satisfy the criteria in the applicable subsection below.

- (a) The following criteria apply to all uses in Section 139.050 and other uses where referenced:
 - (1) The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.
 - (2) The use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

- (3) Adequate fire protection and other rural services are or will be available when the use is established.
- (4) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.
- (5) Any noise associated with the use will not have a significant adverse impact on nearby land uses.
- (6) The use will not have a significant adverse impact on potential water impoundments identified in the comprehensive plan, and not create significant conflicts with operations included in the comprehensive plan inventory of significant mineral and aggregate sites.

Non-farm Dwellings

(b) The following additional criteria apply to non-farm dwellings:

- (1) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in Section 139.120(b).
- (2) The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993 in any way that enables the lot or parcel to meet the criteria for a non-farm dwelling.
- (3) The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated shall be considered. To address this standard, information outlined in Section 139.030(h)(11)(A)(3) shall be provided.
- (4) Disqualification. Prior to issuance of any residential building permit for an approved non-farm dwelling under Section 139.050(a), the applicant shall provide evidence that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or ORS 308A.724 or ORS 321.359 (1)(b), ORS 321.842(1)(A) and 321.716 ~~308.370 or 308.765 or ORS 321.352, 321.730, and 321.815.~~ A parcel that has been disqualified under this section shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.

Home Occupation

- (c) Notwithstanding Sections 110.270 and 120.075, home occupations, including the parking of vehicles in conjunction with the home occupation, including bed and breakfast inns, are subject to the following criteria:

- (1) A home occupation or bed and breakfast shall be operated by a resident of the dwelling on the property on which the business is located. Including the residents, no more than five full-time or part-time persons shall work in the home occupation ("person" includes volunteer, non-resident employee, partner or other person).
 - (2) It shall be operated substantially in:
 - (A) The dwelling; or
 - (B) Other buildings normally associated with uses permitted in the zone in which the property is located.
 - (3) It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.
 - ~~(4) A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.~~
 - (5) A sign shall meet the standards in **Chapter** 191. ~~.060(a) for home occupations and 191.060(F) for bed and breakfast inns.~~
 - (6) The **property**, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
 - (7) Retail and wholesale sales that do not involve customers coming to the property, such as internet, telephone or mail order offsite sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.
- (d) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. "Planted vineyard" means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.
 - (e) For uses listed in Sections 139.050(d)(3), (h)(1),(2) and (3), and (i), new facilities on high-value farmland shall not be authorized. Existing legally established facilities on high-value farmland may be maintained, enhanced, or expanded on the same tract where the current use is located.
 - (f) Private Parks, playgrounds and campgrounds shall meet the following criteria:
 - (1) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.
 - (2) It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

- (3) A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.
- (4) A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:
 - (A) No more than one-third or a maximum of 10 campsites, whichever is smaller may include yurts;
 - (B) The yurt shall be located on the ground or on a wood floor with no permanent foundation.
- (5) Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.
- ~~(6) It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.~~
- (7) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.
- (g) Temporary accommodations for hunting or fishing. The following criteria apply to private seasonal accommodations for fee hunting and private accommodations for fishing:
 - (1) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.
 - (2) Only minor incidental and accessory retail sales are permitted.
 - (3) Accommodations are occupied temporarily for the purpose of:
 - (A) Hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; or
 - (B) Fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission, and are located within 1/4 mile of fish-bearing Class I waters.
 - (4) Accommodations shall comply with the special use and siting requirements in Sections 139.070, except (e).

Golf Course

- (h) A golf course is subject to the following limitations:
 - (1) New golf courses shall not be permitted on high-value farmland, as defined in Section 139.130(e).
 - (2) A legally established existing golf course on high-value farmland may be expanded on the subject tract where the current use is located, consistent with the provisions of Section 139.130(d).

(i) A portable or temporary facility for the primary processing of forest products is subject to the following criteria and limitations:

- (1) The use shall not seriously interfere with accepted farming practices.
- (2) The use shall be compatible with farm uses described in ORS 215.203 (2).
- (3) The use may be approved for a maximum one-year period, which is renewable.
- (4) The primary processing of a forest product, as used in this section, means the use of a portable chipper, stud mill, or other similar facility for 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 tract where the primary processing facility is located.

~~(j) Youth camps on a lot or parcel predominantly in forest use on January 1, 1993:~~

- (1) Youth camps shall be owned and leased and operated by a state or local government or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience for persons 21 years of age or younger. Youth camps do not include any manner of juvenile detention center or facility.
- (2) The number of overnight camp participants that may be accommodated shall be determined by the Board, or its designee, based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. A youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff, except the Board, or its designee, may allow up to eight (8) nights during the calendar year when the number of overnight participants may exceed the total number of over-night participants.

Overnight stays for adult programs primarily for individuals over twenty-one years of age, not including staff, shall not exceed 10% of the total camper nights offered by the youth camp.

- (3) A campground as described in Section 139.050 (h) (1 through 5) shall not be established in conjunction with a youth camp.
- (4) A youth camp shall not be allowed in conjunction with an existing golf course and a youth camp shall not interfere with the exercise of legally established water rights on adjacent properties.
- (5) The youth camp shall be located on a lawful parcel that provides a forested setting to ensure outdoor experience without depending upon the use of adjacent public and private land. This determination shall be based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp, as well as, the number of overnight participants and type and number of proposed facilities. The parcel shall be a minimum of 40 acres with suitable protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural

setback from roads and adjacent public and private property shall be 250 feet unless the Board, or its designee, sets a different setback based upon the following criteria that may be applied on a case-by-case basis:

- (A) The proposed setback will prevent conflicts with commercial resource management practices, and
 - (B) will prevent a significant increase in safety hazards associated with vehicular traffic; and
 - (C) will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.
- (6) ~~The parcel shall be suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1) (f). Prior to granting final approval, the Board or its designee shall verify that a proposed youth camp will not result in the need for a sewer system.~~
- (7) A youth camp may provide for the following facilities:
- (A) Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding or swimming that can be provided in conjunction with the site's natural environment. Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use.
 - (B) Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the Board or its designee may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants.
 - (C) Bathing and laundry facilities except that they shall not be provided in the same building as sleeping quarters and up to three camp activity buildings, not including primary cooking and eating facilities.
 - (D) Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals.
 - (E) Administrative, maintenance and storage buildings; permanent structure for administrative services, first aid, equipment and supply storage, and for use as an

infirmary if necessary or requested by the applicant, and covered areas that are not fully enclosed.

(F) An infirmary may provide sleeping quarters for the medical care provider, (e.g. doctor, registered nurse, emergency medical technician, etc).

(G) A caretaker's residence may be established in conjunction with a youth camp prior to or after the effective date of this rule, if no other dwelling exists on the subject property.

(8) A proposed youth camp shall comply with the following safety requirements in OAR 660-006-0035 and shall have a fire safety protection plan developed for each youth camp that includes fire prevention measures; on-site pre-suppression and suppression measures; and the establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.

(A) Except as determined under subsection (B) and (C) of this section, a youth camp's on-site fire suppression capability shall at least include a 1,000 gallon mobile water supply that can access all areas of the camp; and a 30-gallon-per-minute water pump and an adequate amount of hose and nozzles; and a sufficient number of fire-fighting hand tools; and trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

(B) An equivalent level of fire suppression facilities may be determined by the Board or its designee. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by the Oregon Department of Forestry and not served by a local structural fire protection provider.

(C) The provisions for on-site fire suppression may be waived by the Board or its designee if the youth camp is located in an area served by a structural fire protection provider and that provider informs the Board in writing that on-site fire suppression at the camp is not needed.

(k) Living History Museum (only on a tract predominantly in farm use on January 1, 1993).

A living history museum related to resource-based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than a Farm/Timber Zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary.

(1) As used in this paragraph:

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

(B) "Local historical society" means the local historical society recognized by the County Board of Commissioners and organized under ORS Chapter 65.

(I) Commercial Activities in Conjunction with Farm Use

- (1) The commercial activity must be primarily a customer or supplier of farm uses.
- (2) The commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates.
- (3) The agricultural and commercial activities must occur together in the local community to satisfy the statute.
- (4) The products and services provided must be "essential to the practice of agriculture."

139.070 SPECIAL USE AND SITING REQUIREMENTS. The following regulations shall apply to new dwellings, structures accessory to a dwelling, and they may also be applied as a standard or condition of approval for dwellings, other structures and uses including but not limited to those in Sections 139.030, 139.040 and 139.050.

(a) **Special Siting Requirements:**

- (1) Dwellings and structures shall comply with the special requirements in (2) or (3). Compliance with the provisions in (2) and Section 139.070 (b), (f) and (g) satisfies the criteria in (3) below. Alternative sites that meet the criteria in (3) may be approved as provided in Section 110.680.
- (2) Siting Standards for Dwellings and Other Buildings.
 - (A) Dwellings shall be at least 200 feet from any abutting parcel in farm use or timber production. Buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production.
 - (B) The special setback in (A) shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 to 195.336 nor should the special setback in (A) prohibit a claimant's application for homesites under ORS 195.300 to 195.336.**
 - (B) The dwelling or other building shall be located within 300 feet of the driveway entrance on an abutting public road; or, if the property does not abut a public road for a distance of at least 60 feet, the dwelling or other building shall be located within 300 feet of the point where the driveway enters the buildable portion of the property.
- (3) Review criteria for alternative sites. Sites for dwellings or buildings that do not meet the siting requirements in (2) may be approved if the proposed site will meet the following criteria:

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- (A) The site will have the least impact on nearby or adjoining forest or agricultural lands.
 - (B) The site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.
 - (C) The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling and structures is minimized.
 - (D) The risks associated with wildfire are minimized.
- (b) **Declaratory Statement.** The owner of property for which a dwelling, structure or other specified use has been approved shall be required to sign and allow the entering of the following declaratory statement into the chain of title for the subject lots or parcels:

“The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and I/We acknowledge the need to avoid activities that conflict with nearby farm or forest uses and practices I/We will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.”

- (c) **Domestic Water Supply.**
- (1) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629).
 - (2) Evidence of a domestic water supply means verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or a water use permit issued by the Water Resources Department for the use described in the application; or verification from the Water Resources Department that a water use permit is not required for the use.
 - (3) If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report upon completion of the well.
- (d) **Road Access.** As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the U.S. Forest Service, the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.
- (e) **Tree Planting Requirements for Lots or Parcels over 10 Acres:**

- (1) Prior to issuance of a building or siting permit for a dwelling, approved under the provisions in 139.030(A), (B) or (C), on a tract of more than 10 acres in size, the landowner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.
- (2) At the time required by the Department of Forestry rules the owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met.

(f) **Fire Protection.**

- (1) ~~The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district.~~
- (2) If inclusion within a fire protection district or contracting for residential fire protection is impracticable, an alternative means for protecting the dwelling from fire hazards may be approved, pursuant to the procedures set forth in Section 110.680, subject to the requirements of paragraph (3) of this subsection.
- (3) Alternative means of fire protection may include a fire sprinkling system, on-site equipment and water storage or other methods that are reasonable, given the site conditions. The following requirements apply:
 - (A) If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use.
 - (B) Road access to the water supply required in paragraph (A) of this subsection shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posed along the access route to indicate the location of the emergency water source.

(g) **Fire Hazard Reduction.**

- (1) The owners of a dwelling, or structure occupying more than 200 square feet, shall maintain a primary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provision in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991 and published by the Oregon Department of Forestry.
- (2) The dwelling shall have a fire retardant roof.

- (3) The dwelling shall not be sited on a slope of greater than 40 percent.
- (4) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

(h) **Road and Drainage Standards.**

- (1) Public road access to structures of more than 200 square feet in area or a dwelling shall comply with Section 4 of the Marion County Department of Public Works Engineering Standards adopted by the Board of County Commissioners April 11, 1990.
- (2) Except for private roads and bridges accessing only commercial forest uses, private road or driveway access to structures of more than 200 square feet in area or a dwelling shall meet the requirements in ~~Marion County Fire District #1 Ordinance 1993.1, Appendix A-7 of~~ **the local fire protection district or forest protection district**, except that the county maximum grade standard for a private road is 15 percent. A greater grade may be approved ~~by the Fire District or, if the site is not in a fire district, by the State Department of~~ Forestry.
- (3) Drainage standards for private roadways shall be those in Section 5 of the Public Works Engineering standards except that corrugated metal culverts of equivalent size and strength may be used.

139.080 EXISTING DWELLINGS AND OTHER STRUCTURES. For the purposes of regulating dwellings and structures existing at the time the FT zone is applied, the following regulations shall apply:

- (a) Legally established dwellings existing when the FT zone is applied shall be considered in conformance with the FT zone and may be repaired, altered, enlarged or replaced pursuant to Section 139.020(e), 139.030(d) or (i).
- (b) Legally established structures accessory to a dwelling or a farm or forest use and existing when the FT zone is applied shall be considered in conformance with the FT zone and may be repaired, replaced, altered, or enlarged. New structures shall be permitted if accessory to a legally established dwelling existing when the FT zone is applied.
- (c) Notwithstanding Section 114.070, if a **legally established** non-resource use exists in the FT zone and is unintentionally destroyed by fire, other casualty or natural disaster, the use may be reestablished to its previous nature and extent, but the reestablishment shall satisfy other building codes, ordinances and permit requirements. ~~Efforts to Such reestablishment~~ **the use** shall commence within one year of destruction of the use or structure.

139.090 MINIMUM PARCEL SIZE, DIVISIONS OF LAND, AND PROPERTY LINE ADJUSTMENTS. The following regulations shall apply when property line adjustments and partitions of land within a FT zone subject to the provisions of Chapter 172 are proposed:

- (a) Minimum Parcel Size for Newly Created Parcels:
 - (1) The minimum parcel size shall be 80 acres, except as provided in subsections (a)(2), and (b) or (c) below.
 - (2) A new parcel less than 80 acres may be approved as follows:

- (A) The parcel shall only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm or forest uses.
- (B) The criteria in Section 139.060 applicable to the proposed use of the parcel shall apply to the creation of the parcel.
- (C) A parcel shall not be approved before the use is approved.
- (D) A division of land for non-farm/forest use shall not be approved unless any additional tax imposed for the change has been paid or payment has been made a condition of approval.

(b) ~~Requirements for creation of new non-farm parcels if the land was predominantly devoted to farm use on January 1, 1993. A new parcel smaller than 80 acres may be created only for those uses listed in Sections 139.050, except the residential uses in subsections 139.050(a) and (b).~~

- (1) If the land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels subject to the following:
 - (A) A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.
 - (B) A parcel created pursuant to this subsection that does not contain a dwelling:
 - (1) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;
 - (2) May not be considered in approving or denying an application for siting any other dwelling;
 - (3) May not be considered in approving a redesignation or rezoning of forestlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and
 - (C) May not be smaller than 25 acres unless the purpose of the land division is:
 - (1) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or
 - (2) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.
- (2) A division of land smaller than the minimum lot or parcel size described in Section 139.090 (a) and (b) may be approved to establish a ~~church~~ **religious organization** including cemeteries in conjunction with the ~~church~~ **religious organization** if they meet the following requirements:

- (A) The church **religious organization** has been approved under Section 139.040 (c);
 - (B) The newly created lot or parcel is not larger than five acres; and
 - (C) The remaining lot or parcel, not including the church **religious organization**, meets the minimum lot or parcel size described in Section 139.090 (a) and (b) either by itself or after it is consolidated with another lot or parcel.
- (c) Requirements for creation of new non-forest parcels if the land was predominantly devoted to forest use on January 1, 1993:
- (1) For a permitted use listed in Section 139.020 (q); or
 - (2) For a conditional use listed in Sections 139.050 (c)(1) and (2), (e)(1), (f)(1) through (4), (h)(1), (3) and (5), (i), (j), (k), and (m).

(3) A division of land to create two parcels for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels may be approved as follows:

(A) A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:

- (i) If the parcel contains a dwelling or another use allowed under ORS chapter 215, the parcel must be large enough to support continued residential use or other allowed use of the parcel; or**
- (ii) If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under provisions contained in Sections 139.030(a), (b), or (c), based on the size and configuration of the parcel.**

(B) Before approving a proposed division of land under this section, the governing body of a county or its designee shall require as a condition of approval that the provider of public parks or open space, or the not-for-profit land conservation organization, present for recording in the deed records for the county in which the parcel retained by the provider or organization is located an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:

- (i) Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone or mixed farm and forest zone except park or conservation uses; and**
- (ii) Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.**

(C) If a proposed division of land under this section results in the disqualification of a parcel for a special assessment or the withdrawal of a parcel from designation as riparian habitat, the owner must pay additional taxes before the county may approve the division.

(d) Property Line Adjustments:

(1) When one or more **lots or** parcels subject to a proposed **property** line adjustment are larger than the minimum parcel size pursuant to Section 136.090(a)(1), the same number of **lots or** parcels shall be as large or larger than the minimum parcel size after the adjustment. When all **lots or** parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no **lot or** parcel shall be reduced below the applicable minimum parcel size. **If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.**

(2) A property line adjustment may not be used to:

(A) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;

(B) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or

(C) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

(e) Property Line Adjustments if the land was predominantly devoted to forest use on January 1, 1993:

(1) Parcels larger than 80 acres may not be reduced to below 80 acres.

(2) Parcels smaller than 80 acres may be reduced or enlarged provided:

(A) If the tract does not include a dwelling and does not qualify for a dwelling under Sections 139.030(a) or (b), any reconfiguration after November 4, 1993 cannot in any way enable the lot or parcel to meet the criteria for a new dwelling under Sections 139.030(a) or (b).

(B) Except as provided in (C) a lot or parcel that is reduced will be better suited for management as part of a commercial forest ~~or agricultural operation~~; and, if capable of producing 5,000 cubic feet per year of commercial tree species will not be reconfigured so that the cubic feet per year capability of the lot or parcel is reduced.

(C) A lot or parcel may be reduced to the minimum size necessary for the use if the lot or parcel:

(1) Was approved as a non-farm or non-forest parcel, or

(2) Is occupied by an approved non-farm or non-forest dwelling, or

(3) More than half of the parcel is occupied by a use in Sections 139.020 or 139.050 other than a dwelling or farm or forest use, or

(4) The lot or parcel is occupied by a dwelling established before January 1, 1994 and is not capable of producing 5,000 cubic feet per year of commercial tree species as defined in Section 139.130(hg).

(D) A property line adjustment may not be used to:

(1) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;

(2) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or

(C) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

139.100 DEVELOPMENT STANDARDS. The following standards apply to all development in the FT zone.

(a) Maximum Height:

(1) Dwellings - 35 feet

(2) Farm related structures on farm parcels - none

- (3) Non-residential and non-farm structures - 35 feet unless they are in conjunction with conditional uses allowed in Section 139.050, and a greater height is requested and approved as part of the conditional use permit.
- (b) Minimum Setbacks: Except as required in Section 139.070(a), the following setback requirements shall be implemented for all new structures other than farm-exempt buildings, signs and fences:
 - (1) Rear Yard - a minimum of 20 feet.
 - (2) Side Yard - a minimum of 20 feet, except for lots or parcels of one-half acre or smaller created prior to January 1, 1994, in which case the side yard setback shall be five (5) feet.
 - (3) Front Yard - a minimum of 20 feet. When by ordinance a greater setback or a front yard of greater depth is required than specified in this section, then such greater setback line or front yard depth shall apply (See Section 112).

139.110 PERMIT EXPIRATION DATES.

- (a) Notwithstanding other provisions of this ordinance, a discretionary decision, except for a land division, approving a proposed development in the FT zone expires two years from the date of the final decision if the development action is not initiated in that period. The director may grant an extension period of up to 12 months if:
 - (1) An applicant makes a written request for an extension of the development approval period.
 - (2) The request is submitted to the county prior to expiration of the approval period.
 - (3) The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.
 - (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.
- (b) Approval of an extension granted under this section is not a land-use decision described in ORS 197.015 and is not subject to appeal as a land-use decision.
- (c) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.
- (d) If a permit is approved for a proposed residential development in the FT zone, the permit shall be valid for four years. For the purposes of this subsection, "residential development" only includes the dwellings provided for under 139.020 (e), 139.030 (a), (b), (c), (d), (h) and (i), and 139.050 (a).
- (e) An extension of a permit consistent with (d) above and with 139.110 (a) (1 through 4) and where applicable criteria for the decision have not changed shall be valid for two years.

139.120 CONSIDERATION OF SOIL CLASSIFICATION CHANGES. For the purposes of approving an application for a lot-of-record dwelling under Section 139.030(h) or for a dwelling not in conjunction with farm use under Section 139.050(a) or for a forest land dwelling under Section 139.030(a), (b), or (c), the soil class, soil rating, or other soil designation of a specific lot or parcel may be changed if the property owner:

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- (a) For lot-of-record dwellings:
- (1) Submits, for a lot-of-record dwelling only, a statement of agreement from the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture that the soil class, soil rating or other soil designation should be adjusted based on new information; or
 - (2) Submits a report from a soils scientist whose credentials are acceptable to the State Department of Agriculture that the soil class, soil rating, or other soil designation should be changed; and
 - (3) Submits, for a lot-of-record dwelling only, a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subsection (1) of this section and finds the analysis in the report to be soundly and scientifically based.
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- (b) For dwellings not in conjunction with farm use, submits a report from a consulting soils scientist whose credentials have been certified as acceptable to the State Department of Agriculture that the soil class, soil rating, or other soil designation should be changed, and the report satisfies the most recent requirements in Oregon Administrative Rules for acceptable soils reports.
- (c) For forestland dwellings, where NRCS data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data and be approved by the Department of Forestry.

139.130 DEFINITION OF TERMS USED IN THIS CHAPTER. The following terms apply only to Chapter 139 and have no relevance to the same term used in other chapters of this ordinance unless specifically stated.

- (a) Auxiliary - For the purposes of Section 139.020(f) and (g), means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- (b) Filming Activities - On-site filming and activities accessory to on-site filming includes filming and site preparation, construction of sets, staging, makeup and support services customary provided for on-site filming. Production of advertisements, documentaries, feature film, television services and other film production that rely on the rural qualities of the FT zone in more than an incidental way. It does not include facilities for marketing, editing and other such activities that are allowed only as a home occupation or construction of new structures that require a building permit.
- (c) Commercial dairy farm - is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by Section 139.030 (e) (1) or (2).
- (d) Golf Course - 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. A "golf course" means a nine (9) or 18 hole regulation golf, or golf tournament, course consistent with the following:

- (1) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes.
- (2) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes.
- (3) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course and conforms to the following.

- (A) ~~An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course include parking, maintenance buildings, cart storage and repair, practice range or driving range, clubhouse, restrooms, lockers and showers, food and beverage service, pro shop, and a practice or beginners course.~~
- (B) Accessory uses to a golf course do not include sporting facilities unrelated to golf such as tennis courts, swimming pools, or weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.
- (C) A use is accessory to a golf course only when limited in size and orientation to serve the needs of persons and their guests who patronize the golf course to golf.
- (D) Commercial activities such as food and beverage service and pro shop are accessory to a golf course only when located in the clubhouse.
- (E) Accessory uses may include one or more food and beverage service facilities to addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designated for or include structures for banquets, public gatherings or public entertainment.

(e) High-value farmland - A tract composed of:

- (1) Soils rated Class I or II, prime, or unique, either irrigated or not irrigated;
- (2) The following Class III soils: Chehalem (CeC), Concord (Co), Hullt (HuD), Jory (JoD), Nekia (NeC, NeD, NkC), Salkum (SkD), Silverton (SuD), and Woodburn (WuD);
- (3) The following Class IV soils: Bashaw (Ba), Camas (Ca), Courtney (Cu), Dayton (Da), and Jory (JoE).

(f) Tract - One or more contiguous lots or parcels under the same ownership.

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- (g) Winery - As authorized under Section 139.030(b), a winery is a facility that produces and sells wine and has a maximum annual production of:
- (1) Less than 50,000 gallons and owns an on-site vineyard of at least 15 acres, owns a contiguous vineyard of at least 15 acres, has a long-term contract for the purchase of all the grapes from at least 15 acres of vineyard contiguous to the winery, or obtains grapes from any combination of these sites; or
 - (2) At least 50,000 gallons and owns an on-site vineyard of at least 40 acres, owns a contiguous vineyard of at least 40 acres, has a long-term contract for the purchase of all the grapes from at least 40 acres of vineyard contiguous to the winery, or obtains grapes from any combination of these sites.
- (h) Commercial tree species - Trees recognized under rules adopted under ORS 527.715 for commercial production.

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- (i) **Cubic Foot Per Year Per Tract - The average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resources Conservation Service (NRCS) soil survey information, USDA Forest Service plant association guides, Oregon Department of Revenue Western Oregon site class maps, or other information determined by the State Forester to be of comparable quality. Where such data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data as explained in the Oregon Department of Forestry's Technical Bulletin entitled "Land Use Planning Notes Number 3 dated April 1998" and be approved by the Oregon Department of Forestry.**

DRAFT – 2/22/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 171
P (PUBLIC) ZONE

Revised _____
Revised 03/29/06 Ord #1227
Revised 07/28/04
Revised 01/01

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171.010 PURPOSE. The purpose and intent of the P zone is to provide regulations governing the development of lands appropriate for specific public and semi-public uses and to ensure their compatibility with adjacent uses. It is intended that this zone be applied to individual parcels shown to be an appropriate location for a certain public or semi-public use. If the use existing at the time the P zone is applied is discontinued or if a proposed use is not established, it is the intent that the land be rezoned to conform to surrounding zoning or be devoted to permitted uses. It is not intended that a property zoned Public for one type of use be allowed to change without demonstrating that the proposed conditional use will be compatible with adjacent uses and the property is better suited to the proposed use than alternative locations.

171.020 USES. Within any P (PUBLIC) zone no building, structure or premises shall be used, arranged, or designed to be used, erected, structurally altered or enlarged except for the following purposes:

- (A) Farm use;
- (B) Forest use;
- (C) Dwellings (including mobile homes) and other structures customarily provided in conjunction with farm or forest use subject to the criteria in Section 139.030;
- (D) Utility facilities necessary for public service except public power generation.
- (E) Wireless communication facilities attached subject to the following development standards:

- (1) Notwithstanding other height limitations in this Ordinance Omni-directional (whip) antennae not exceeding 20 feet in height and directional/parabolic antennae not exceeding 7 feet in diameter or width and 15 feet in height may be attached to or located on existing structures.
 - (2) Antenna and associated equipment shall be surfaced in a nonreflective color to match the structure on which it is located. An equipment enclosure may be set back from the edge of a roof by a distance at least equal to its height in lieu of screening.
 - (3) Equipment enclosures shall be located within the building on which it is located wherever possible, otherwise, equipment enclosures shall be fenced by a 6 foot high fence, wall or hedge.
 - (4) Antennae shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.
 - (5) A wireless communication facility, attached, and equipment enclosure, shall be removed by the facility owner or property owner within 6 months of the date it ceases to be operational.
- (F) Wireless communications facilities (See Limited Use, Section 125.120).
- (G) Fire and emergency services stations and police substations; training facilities, administrative offices and living quarters for fire, emergency, and police services are permitted in conjunction with these uses, not to exceed 20 full-time persons and 200 day-use visitors.

171.030 CONDITIONAL USES. When authorized under the procedure provided for conditional uses in this Ordinance, the following uses will be permitted in a P zone:

- (A) Airport and airport related commercial and industrial uses;
- (B) Public ball park, exposition, fairground, museum, stock show and related commercial uses subject to 171.040;
- (C) Cemeteries, crematoriums and mausoleums;
- (D) Dwelling for the caretaker or watchman; housing for the staff required for an approved conditional use;
- (E) Golf courses, public parks and playgrounds, recreational resorts and retreats, related camping and related commercial uses subject to 171.040;
- (F) Churches **Religious organizations** and related conference and residence facilities;
- (G) Schools, elementary and secondary (as defined in Chapter 110);
- (H) Military training facilities and armory;

- (I) Public instructions for detention or correction;
- (J) Residential facilities, institutions and schools for the handicapped or mentally retarded;
- (K) Public service buildings, structures and uses, (e.g. field offices, outdoor storage of equipment, reservoir, water tower, pump station, sewage treatment plant, solid waste disposal site, power generation) except fire, police and emergency service stations.
- (L) Fire and emergency services stations and police substations; training facilities, administrative offices and living quarters for fire, emergency, and police services exceeding 20 full-time persons and 200 day-use visitors.

171.040 SCALE OF COMMERCIAL USES:

- (A) New commercial uses in conjunction with public uses may be established up to a maximum of 3,500 square feet of floor area.
- (B) Lawfully established commercial uses existing as of the date of adoption of this ordinance may be expanded up to 3,500 square feet of floor area, or an additional 25% of the floor area that existed as of the date of adoption of this ordinance, whichever is greater.
- (C) **Airport related uses located at the Aurora Airport are not subject to the size limitations in (A) and (B) of this section.**
- (D) Except as established in (B), for a commercial use to exceed the square foot limitations requires taking an exception to Goal 14. Such exception shall be processed as an amendment to the Marion County Comprehensive Plan

171.050 PROHIBITED AND LAWFULLY ESTABLISHED EXISTING USES:

- (A) Uses of structures and land not specifically permitted in the Public zone.
- (B) New residential dwellings, except when accessory to a primary use. However, a dwelling that legally existed at the time of adoption of this Ordinance shall not be a nonconforming use, and may be remodel, expanded, or replaced.
- (C) Lawfully established commercial and industrial uses that existed prior to zoning or established through the applicable land use process on or before the date of this ordinance, not otherwise listed in the zone, are allowed outright and shall not be classified as non-conforming uses.
- (D) All other lawfully established, existing uses and structures not specifically permitted in the Public zone shall be considered nonconforming uses subject to the provisions of Chapter 114.

171.060 PROPERTY DEVELOPMENT STANDARDS:

- (A) HEIGHT. No building or structure in a P zone shall exceed 6 stories or 70 feet, provided that buildings or structures shall set back from every street and lot line 1 foot for each foot of height of the building in excess of 35 feet in addition to all other yard and setback requirements herein specified.
- (B) FRONT YARD. Front yard shall be a minimum of 20 feet. No parking shall be permitted within the minimum front yard area.
- (C) SIDE YARDS. Where the side of a lot in a P zone abuts upon the side of a lot in any "R" zone, there shall be a minimum side yard of 10 feet. Otherwise there shall be no minimum side yard setback. Where the side of a lot abuts upon a street there shall be a minimum side yard of 20 feet wherein no parking shall be permitted.
- (D) REAR YARD. In a P zone there shall be a rear yard that shall have a minimum depth of 30 feet.
- (E) LOT AREA AND COVERAGE. The minimum requirements in P zones for dwellings shall be 1 acre except 6,000 square feet inside an unincorporated community boundary where public sewer and water service is provided. No main building, including dwellings, shall occupy more than 30% of the lot area.
- (F) OPEN STORAGE.
 - (1) All yard areas, exclusive of those required to be landscaped as provided in Section 171.060 (G), may be used for materials and equipment storage areas related to a use permitted in the P zone, provided such area is screened so it cannot be seen from public roads, or from dwellings on property in other zones.
 - (2) The surface of open storage areas, including automobile and truck parking area shall be paved or graveled and maintained at all times in a dust-free condition.
- (G) LANDSCAPING. The area within 20 feet of a street shall be landscaped. As a condition of approval for a conditional use additional landscaping may be required if necessary to make the use compatible with the area.
- (H) PERFORMANCE STANDARDS. No land or structure shall be used or occupied unless maintained and operated in continuing compliance with all applicable standards adopted by the Oregon Department of Environmental Quality.
- (I) SEWAGE DISPOSAL. Demonstrate that the development will not exceed the existing carrying capacity of the local sewage disposal system or has an on-site sewage disposal site approved by Marion County or the Department of Environmental Quality.
- (J) TRAFFIC ANALYSIS. Demonstrate that the development will be consistent with the identified function, capacity, and level of service of transportation facilities serving the site. A transportation impact analysis, approved by the Marion County Department of Public Works, may be required prior to building permit approval.

DRAFT – 9/25/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 150
INTERCHANGE DISTRICT ZONE

Revised _____
Revised 07/28/04
Revised 08/06/03
Revised 01/01

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150.010 PURPOSE AND INTENT. The purpose and intent of the Interchange District is to provide for the location of needed highway service commercial facilities at the interchanges between the controlled access highways and the intersecting arterial roads. To encourage the orderly and compatible development of such district to the end that the natural assets and scenic values of the Willamette Valley will not be lost to the traveler, the residents of the county, or the owners of the property within the Interchange District, well-landscaped sites and attractive buildings shall be encouraged. In providing for the location of the highway-oriented service firms, it is essential that the principle function of the interchange (the carrying of traffic to and from the freeway in a safe and expeditious manner) be preserved. Also, the purpose is to provide safe ingress and egress to the commercial developments through control of access points on the county throughways, arterial, streets and highways servicing the Interchange Districts.

The intent of this Interchange District Ordinance is to promote the health, safety and general welfare of the area and this ordinance is based on the following consideration, among others: the various characteristics of the various areas in the county, the suitability of the areas for particular land uses and improvements, the land uses and improvements in the areas, trends in lands improvements, density of development, property values, the needs of economic enterprises in the future development of the

areas, needed access to particular sites in the area, natural resources of the county and prospective needs for development thereof, and the public need for healthful, safe, aesthetic surroundings and conditions. The uses within the ID zone are functionally classified by description of the particular activity or by reference to a category in the "Standard Industrial Classification Manual, 1987 (SIC)."

The SIC index number is referenced as an aid to interpretation of uses. Where the term used to describe a use is defined in Chapter 110, the definition takes precedence over any SIC classification.

Furthermore, the Interchange District is intended to comply with Oregon Administrative Rules regarding unincorporated communities. That is, uses at those interchanges which satisfy the rule definition of a "Rural Service Center" or "Urban Unincorporated Community" shall be regulated by this chapter in conformity with OAR Chapter 660, Division 22.

150.020 INTERCHANGE DISTRICT. The boundaries of the ID zone are set forth in the Freeway Corridor zone maps, filed with and incorporated into the zoning maps.

150.030 COMMERCIAL USES. Within any Interchange District, no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged, except as permitted by this ordinance. The following uses are permitted in the ID zone.

- (A) Service station, including gas, oil, lubricating, and minor repair (SIC 5541);
- (B) Towing service;
- (C) Traveler accommodations:
 - (1) Hotels and motels up to 35 units in an unincorporated community that is at least 10 miles from the urban growth boundary of any city adjacent to Interstate Highway 5;
- (D) Eating place, including restaurant, cafe, coffee shop, dining room, drive-in, and tea room (SIC 5812);
- (E) Recreational vehicle park (SIC 7033) in an unincorporated community;
- (F) Vending machines, automatic merchandising;
- (G) Automobile parking (SIC 7521) in an unincorporated community;
- (H) General automotive repair shop (SIC 7538) in an unincorporated community;
- ~~(I) Outdoor advertising signs (billboards);~~
- (J) Wireless communication facilities attached subject to the following development standards:
 - (1) Notwithstanding other height limitations in this ordinance, Omni-directional (whip) antennae not exceeding 20 feet in height and directional/parabolic antennae not exceeding 7 feet in diameter or width and 15 feet in height may be attached to or located on existing structures.

- (2) Antenna and associated equipment shall be surfaced in a nonreflective color to match the structure on which it is located. An equipment enclosure may be setback from the edge of a roof by a distance at least equal to its height in lieu of screening.
 - (3) Equipment enclosures shall be located within the building on which it is located wherever possible, otherwise, equipment enclosures shall be fenced by a 6 foot high fence, wall or hedge.
 - (4) Antennae shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.
 - (5) A wireless communication facility attached and equipment enclosure shall be removed by the facility owner or property owner within 6 months of the date it ceases to be operational.
- (K) Wireless communication facilities (See Limited Use, Section 125.120);
- (L) Uses legally established and existing on July 19, 2000. Such uses are permitted pursuant to this section only on the lot(s) or parcel(s) where they existed on July 19, 2000, in an unincorporated community.

150.040 CONDITIONAL USES. When authorized under the procedure provided for conditional uses in this ordinance, the following uses will be permitted in the Interchange District:

- (A) Except in a designated unincorporated community:
- (1) All permitted and conditional uses set forth in the C zone not exceeding 3,500 square feet of floor space.
- (B) In an unincorporated community:
- (1) Rural Service Center - Retail, wholesale, and service uses not listed in Section 150.030 and not exceeding 4,000 square feet of floor space (SIC 50 through 89 except 70 and 88);
 - (2) Urban Unincorporated Community (Brooks-Hopmere) - Retail, wholesale, and service uses not listed in Section 150.030 and not exceeding 8,000 square feet of floor space (SIC 50 through 89 except 70 and 88);
 - (3) Home occupations, subject to section 120.075.

150.050 FRONT YARD (COMMERCIAL). In an ID zone, there shall be a minimum front yard of 20 feet. No parking shall be allowed in the required minimum front yard.

150.060 SIDE AND REAR YARDS (COMMERCIAL).

- (A) There shall be a side yard and a rear yard on every lot or parcel in an ID zone, which yards shall have a minimum depth as follows:
- (1) One (1) story - 6 feet;
 - (2) Two (2) stories - 7 feet;
 - (3) **Over two** ~~Two and one-half (2 1/2)~~ stories - 8 feet.

- (2) Antenna and associated equipment shall be surfaced in a nonreflective color to match the structure on which it is located. An equipment enclosure may be setback from the edge of a roof by a distance at least equal to its height in lieu of screening.
 - (3) Equipment enclosures shall be located within the building on which it is located wherever possible, otherwise, equipment enclosures shall be fenced by a 6 foot high fence, wall or hedge.
 - (4) Antennae shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration.
 - (5) A wireless communication facility attached and equipment enclosure shall be removed by the facility owner or property owner within 6 months of the date it ceases to be operational.
- (K) Wireless communication facilities (See Limited Use, Section 125.120);
- (L) Uses legally established and existing on July 19, 2000. Such uses are permitted pursuant to this section only on the lot(s) or parcel(s) where they existed on July 19, 2000, in an unincorporated community.

150.040 CONDITIONAL USES. When authorized under the procedure provided for conditional uses in this ordinance, the following uses will be permitted in the Interchange District:

- (A) Except in a designated unincorporated community:
- (1) All permitted and conditional uses set forth in the C zone not exceeding 3,500 square feet of floor space.
- (B) In an unincorporated community:
- (1) Rural Service Center - Retail, wholesale, and service uses not listed in Section 150.030 and not exceeding 4,000 square feet of floor space (SIC 50 through 89 except 70 and 88);
 - (2) Urban Unincorporated Community (Brooks-Hopmere) - Retail, wholesale, and service uses not listed in Section 150.030 and not exceeding 8,000 square feet of floor space (SIC 50 through 89 except 70 and 88);
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- (A) There shall be a side yard and a rear yard on every lot or parcel in an ID zone, which yards shall have a minimum depth as follows:
- (1) One (1) story - 6 feet;
 - (2) Two (2) stories - 7 feet;
 - (3) **Over two** ~~Two and one-half (2-1/2)~~ stories - 8 feet.

150.100 FRONT YARD (INDUSTRIAL). There shall be a front yard on every lot in an Interchange District, which front yard shall have a minimum depth of 20 feet. Any front yard provided adjacent to a street shall not be used for off-street parking or loading areas, except ingress and egress lanes.

150.110 REAR AND SIDE YARDS (INDUSTRIAL). There shall be a rear and side yard on every lot in an Interchange District, which rear and side yard shall have a minimum depth of 10 feet. The minimum depth shall be increased 1 foot for each additional foot of building height above 10 feet, except a rear or side yard is not required adjacent to a railroad right-of-way, siding or spur track; provided, however, any rear or side yard provided adjacent to a street shall have a minimum depth of 20 feet.

150.120 HEIGHT (INDUSTRIAL). In an Interchange District, no building or structure shall exceed 45 feet.

150.130 LANDSCAPED YARDS (INDUSTRIAL). All yards shall be landscaped as provided in section 150.150(B).

150.140 INDUSTRIAL PERFORMANCE STANDARDS. No land or structure shall be used or occupied unless maintained and operated in continuing compliance with all applicable standards adopted by the Oregon Department of Environmental Quality.

150.150 GENERAL REQUIREMENTS FOR ALL USES.

- (A) Access. New and expanded uses shall obtain an access permit from Marion County Public Works or the Oregon Department of Transportation.
- (B) Landscaping and Screening Requirements:
 - (1) There shall be provided a 10 foot landscaped yard adjacent to every street exclusive of driveways.
 - (2) All required side and rear yards shall be landscaped exclusive of driveways,
 - (3) Landscaping of yards shall be done as an integral part of the development.
 - (4) All rear and side yards adjacent to property used or zoned for residential purposes shall be contained by an ornamental sight-obscuring fence, wall or hedge 6 feet in height. If a hedge is used, it may be planted at the 3 foot level provided it is capable of attaining a height of at least 6 feet.
- (C) Open Storage Yards. All yard areas, exclusive of those required to be landscaped, may be used for materials and equipment storage yards or areas provided such yard area is enclosed with an ornamental, sight-obscuring fence or wall placed at a height of 6 feet or a compact evergreen hedge planted at 3 feet and capable of attaining a minimum of 6 feet; provided that, in no case, shall any fence or hedge be placed in vision clearance area (see Section 110.770). Any fence, wall or hedge shall be located on the property at the required setback line in the same manner as if said fence or wall were a building.

Open storage yards shall be placed or graveled and maintained in a dust free condition.

- (D) Loading and Parking Facilities. Every vehicle loading and parking area shall be clearly designated as such and paved as provided in Section 118.060 and 118.070.
Parking requirements shall be provided as set forth in Section 118.050.
- (E) Utilities. All on-premise utility services shall be installed underground.
- (F) Lights. Outdoor lighting is permitted provided all lights or group of lights used for the purpose of illuminating a structure, sign, storage yard or outdoor sales and parking area shall be directed away from a public street or highway and any adjacent residential structures.
- (G) Removal Agreements. In the event that any landscaped yard, structure or sign is allowed to extend into the special setback, a removal agreement must be first signed by the property owner.
- (H) Lot Area. No minimum lot area is required.
- (I) Sewage Disposal. Demonstrate that the development will not exceed the existing carrying capacity of the local sewage disposal system or has an on-site sewage disposal site approved by Marion County or the Department of Environmental Quality.
- (J) Traffic Analysis. Demonstrate that the development will be consistent with the identified function, capacity, and level of service of transportation facilities serving the site. A transportation impact analysis, approved by the Marion County Department of Public Works, may be required prior to building permit approval.
- (K) **Signage. All signs shall meet the standards in Chapter 191.**

150.160 APPROVAL CRITERIA FOR CONDITIONAL USES. Any new use permitted in section 150.040 or 150.095 shall be allowed only upon demonstration of satisfaction of the following criteria:

- (A) The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use;
- (B) The proposed use will not, by itself or in combination with existing uses in the community, result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations;
- (C) The proposed use will not, by itself or in combination with existing uses in the community; exceed the carrying capacity of the soil or of existing water supply resources and sewer services;
- (D) The traffic generated by the proposed use is consistent with the identified function, capacity, and level of service of transportation facilities serving the community; and
- (E) The proposed use will not create significant adverse effects on existing uses or permitted uses on adjacent land, considering such factors as noise, dust and odors.
- (F) The proposed use is intended to directly serve the traveling public or trucking industry, or both.

DRAFT – 9/25/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 172
SUBDIVISION AND PARTITION REQUIREMENTS

Revised _____
Revised 07/28/04
Revised 08/06/03
Adopted 12/02

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172.01 PURPOSE. In the interpretation and application of this chapter, the provisions hereof shall be held to be the minimum requirements adopted for the public health, safety, and welfare. To protect the people, among other purposes, such provisions are intended to provide for adequate public services and safe streets for accomplishing, among other things, the following objectives:

- (a) Better living conditions within new subdivisions.
- (b) Simplification and definiteness of land descriptions.
- (c) Establishment and development of streets, utilities, and public areas.
- (d) Stabilization of property values in the subdivision and adjacent areas.
- (e) Provide standards and regulations which will inform the public and aid in uniform enforcement.
- (f) To regulate the subdividing and partitioning of land in areas outside urban growth boundaries in Marion County in accord with applicable state statutes and the State Planning Goals.

172.02 GENERAL DEFINITIONS. For the purpose of this chapter, words used in the present tense include the future, the singular number includes the plural, and the term "this chapter" shall be deemed to include all subsequent amendments.

APPLICANT Any person as defined herein who makes application to Marion County for approval of a subdivision or partition plan.

BOARD means the Marion County Board of Commissioners.

BUILDING LINES The lines indicated on the subdivision plat, or otherwise described, limiting the area upon which structures may be placed.

COMMISSION means the Marion County Planning Commission.

CENTERLINE The legally described survey lines on which the right-of-way was initially established or to which the right-of-way was subsequently relocated.

DIVISION means the Marion County Planning Division.

DIRECTOR means the Planning Director or Planning Director's designee.

EASEMENT The right to use or cross a parcel of land.

FLAG LOT A lot, the major portion of which has access to a street by means of a narrow strip of land not less than 20 feet in width.

HEARINGS OFFICER A person designated by the Marion County Board of Commissioners to hear and decide certain land use cases.

MANUFACTURED HOME A vehicle or structure constructed for movement on public highways, that has sleeping, cooking, and plumbing facilities, is intended for human occupancy, and is being used for residential purposes.

NOTIFICATION AREA The notification area shall be as set forth in Section 111.030 (c).

PARTITION Either an act of partitioning land or an area or tract of land partitioned as defined in this Chapter.

PARTITION LAND To divide land into two or three parcels of land within a calendar year, but does not include:

- (a) A 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;
- (b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing land reduced in size by the adjustment complies with an applicable zoning ordinance;
- (c) The division of land resulting from the recording of a subdivision or condominium plat;
- (d) 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 applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). However, any property divided by the sale or grant of property for state highway, county road, city street or other 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; or
- (e) A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city

streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.

PLANNED DEVELOPMENT A subdivision of land incorporating common open space with each dwelling being placed on its own lot. See Chapter 121.

PLAT Includes a final map, diagram, drawing, replat, or other writing containing all descriptions, locations, specifications, dedications, provisions and information concerning a subdivision or partitioning and complying with the provisions of ORS 92 and 209.

PROPERTY LINE ADJUSTMENT The adjustment of a common property line between two or more parcels that does not create an additional parcel, **or elimination of a common property line between abutting properties.**

SHALL The term "shall" means mandatory.

STREET OR ROAD A public or private way that is or has been 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. The term "street" shall include thoroughfare as defined herein.

(a) **ARTERIAL**

Principal Arterial

- Continuous segments with trip length and travel density indicative of statewide or interstate travel; and
- Serves all of the large urban areas and most of the moderate sized cities.

Arterial

- Links cities, larger towns, and other major traffic generators; and provide interstate and inter-county service; and
- Spaced such that all developed areas of the region are within reasonable distance of an arterial; and
- Serves a higher travel density, trip length, and overall travel speed than collector and local systems.

(b) **COLLECTOR**

Major Collector

- Provides service to larger towns not directly served by higher classed roads and to

other traffic generators of equivalent intra-county importance (including parks, tourist attractions, significant resource areas, etc.); and

- Links these places with nearby towns and cities, or routes of higher classification; and
- Serves the more important intra-county travel corridors.

Minor Collector

- Spaced at intervals to collect traffic from local roads and bring all developed areas within a reasonable distance of a collector road; and
- Provides service to any remaining smaller communities and traffic generators; and
- Links locally important traffic generators with their local constituents.

(c) **CUL-DE-SAC** A dead-end road or street with vehicular turnaround at or near the dead end.

(d) **DEAD-END STREET** The same as cul-de-sac with no turnaround at the dead end.

(e) **HALF STREET** A portion of the ultimate width of a road or street where the remaining portion of the road or street shall be provided at a future date.

(f) **LOCAL**

- Primarily provide access to adjacent lands; and
- Provide relatively short travel distances compared to higher classed facilities.

SUBDIVIDER Any person who undertakes the subdivision of land.

SUBDIVIDE LAND Means to divide land into four or more lots within a calendar year.

SUBDIVISION Means either an act of subdividing land or an area or a tract of land subdivided.

THOROUGHFARE Any vehicular way through the planned development or any vehicular way within the planned development.

- (a) Minor thoroughfares are to serve specific property only, not the general traffic circulation in the area, and need to be constructed only wide enough to adequately perform this function. Minor thoroughfares include "T" turnarounds, cul-de-sacs, circles, loops, and those "L" shaped streets not functioning as a through thoroughfare.
- (b) Major thoroughfares are publicly owned streets permitting traffic to move in one side of the planned development and out of another.

UTILITIES Any water, gas, sanitary or storm sewer, electrical, telephone, drainage way, wire, or television communication service and all persons, companies, or governmental agencies supplying the same.

UTILITY FACILITIES OVERHEAD All utility poles, overhead wires, and associated overhead facilities with the exception of:

- (a) Antennae, associated equipment, and supporting structures used by a utility for furnishing communication services.
- (b) Equipment appurtenant to underground facilities such as surface-mounted transformers and switchgear, pedestal-mounted terminal boxes, meter cabinets, concealed ducts, and municipal fire alarms, street lights, traffic control signals and poles used exclusively for such services as are served from an underground source of supply.
- (c) Temporary poles, overhead wires, and associated overhead facilities used in conjunction with construction projects.
- (d) High-capacity electric and communication feeder lines and utility transmission lines operating at 50,000 volts or more.

GENERAL REGULATIONS

172.04 CONSIDERATIONS FOR APPROVAL OR DENIAL. When considering a **property line adjustment**, subdivision or partitioning plan, the Commission, Director, Hearings Officer or Board, when it exercises its authority pursuant to 172.17 **05**, shall consider whether or not it is in accordance with the adopted ordinances, comprehensive plans, and land development policies of Marion County. In reviewing an application, the Commission, Director, Hearings Officer or Board may prescribe conditions or make changes or modifications to the **property line adjustment**, subdivision or partitioning plan to bring them into compliance with any applicable ordinances or regulations.

172.05 DIRECTOR REVIEW. **The provisions of this chapter and other provisions of this ordinance notwithstanding, the Director shall have the power to decide applications for all property line adjustments and partitions and impose conditions consistent with this ordinance. Any appeal shall be conducted pursuant to section 119.150.**

The Planning Commission, Hearings Officer or Board shall have the power to decide applications for a subdivision. If the Hearings Officer, Planning Commission, or board makes the initial decision, the review body shall conduct a public hearing on the application pursuant to Chapter 111.

The Director shall also have the power to forward an application for a property line adjustment, partition and subdivision to the Hearings Officer or Planning Commission for the initial decision. In such case, the review body shall conduct a public hearing on the application pursuant to Chapter 111.

172.06 APPROVAL REQUIRED BEFORE CREATING STREET TO PARTITION LAND.

No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the Commission, Director, Hearings Officer, or Board.

172.08 PROHIBITION OF SALE OR TRANSFERS OF LOTS PRIOR TO RECORDING OF PLAT. No person shall dispose of, transfer, sell, or agree, offer or negotiate to sell any lot in any subdivision or any parcel in a partition, except as authorized in ORS Chapter 92.

~~(a) No person shall negotiate to sell any lot in any subdivision until a tentative plan of the subdivision has been approved.~~

~~(b) No person shall dispose of, transfer, sell, or agree, offer or negotiate to sell any lot in any subdivision by reference to or exhibition or other use of a plat of such subdivision has been so recorded.~~

172.12 PROPERTY LINE ADJUSTMENTS The following requirements shall apply to all property line adjustments:

(a) Regardless of the size of the adjustment, when a property line to be adjusted is part of a division of land previously approved by Marion County it shall be subject to the approval of the Planning Director.

(b) Except as provided in (a) above, no approval is necessary for property line adjustments in the RM (MULTIPLE FAMILY RESIDENTIAL), C (COMMERCIAL), CC (COMMUNITY COMMERCIAL), ID (INTERCHANGE DISTRICT), I (INDUSTRIAL), or IUC (UNINCORPORATED COMMUNITY INDUSTRIAL) zones.

(c) Except as provided in (b) above, all property line adjustments shall require approval under the partitioning procedure if the adjustment exceeds 10% of the total land area of the smallest affected parcel.

(d) Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the replat process specified in ORS 92.180 to 92.190.

ROADS, STREETS AND EASEMENTS

172.14 ENGINEERING STANDARDS AND REQUIREMENTS Engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County Department of Public Works.

172.16 DEDICATION OR DEEDING OF ROADWAY No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as a roadway without first obtaining the approval of the Board and delivering the deed to the Board for its endorsement. No dedication is effective unless the property is accepted by the Board and recorded with the Marion County Clerk's Office.

172.18 DEAD-END STREETS When it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision without a

Public Works. Following final inspection, if the improvement is complete and the amount of the bond or deposit exceeds the actual cost to the county of completing the improvement, the remainder shall be released.

MAINTENANCE BONDS

The applicant shall provide a maintenance bond in a form approved by the Office of Legal Counsel equal to 40 percent of the construction cost of all required improvements. The applicant shall provide the bond within 30 days after final review of the required improvements. The bond shall remain in effect for one year after the completion of construction of all required improvements. The purpose of the bond is to guarantee applicant's obligation to maintain all required improvements for a period of one year after completion of construction of all required improvements. After the expiration of the one year period, any remaining balance on the bond shall be released. The bond shall include a provision stating that, in the event the county must take legal action to recover on this bond, and it prevails at trial or on appeal, the county shall be entitled to recover its reasonable attorney fees and its costs and disbursements. Nonpayment of the bond will not invalidate applicant's obligations under the bond.

172.30 UTILITY EASEMENTS Utility easements meeting the approval of the Marion County Department of Public Works shall be provided to all newly created lots.

172.32 STREET OR ROAD IMPROVEMENTS All street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the Director of Public Works. Subdivision plats shall not have final approval until such time as the Director of Public Works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the Marion County Department of Public Works.

No building permits within a subdivision or partition shall be issued until the Director of Public Works, or his/her designee, approves that the improvements have been completed or, sufficient improvement agreements and financial guarantees have been recorded.

172.34 PRIVATE STREETS In the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the Homeowners Association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

LOTS

172.36 LOT SIZE All lots approved under this chapter shall have sufficient area to be consistent with the intent of the Comprehensive Plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal. Lots to be served by public or privately owned sewage collection and disposal system must meet the requirements and have approval of the Oregon State Department of Environmental Quality before being recorded or sold. State regulations, soil types, drainage, terrain, and location may be included as part of the criteria used by the State or county in determining appropriate lot sizes for lots using subsurface disposal of sewage. Lot size and dimension shall be as prescribed in the corresponding zone.

172.38 CURVED FRONT LOT LINES CURVED FRONT LOT LINES When front lot lines are on a curve or arc, the front line distance shall be indicated on the final plat by bearing and chord distance.

turnaround. In all other cases, dead-end streets shall have a turnaround with a configuration approved by the Marion County Department of Public Works.

172.20 RADIUS AT STREET INTERSECTIONS The property line radius at street intersections shall be to the Marion County Public Works Department's standards.

172.22 STREET GRADES No street grade shall be in excess of 12% unless the Commission or Hearings Officer finds that, because of topographic conditions, a steeper grade is necessary. The Commission or Hearings Officer shall require a written statement from the Director of Public Works indicating approval of any street grade that exceeds 12%.

172.24 DEDICATION OF RIGHT-OF-WAY If land to be subdivided or partitioned will cause the termination of a roadway or borders a roadway right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in the Zoning Ordinance, standard right-of-way widths are subject to the standards of the Marion County Department of Public Works.

172.26 ADDITIONAL RIGHT-OF-WAY WIDTHS Where topographical requirements necessitate either cuts or fills for the proper grading of the streets, additional right-of-way may be required to be dedicated to allow all cut and fill slopes to be within the right-of-way.

172.28 PERFORMANCE STANDARDS Whenever adequate assurances of performance are required as a condition of approval of any subdivision under this ordinance, the applicant shall provide one of the following:

- (a) A surety bond executed by a surety company authorized to transact business in the State of Oregon, in an amount equal to 100 percent of the construction cost of the required improvements, as verified by the county.
- (b) A verified deposit with a responsible escrow agent or trust company of cash or negotiable bonds in an amount equal to 100 percent of the construction costs of the required improvements, together with an agreement that the deposit may be disbursed only upon county approval. The agreement shall include a provision that the county shall allow release of the deposit in such amounts and at such times as a corresponding proportion of the required improvements are completed to the satisfaction of the County Engineer following an inspection by the County Engineer or the Engineer's authorized representative.
- (c) An irrevocable letter of credit from one or more financial or lending institutions pledging that funds equal to 100 percent of the construction cost of all required improvements are available to the applicant and are guaranteed for payment for the improvements.

Regardless of the option chosen above, no building permits for any structures within the subdivision will be issued until all improvements have been completed by the applicant. In the event the applicant fails to complete all improvements, the county may estimate the cost of completing any required improvement, call on the bond or deposit for the funds necessary to complete the improvement, and complete the improvement to the extent of the funds obtained upon call of the bond or deposit. If the amount obtained from the bond or deposit is insufficient to complete the improvement, the county may either hold the collected funds until additional funds are authorized for the improvement or expend the collected funds on a revised improvement or on a portion of the improvement as determined reasonable by the Director of

No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the Commission, Director, Hearings Officer, or Board.

172.08 PROHIBITION OF SALE OR TRANSFERS OF LOTS PRIOR TO RECORDING OF PLAT. No person shall dispose of, transfer, sell, or agree, offer or negotiate to sell any lot in any subdivision or any parcel in a partition, except as authorized in ORS Chapter 92.

~~(a) No person shall negotiate to sell any lot in any subdivision until a tentative plan of the subdivision has been approved.~~

~~(b) No person shall dispose of, transfer, sell, or agree, offer or negotiate to sell any lot in any subdivision by reference to or exhibition or other use of a plat of such subdivision has been so recorded.~~

172.12 PROPERTY LINE ADJUSTMENTS The following requirements shall apply to all property line adjustments:

(a) Regardless of the size of the adjustment, when a property line to be adjusted is part of a division of land previously approved by Marion County it shall be subject to the approval of the Planning Director.

(b) Except as provided in (a) above, no approval is necessary for property line adjustments in the RM (MULTIPLE FAMILY RESIDENTIAL), C (COMMERCIAL), CC (COMMUNITY COMMERCIAL), ID (INTERCHANGE DISTRICT), I (INDUSTRIAL), or IUC (UNINCORPORATED COMMUNITY INDUSTRIAL) zones.

(c) Except as provided in (b) above, all property line adjustments shall require approval under the partitioning procedure if the adjustment exceeds 10% of the total land area of the smallest affected parcel.

(d) Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the replat process specified in ORS 92.180 to 92.190.

ROADS, STREETS AND EASEMENTS

172.14 ENGINEERING STANDARDS AND REQUIREMENTS Engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County Department of Public Works.

172.16 DEDICATION OR DEEDING OF ROADWAY No person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as a roadway without first obtaining the approval of the Board and delivering the deed to the Board for its endorsement. No dedication is effective unless the property is accepted by the Board and recorded with the Marion County Clerk's Office.

172.18 DEAD-END STREETS When it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision without a

enable the staff to review the proposal and determine if the partition is consistent with the intent of the Zoning Ordinances and Comprehensive Plan and whether public services are required and available.

172.48 PARTITIONING APPLICATION AND INITIAL DECISION When an area or tract of land is to be partitioned an application shall be filed with the Planning Division provided that this section shall not apply to lots maintaining a minimum 20 feet of frontage on a public street right-of-way in the RM (MULTI-FAMILY RESIDENTIAL), C (COMMERCIAL), CC (COMMUNITY COMMERCIAL), ID (INTERCHANGE DISTRICT), I (INDUSTRIAL), or IUC (UNINCORPORATED COMMUNITY INDUSTRIAL) zones.

~~This administrative decision shall be final unless an appeal is taken as provided in Subsection 172.82 below. When a partitioning application is to be considered concurrently with an additional land use application, the initial decision may be made by the Director or Hearings Officer. The Director shall determine if annexation to a sewer or water district is required. If the Director determines that annexation is required, annexation or a non-remonstrance agreement must be filed with the appropriate agency.~~

172.50 REQUIRED APPLICATION INFORMATION

- (a) The application form filled out completely in ink.
- (b) Copy of the officially recorded title transfer instrument (deed, warranty deed, or contract) that shows the legal description for the parent parcel.
- (c) Plot Plan . The plot plan should be on a separate sheet of paper 8 ½" X 11" and must be drawn in ink, showing the location of the proposed property lines and adjustments, and distances to structures, property lines, roads, driveway access and other features. The Plot Plan must be reviewed and initialed as accepted by a Plans Examiner from the Building Inspection Division.
- (d) A written statement that explains the reasons for dividing the land and how the division conforms to Marion County land use policies and regulations of the applicable zone.
- (e) If the partitioning includes the creation of a private roadway the applicant must include four (4) proposed road names in the order of preference.
- (f) If the property is within the Sensitive Groundwater Overlay Zone, any study of water supply required by Chapter 181 of the Rural Zoning Ordinance shall accompany the application. If the ordinance requires peer review of the study, this must also be submitted with the Partition application. If the property is within the Geologically Hazardous Overlay Zone, any study required by Chapter 182 of the Rural Zoning Ordinance shall accompany the application. If the ordinance requires peer review of the study, this must also be submitted with the Partition application.
- (g) Filing fee.

172.51 FILING OF APPLICATION. **An application for a partition may be filed by one or more of the following:**

- (a) **The owner of the property that is the subject of the application;**
- (b) **The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;**

- (c) A lessee in possession of the property subject to the application who submits written consent of the owner to make such application;
- (d) The appropriate local government or state agency when the application is for public works project; or
- (e) A governmental body that has initiated condemnation procedures on the property that is subject to the application, but has not yet gained title.
- (f) A co-tenant if the property that is the subject of the application is owned by tenants in common.

The application shall be filed with the Director in writing on an application form provided by the Planning Division. The application shall set forth the partition sought, the location of proposed property lines, the location of proposed and existing buildings and septic systems on the premises, the name or names of the owners of the property. The application shall contain such other information as deemed necessary by the Director, Planning Commission or Hearings Officer.

172.52 REQUIRED SIGNATURES. Applications shall include the following signatures:

- (a) Signatures of all owners of the subject property; or
- (b) The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement; or
- (c) The signatures of lessee in possession of the property with the written consent of all the owners; or
- (d) The signatures of the agents of those identified in Section 172.51 (a), (b), or (c) when authorized in writing by those with the interests described in Section 172.51(b) or (c), and all the owners of the property; or
- (e) The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners.
- (f) The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common, provided that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the Planning Division can give them notice of the decision.
- (g) Prima facie proof of ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the Director, Planning Commission, Hearings Officer and the Board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this ordinance more definite and complete proof is required. Nothing herein prevents the Director, Planning Commission, Hearings Officer or Board from demanding proof that the signer is the owner, officer, attorney in fact, or agent.

172.53 INFORMATION FROM AFFECTED AGENCIES Upon receipt, a copy of the application shall be distributed to the Marion County Department of Public Works, County Assessor, County Surveyor, Building Inspection Division, and other affected agencies with a request for comments or suggestions regarding those features that come within the scope of their activities.

172.54 CONFORMANCE WITH REGULATIONS Unless a variance is granted as provided herein, partitions shall conform to applicable regulations contained in Sections 172.18 through 172.66. **The Director shall determine if annexation to a fire, sewer or water district is required. If the Director determines that annexation is required, annexation or a non-remonstrance agreement must be filed with the appropriate agency.**

172.56 ACCESS STANDARDS All lots must have a minimum of 20 feet of frontage on a public right-of-way, or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards shall be provided prior to the issuance of building permits on the parcels served by the access easement.

- (a) Have a minimum easement width of 20 feet;
- (b) Have a maximum grade of 12%;
- (c) Be improved with an all-weather surface with a minimum width of 12 feet;
- (d) Provide adequate sight-distance at intersections with public roadways;
- (e) Be provided with a road name sign at the public roadway as an identification for emergency vehicles in accordance with the Marion County Address and Street Name Ordinance.

172.58 NOTIFICATION OF DECISION Notice of the decision, including any variances, and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, the co-tenants of the subject property if the property is owned by tenants in common, mortgagees, Department of Public Works, affected county agencies, fire district, and all landowners within the notification area. **This decision shall be final unless an appeal is taken as provided in Subsection 172.60 below.**

172.60 APPEAL Upon final action on the partitioning by the Director, interested persons may appeal the decision no later than ~~12~~ **15** days after the decision is rendered.

172.62 PUBLIC HEARING If the Director's decision is appealed, the Hearings Officer or Board shall conduct a public hearing in accordance with Chapter 111 of the Marion County Rural Zoning Ordinance.

172.64 DECISION ON APPEAL The Hearings Officer or Board shall render a decision on the appeal in accordance with the provisions of this chapter, after the conclusion of the hearing. Notice of the decision shall be provided to the applicants, appellant, and others requesting notice in writing. The decision of the Hearings Officer may be appealed to the Board no later than 12 days after the decision is rendered. The Board may sustain the decision or decide the appeal with or without a further public hearing. If a public hearing is held it shall conform with Chapter 111 of the Marion County Rural Zoning Ordinance. If the Board exercises its authority pursuant to this Section, its decision is final and appealable only to the Oregon Land Use Board of Appeals.

172.66 FINAL RECORDATION Within two years of approval of the partitioning application, the applicant shall submit for approval by the Director, a partitioning plat in the appropriate form that shall reflect the final decision. When approved, the plat shall be recorded with the Marion County Clerk. Until

the plat is approved and recorded, no building permits for any of the divided parcels shall be issued. Should the applicant fail to record a partitioning plat within two years the approval shall be deemed null and void. One extension may be approved by the Director upon submittal of written justification prior to the expiration of the two-year time limit.

SUBDIVISIONS

172.68 SUBDIVISION PRE-APPLICATION CONFERENCE Prior to the actual filing of a subdivision application ~~it is recommended that~~ the subdivider **shall** contact staff for a **mandatory** pre-application conference. The meeting will enable the staff to review the proposal and determine if the subdivision is consistent with the intent of the Rural Zoning Ordinance and the Comprehensive Plan and whether public services are required and available.

172.70 APPLICATION When an area or tract of land is to be subdivided an application shall be filed with the Planning Division. The applicant shall specify on the application whether the request is for conceptual or detailed approval or both. Conceptual approval indicates that the subdivision or PUD, in the general manner and density proposed, is deemed consistent with the Comprehensive Plan but conceptual approval shall not be binding on the Planning Commission or Hearings Officer with regard to specific design or engineering. In granting conceptual approval the Commission or Hearings Officer shall identify any elements of the proposal that need further evaluation or refinement.

172.72 REQUIRED APPLICATION INFORMATION

- (a) The application form and any supplementary information filled out completely.
- (b) Copy of the officially recorded title transfer instrument (deed, warranty deed, or contract) that shows the legal description for the parent parcel. Title reports are not acceptable.
- (c) Twenty-seven copies of a scale drawing of the proposed subdivision with the following details shown:
 - 1. Structures, streets, driveway access points (existing and proposed), and easements (existing and proposed).
 - 2. Topography, drainage ditches.
 - 3. A layout of the proposed subdivision with proposed lot lines to scale, north arrow, and name and address of applicant.
- (d) If the property is within the Geologically Hazardous Overlay Zone, any study required by Chapter 182 of the Rural Zoning Ordinance shall accompany the application. If the ordinance requires peer review of the study, this must also be submitted with the Partition application.
- (e) If the property is within the Sensitive Groundwater Overlay Zone, any study of water supply required by Chapter 181 of the Rural Zoning Ordinance shall accompany the application. If the ordinance requires peer review of the study, this must also be submitted with the Partition application.
- (f) Filing fee.

172.73 FILING OF APPLICATION. **An application for a subdivision may be filed by one or more of the following:**

- (a) The owner of the property that is the subject of the application;
- (b) The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;
- (c) A lessee in possession of the property subject to the application who submits written consent of the owner to make such application;
- (d) The appropriate local government or state agency when the application is for public works project; or
- (e) A governmental body that has initiated condemnation procedures on the property that is subject to the application, but has not yet gained title.
- (f) A co-tenant if the property that is the subject of the application is owned by tenants in common.

The application shall be filed with the Director in writing on an application form provided by the Planning Division. The application shall set forth the subdivision sought, the location of proposed property lines, the location of proposed and existing buildings and septic systems on the premises, the name or names of the owners of the property. The application shall contain such other information as deemed necessary by the Director, Planning Commission or Hearings Officer.

172.74 REQUIRED SIGNATURES. Applications shall include the following signatures:

- (a) Signatures of all owners of the subject property; or
- (b) The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement; or
- (c) The signatures of lessee in possession of the property with the written consent of all the owners; or
- (d) The signatures of the agents of those identified in Section 172.73 (a), (b), or (c) when authorized in writing by those with the interests described in Section 172.73 (b) or (c), and all the owners of the property; or
- (e) The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners.
- (f) The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common, provided that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the Planning Division can give them notice of the decision.
- (g) Prima facie proof of ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the Director, Planning Commission, Hearings Officer and the Board may accept

these statements to be true, unless the contrary be proved, and except where otherwise in this ordinance more definite and complete proof is required. Nothing herein prevents the Director, Planning Commission, Hearings Officer or Board from demanding proof that the signer is the owner, officer, attorney in fact, or agent.

172.75 INFORMATION FROM AFFECTED AGENCIES Upon receipt, a copy of the application shall be distributed to the Marion County Department of Public Works, County Assessor, County Surveyor, and other affected agencies with a request for comments or suggestions regarding those features that come within the scope of their activities.

172.76 CONFORMANCE WITH REGULATIONS Unless a variance is granted as provided herein, the subdivision shall conform to applicable regulations contained in Sections 172.18 through 172.66 of this chapter and planned developments shall, in addition, conform to the regulations in Sections 121.200 through 121.250. **The Director shall determine if annexation to a fire, sewer or water district is required. If the Director determines that annexation is required, annexation or a non-remonstrance agreement must be filed with the appropriate agency.**

172.78 PUBLIC HEARING Upon receipt of responses from other departments and agencies, the Commission, Hearings Officer or Board shall hold a public hearing on the conceptual or detailed application as prescribed in Chapter 111 of the Marion County Rural Zoning Ordinance. The hearing notice shall include a description of any proposed variances. The purpose of the public hearing shall be to elicit responses from interested persons concerning the appropriateness and feasibility of the proposed subdivision plan. If the application is for conceptual approval, a public hearing shall be held and a second public hearing at the time of application for detailed approval shall not be required.

172.80 NOTIFICATION OF DECISION Notice of decision including any adjustments or variances granted, and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, the co-tenants of the subject property if the property is owned by tenants in common, those within the notification area, and any interested person, who, in writing, requests notification. **This decision shall be final unless an appeal is taken as provided in Subsection 172.82 below.**

172.82 APPEAL The decision of the Commission or Hearings Officer may be appealed to the Board no later than ~~12~~ **15** days after the decision is rendered. The Board may sustain the decision or decide the appeal with or without a further public hearing. If a public hearing is held, it shall conform with Chapter 111 of the Marion County Rural Zoning Ordinance. If the Board exercises its authority pursuant to Chapter 111 of the Marion County Rural Zoning Ordinance, its decision is final and appealable only to the Oregon Land Use Board of Appeals.

172.84 ACTION AND RECORDING OF FINAL PLATS After receiving detailed approval, a subdivider shall submit a final plat for approval. A subdivision plat, when ready for final approval prior to recording, shall be substantially in accordance with the approved detailed plan. The final plat shall be tied into the Geodetic Coordinate System used in the County. After the final plat has been filed with the Marion County Surveyor and a copy forwarded to the Planning Division, the Director shall review the final plat and compare it with the approved detailed plan to ascertain whether the final plan substantially conforms to the approved detailed plan and the conditions of approval. Before submitting the final to the Board for approval, the final plat shall be approved and signed by all persons set out in the dedication, the mortgagees, if any, the Director, County Surveyor, County On-Site Wastewater Specialist, County Assessor, and the signature and seal of the registered land surveyor responsible for the laying out of the subdivision. All the conditions of detailed approval shall be fulfilled before submitting the final plat to the County Surveyor for approval and signature. If the County Surveyor or Planning Director finds that

there has not been substantial conformance with the approved detailed plan, the subdivider shall be advised of the changes that must be made and afforded an opportunity to make such changes.

When the final plat has been reviewed by the Director and is found to be in substantial conformity to the approved detailed plan, the subdivider has fully complied with ORS 92.090 (4) and (5), the Director or authorized representative shall sign the final plat. The Director may elect to submit the final plat to the Commission or Hearings Officer for further review.

All signatures on the final plat shall be in black archival ink. Where the subdivider has expressed the intent, in writing, to develop the subdivision in phases, or stages, the final plat may contain all or only a portion of the approved detailed plan.

172.86 TIME LIMIT FOR THE FILING AND RECORDING OF A PLAT When the subdivider has expressed intent to develop a subdivision in phases or stages, the first phase of the final plat, or, if not to be developed in phases or stages, the completed final plat must be filed with the Director by the first day of the 24th month following the date of detailed approval or said detailed approval shall be deemed null and void. The final plat shall be approved by public officials as required by law and recorded within 180 days following the date the plat is submitted to the Director. Extensions to either time deadline may be approved by the Director upon submittal of written justification prior to the expiration of the time limit.

VARIANCES VIOLATIONS AND APPEALS

172.90 VARIANCES FROM REGULATIONS

- (a) **Authorization** The Commission, Hearings Officer or Board may authorize a variance of any requirements set forth in this chapter. The Director may authorize such **concurrent** variances for partitions ~~without a public hearing the written concurrence of the affected County department.~~ Variances **concurrent with a subdivision application** pertaining to any regulation contained in the Marion County **Rural** Zoning Ordinance shall be authorized only as provided in the **Chapter 122** of Zoning Ordinance after a public hearing.
- (b) **Basic Consideration of a Variance** Variances to Sections 172.22 and 172.56 and Chapter 121 may be granted only upon a sufficient showing as determined by the Director, Commission, Hearings Officer or Board that:
 - (1) Special conditions or circumstances peculiar to the property under consideration make a variance necessary for the property development of the subdivision or partitioning and the preservation of property rights and values.
 - (2) That the variances will not be detrimental to the public welfare or injurious to other properties adjacent to or in the vicinity of the proposed subdivision or partitioning.
- (c) **Application for Variance** Any person wishing to obtain a variance from these regulations **in this chapter** shall submit to the Division a written statement giving complete details of conditions and reasons why a specific variance should be granted are stated.

172.92 APPEAL PROCEDURE Any person may appeal the granting or denial of a variance of the Ordinance by filing a written appeal within the appeal period provided for the partitioning or subdivision.

The procedure for considering appeals to variances shall be the same as that provided in Sections 172.64 and 172.82.

172.94 LOTS CREATED IN VIOLATION OF THIS CHAPTER Any lot, parcel, street or road created in violation of the provisions of this chapter shall be deemed null and void. When such a lot or parcel of land is created in violation of the provisions of this chapter or has failed to receive approval of the county as required by ORS 92.040, the Marion County Building Official shall stop the construction of any structure in process on said property. No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, or is being used or has been divided in violation of the provisions of this chapter or the Marion County Rural Zoning Ordinance, unless issuance of the permit would correct the violation.

DRAFT – 2/22/08
DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 178
FLOODPLAIN OVERLAY ZONE

Revised _____
Revised 12/04/02

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178.010 **PURPOSE.** The purpose of the Floodplain Overlay Zone is to:

- (A) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.
- (B) Minimize expenditure of public money for flood control projects, rescue and relief efforts in areas subject to flooding.
- (C) Minimize flood damage to new construction by elevating or flood proofing all structures.
- (D) Control the alteration of natural floodplains, stream channels and natural protective barriers, which hold, accommodate or channel flood waters.
- (E) Control filling, grading, dredging and other development, which may be subject to or increase flood damage.
- (F) Prevent or regulate the construction of flood barriers which may increase flood hazards in other areas.
- (G) Comply with the requirements of the Federal Insurance Administration to qualify Marion County for participation in the National Flood Insurance Program.

- (H) Minimize flood insurance premiums paid by the citizens of Marion County by reducing potential hazards due to flood damage.
- (I) Implement the floodplain policies in the Marion County Comprehensive Plan.

178.020 **DEFINITIONS.** For purposes of this overlay zone the following terms shall mean:

- (A) **Accessory - a building, structure, vehicle, or use which is incidental and subordinate to and dependent upon the primary use on the lot.**
- (B) **Area of Shallow Flooding** - Means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.
- (C) **Base Flood Level** - The flood level having a one percent chance of being equaled or exceeded in any given year (100 year floodplain).
- (D) **Basement – Any area of a building having its floor subgrade (below ground level on all sides) and not meeting the requirements for crawlspace construction in FEMA Technical Bulletin 11-01.**
- (E) **Critical Facility - Means buildings or locations vital to the emergency response effort (e.g., emergency operations centers, 911 centers, police and fire stations, municipal water distribution and storage systems, hospitals, road departments and select roads and bridges, radio and TV stations and towers), and buildings or locations that, if damaged, would create secondary disasters (e.g., hazardous materials facilities, water and wastewater distribution and treatment facilities, schools, nursing homes, natural gas and petroleum pipelines, and prison or jail facilities).**
- (F) **Conveyance** - Means the carrying capacity of all or a part of the floodplain. It reflects the quantity and velocity of floodwaters. Conveyance is measured in cubic feet per second (CFS). If the flow is 30,000 CFS at a cross section, this means that 30,000 cubic feet of water pass through the cross section each second.
- (G) **Existing Manufactured Home Park or Subdivision** - Is one in which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed was completed before the effective date (August 15, 1979) of the community's floodplain management regulations. The construction of facilities includes, at a minimum, the installation of utilities, construction of streets, and either final site grading or the pouring of concrete pads.
- (H) **Encroachment** - Means any obstruction in the floodplain, which affects flood flows.
- (I) **Flood or Flooding** - A general and temporary condition of partial or complete inundation of usually dry land areas from the unusual and rapid accumulation of runoff of surface waters from any source.

- (J) **Flood Boundary Floodway Map (FBFM)** - The map portion of the Flood Insurance Study (FIS) issued by the Federal Insurance Agency on which is delineated the Floodplain, Floodway (and Floodway Fringe) and cross sections (referenced in the text portion of the FIS).
- (K) **Floodplain Development** - Means any manmade change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the floodplain.
- (L) **Floodway Fringe** - The area of the floodplain lying outside of the floodway as delineated on the FBFM where encroachment by development will not increase the flood elevation more than one foot during the occurrence of the base flood discharge.
- (M) **Floodplain** - Lands within the County that are subject to a one percent or greater chance of flooding in any given year and other areas as identified on the official zoning maps of Marion County.
- (N) **Flood Insurance Rate Map (FIRM)** - The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards (floodplain) and the risk premium zones applicable to the community and is on file with the Marion County Planning Division.
- (O) **Flood Insurance Study (FIS)** - The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway map and the water surface elevation of the base flood and is on file with Marion County Planning Division.
- (P) **Floodproofing** - A combination of structural or non-structural provisions, changes or adjustments to structures, land or waterways for the reduction or elimination of flood damage to properties, water and sanitary facilities, structures and contents of buildings in a flood hazard area.
- (Q) **Floodway** - The channel of a river or other watercourse and the adjacent land areas that must remain unobstructed to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. The floodways are identified on the Marion County Flood Boundary Floodway-Insurance Rate Maps (FIRMS) for Marion County. Once established, nothing can be placed in the floodway that would cause ANY use rise in the Base Flood Elevation.
- (R) **Highway Ready Recreation Vehicle** - Means a fully licensed recreation vehicle that is on wheels or a jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
- (S) **Lowest floor** - Means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the

applicable non-elevation design requirements of this ordinance.

- (T) **Manufactured Home** - Means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes mobile homes as defined in Section (T). For insurance and floodplain management purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles as defined in Section 178.020(X).
- (U) **Manufactured Home Park or Subdivision** - Means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots or spaces for rent or sale.
- (V) **Mean Sea Level** - Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.
- (W) **Mobile Home** - Means a vehicle or structure, transportable in one or more sections, which is eight feet or more in width, is 32 feet or more in length, is built on a permanent chassis to which running gear is or has been attached, and is designed to be used as a dwelling with or without permanent foundation when connected to the required utilities. Such definition does not include any recreational vehicle as defined by Section 178.020(X).
- (X) **New Construction** - Any structure(s) for which the start of construction commenced on or after the effective date of the Floodplain Overlay Zone (August 15, 1979).
- (Y) **Obstruction** - Any physical object which hinders the passage of water.
- (Z) **Permanent Foundation** - Means a natural or manufactured support system to which a structure is anchored or attached. A permanent foundation is capable of resisting flood forces and may include posts, piles, poured concrete or reinforced block walls, properly compacted fill, or other systems of comparable flood resistivity and strength.
- (AA) **Recreational Vehicle** - Means a "camper," "motor home," "travel trailer," as defined in ORS 801.180, 801.350, and 801.565 that is intended for temporary human occupancy and is equipped with plumbing, sinks, or toilet, and does not meet the definition of a mobile home in Section 178.020(T).
- (BB) **Reinforced Pier** - At a minimum, a reinforced pier must have a footing adequate to support the weight of the manufactured home under saturated soil conditions. Concrete blocks may be used if vertical steel reinforcing rods are placed in the hollows of the blocks and the hollows are filled with concrete or high strength mortar. Dry stacked concrete blocks do not constitute reinforced piers. When piers exceed 36 inches under "I" beams or 48 inches under floor systems they are required to be designed by an engineer licensed in Oregon.
- (CC) **Special Flood Hazard Area (SFHA)** - Areas subject to inundation from the waters of a 100-

year flood (identified on the FIRM by the letter "A", e.g. A, AE, A1-A30, AO, AH, etc.).

- (DD) **Start of Construction** - ~~(For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)),~~ Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
- (EE) **Substantial Damage** - Means flood related damage when the cost of restoring the structure would equal or exceed 20 percent of the market value of the structure before the damage occurred.
- (FF) **Substantial Improvement** - Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 20 percent of the assessed value of the structure:
- (1) Before the improvement or repair is started; or
 - (2) If the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structures. The term does not include:
 - (a) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions;
 - (b) Any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.
- (GG) **Watercourse** - A natural or artificial channel in which a flow of water occurs either continually or intermittently in identified floodplains.
- (HH) **Water Dependent** - Means a use or activity that can be carried out only on, in or adjacent to water areas because the use requires access to the water body for water related transportation, recreation, energy production or source of water. These uses include structures that to serve their purpose must be in or adjacent to water areas, such as bridges, culverts, and erosion and flood control structures.

(II) Wet floodproofing – A method of construction using building materials capable of withstanding direct and prolonged (72 hours) contact with floodwaters without sustaining significant damage (any damage requiring more than low-cost cosmetic repair, such as painting), consistent with FEMA Technical Bulletin 7-93.

(JJ) **Zoning Administrator** - Shall be the Planning Director or his designee.

178.030 GENERAL PROVISIONS. The following regulations apply to all unincorporated lands in identified floodplains as shown graphically on the zoning maps. The floodplain comprises those areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled the "Flood Insurance Study for Marion County, Oregon, Unincorporated Areas" dated January 19, 2000, with accompanying Floodway and Flood Insurance Rate Maps and amendments taking effect as of August 15, 1979, August 19, 1987, September 30, 1993, December 19, 1995, June 19, 1997, and January 2, 2003. The floodplain also comprises areas identified and mapped by Marion County that were not studied by the **Flood Insurance Study**. ~~FIA~~. The report and maps are incorporated in the overlay zone by this reference and are on file with the Marion County Planning Division. When base flood elevation data have not been provided, the Zoning Administrator shall have the authority to determine the location of the boundaries of the floodplain where there appears to be conflict between a mapped boundary and the actual field conditions, provided a record is maintained of any such determination.

(A) Duties of the Zoning Administrator shall include, but not be limited to:

- (1) Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
- (2) Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
- (3) Review building permits where elevation data is not available either through the FIS or from another authoritative source, to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available.
- (4) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 178.060(J) are met.
- (5) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structures contain a basement.
- (6) For all new or substantially improved floodproofed structures:

- (a) Verify and record the actual elevation (in relation to mean sea level), and
 - (b) Maintain the floodproofing certifications required in Section 178.060(C).
- (7) Maintain for public inspection all records pertaining to the provisions of this ordinance, **including elevation certificates.**

178.040 USES. Within a FP (Floodplain) Overlay zone no uses, structures, recreational vehicles and premises shall be used or established except as provided in the applicable underlying zone and the provisions of this overlay zone. Except as provided herein all uses and floodplain development shall be subject to issuance of a conditional use permit (Floodplain Development Permit) as provided in Section 178.050.

- (A) The following uses are exempt from the regulations of this overlay zone:
- (1) Signs, markers, aids, etc., placed by a public agency to serve the public.
 - (2) Streets, driveways, parking lots and other open space use areas where no alteration of topography will occur.
 - (3) Minor repairs or alterations to existing structures provided the alterations do not increase the size or intensify the use of the structure, and do not constitute "substantial improvement" as defined in Section 178.020(CC).
 - (4) Customary dredging associated with channel maintenance consistent with applicable State or Federal law. This exemption does not apply to the dredged materials placed within a floodplain.
 - (5) Placement of utility facilities necessary to serve established and permitted uses within floodplain areas, such as telephone poles. This exemption does not apply to buildings, substations, or other types floodplain development **of utility facilities development in the floodplain.**

~~(B) The following are not required to obtain a conditional use permit provided:~~

- ~~(1) **(B)** That Prior to obtaining a building permit for any residential, commercial or industrial structure within an area identified by FIA **FEMA** or Marion County as being within a 500 year floodplain the applicant shall comply with the requirement in 178.050(C).~~
- ~~(2) **(C)** New dwellings and manufactured homes, and replacement dwellings that are not being replaced in the same location as the original dwelling, are prohibited in the floodplain if there is an area on the subject property that is located outside of the floodplain where the dwelling can be placed. An exception to this prohibition may be granted if a floodplain development permit, and variance **meeting the criteria in** consistent with Section 178.090, are obtained.~~

(D) Prior to any mining, dredging, filling, grading, paving or excavation within the

- (a) Verify and record the actual elevation (in relation to mean sea level), and
 - (b) Maintain the floodproofing certifications required in Section 178.060(C).
- (7) Maintain for public inspection all records pertaining to the provisions of this ordinance, **including elevation certificates.**

178.040 USES. Within a FP (Floodplain) Overlay zone no uses, structures, recreational vehicles and premises shall be used or established except as provided in the applicable underlying zone and the provisions of this overlay zone. Except as provided herein all uses and floodplain development shall be subject to issuance of a conditional use permit (Floodplain Development Permit) as provided in Section 178.050.

- (A) The following uses are exempt from the regulations of this overlay zone:
- (1) Signs, markers, aids, etc., placed by a public agency to serve the public.
 - (2) Streets, driveways, parking lots and other open space use areas where no alteration of topography will occur.
 - (3) Minor repairs or alterations to existing structures provided the alterations do not increase the size or intensify the use of the structure, and do not constitute "substantial improvement" as defined in Section 178.020(CC).
 - (4) Customary dredging associated with channel maintenance consistent with applicable State or Federal law. This exemption does not apply to the dredged materials placed within a floodplain.
 - (5) Placement of utility facilities necessary to serve established and permitted uses within floodplain areas, such as telephone poles. This exemption does not apply to buildings, substations, or other types floodplain development **of utility facilities development in the floodplain.**

~~(B) The following are not required to obtain a conditional use permit provided:~~

- (1) ~~(B)~~ **(B)** That Prior to obtaining a building permit for any residential, commercial or industrial structure within an area identified by FIA **FEMA** or Marion County as being within a 500 year floodplain the applicant shall comply with the requirement in 178.050(C).
- (2) ~~(C)~~ **(C)** New dwellings and manufactured homes, and replacement dwellings that are not being replaced in the same location as the original dwelling, are prohibited in the floodplain if there is an area on the subject property that is located outside of the floodplain where the dwelling can be placed. An exception to this prohibition may be granted if a floodplain development permit, and variance **meeting the criteria in** consistent with Section 178.090, are obtained.

(D) Prior to any mining, dredging, filling, grading, paving or excavation within the

- (G) A highway ready recreation vehicle may be located on a lot or parcel without a dwelling in a floodplain or floodway only during the non-flood season (June 1 through September 30), subject to the requirements in Section 126.40.
- (H) In addition to other information required in a conditional use application, the application shall include:
 - (1) Land elevation in mean sea level data at development site and topographic characteristics of the site.
 - (2) Base flood level expressed in mean sea level data on the site, **if available**.
 - (3) Plot plan showing property location, floodplain and floodway boundaries where applicable, boundaries and the location and floor elevations of existing and proposed development, or the location of grading or filling where ground surface modifications are to be undertaken.
 - (4) Any additional statements and maps providing information demonstrating existing or historical flooding conditions or characteristics, which may aid in determining compliance with the flood protection standards of this overlay zone.

178.060 FLOOD PROTECTION STANDARDS. In all areas of identified floodplain, the following requirements apply:

(A) **Dwellings, and Manufactured Homes and Related Accessory Structures**

New residential construction, substantial improvement of any residential structures, location of a manufactured home on a lot or in a manufactured home park or park expansion approved after adoption of this ordinance shall:

- (1) Dwellings shall have the top of the lowest floor, including basement, elevated on a permanent foundation to two (2) feet above base flood elevation and the bottom of the lowest floor constructed a minimum of one (1) foot above the base flood elevation. Where the base flood elevation is not available, the top of the lowest floor, including basement shall be elevated on a permanent foundation to two (2) feet above the highest adjacent natural grade (within 5 feet) of the building site and the bottom of the lowest floor elevated to one (1) foot above the highest adjacent natural grade (within 5 feet) of the building site; and
- (2) Manufactured homes shall have the finished floor, including basement, elevated on a permanent foundation to two (2) feet above base flood elevation. Where the base flood elevation is not available, the finished floor, including basement shall be elevated on a permanent foundation to two (2) feet above the highest adjacent natural grade (within 5 feet) of the building site; and
- (3) Manufactured homes shall be anchored in accordance with subsection (D); and

- (4) No new dwelling or manufactured home shall be placed in a floodway. An exception to this prohibition may be granted if a floodplain development permit, and variance consistent with Section 178.080, are obtained.
- (5) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must **comply with** ~~or exceed~~ the following ~~minimum criteria~~ **standards**:
- (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (6) **Construction where the crawlspace is below-grade on all sides may be used. Designs for meeting these requirements must either be certified by a registered professional engineer or architect, or must meet the following standards, consistent with FEMA Technical Bulletin 11-01 for crawlspace construction:**
- (A) **A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;**
 - (B) **The bottom of all openings shall be no higher than one foot above grade;**
 - (C) **Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;**
 - (D) **Interior grade of the crawlspace shall not exceed two (2) feet below the lowest adjacent exterior grade;**
 - (E) **The height of the crawlspace when measured from the interior grade of the crawlspace (at any point on grade) to the bottom of the lowest horizontal structural member of the lowest floor shall not exceed four (4) feet;**
 - (F) **An adequate drainage system that removes floodwaters from the interior area of the crawlspace shall be provided; and,**
 - (G) **Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements for flood insurance purposes. However, below grade-crawlspace construction in the Special Flood Hazard Area is not the recommended construction method because of the increased**

likelihood of problems with foundation damage, water accumulation, moisture damage, and drainage. Applicants shall be advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).

(7) A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, may be constructed to wet floodproofing standards provided that:

(A) The garage shall meet the standards for openings in 178.060 (A) (5); and,

(B) The garage shall be constructed with unfinished materials acceptable for wet floodproofing to two (2) feet above the base flood elevation or, where no BFE has been established, to two (2) feet above the highest adjacent grade.

(8) A detached residential accessory structure may be constructed to wet floodproofing standards provided that:

(A) The accessory structure shall be located on a property with a dwelling;

(B) The accessory structure shall be limited to vehicle parking and limited storage (no workshops, offices, recreation rooms, etc);

(C) The accessory structure shall be constructed with unfinished materials acceptable for wet floodproofing to two (2) feet above the base flood elevation or, where no BFE has been established, to two (2) feet above the highest adjacent grade;

(D) The accessory structure shall not be used for human habitation;

(E) The accessory structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

(F) The accessory structure shall meet the standards for openings in 178.060 (A) (5); and,

(G) The accessory structure shall meet the criteria for a variance in 178.090.

(B) Manufactured homes in existing manufactured home parks

The standards in Section 178.060(A) shall apply to location of a manufactured home in a vacant space in a manufactured home park existing prior to adoption of this ordinance.

(C) Non-residential development

- (1) New construction and substantial improvement of any commercial, industrial or other non-residential structures shall either have the lowest floor, including basement, elevated to two (2) feet above the level of the base flood elevation, **and where** ~~Where~~ the base flood elevation is not available, the lowest floor, including basement, shall be elevated to two (2) feet above the highest adjacent natural grade (within 5 feet) of the building site; or together with attendant utility and sanitary facilities, shall:
- (a) Be floodproofed **to an elevation of two (2) feet above base flood elevation or, where base flood elevation has not been established two (2) feet above the highest adjacent grade, so that the structure is** ~~so that below the base flood level the structure is~~ watertight with walls substantially impermeable to the passage of water.
 - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - (c) Be certified by a registered professional engineer or architect that the standards in this subsection and ~~subsection (E)~~ are satisfied. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed.
 - (d) Non-residential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 178.060 (A) (5).
 - (e) Applicants floodproofing non-residential buildings shall be notified by the Zoning Administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).
- (2) New construction of any commercial, industrial or other non-residential structures are prohibited in the floodway. An exception to this prohibition may be granted if a floodplain development permit, and variance consistent with Section 178.080, are obtained. This prohibition does not apply to water dependent uses.
- (3) **An agricultural structure may be constructed to wet floodproofing standards provided that:**
- (A) **The structure shall be used solely for agricultural purposes, for which the use is exclusively in conjunction with the production, harvesting, storage, drying, or raising of agricultural commodities, the raising of livestock, and the storage of farm machinery and equipment;**
 - (B) **The structure shall be constructed with unfinished materials acceptable for wet floodproofing to two (2) feet above the base flood elevation or, where no BFE has been established, to two (2) feet above the highest adjacent grade;**

- (C) The structure shall not be used for human habitation;**
- (D) The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;**
- (E) The structure shall meet the standards for openings in 178.060 (A) (5); and,**
- (F) The structure shall meet the criteria for a variance in 178.090.**

(D) Anchoring

- (1) All new construction and substantial improvements shall be anchored to prevent floatation, collapse or lateral movement of the structure.
- (2) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movements, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Anchoring methods shall be consistent with the standards contained in Section 308 (Flood Resistance) contained in the Oregon Manufactured Dwelling Standards Manual 1997 **per ORS 446.062**.

(E) Construction materials and methods

- (1) All new construction and substantial improvements below base flood level shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.

(F) Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system as approved by the State Health Division.
- (2) New and replacement sanitary sewage systems including on-site waste disposal systems shall be designed and located to minimize flood water contamination consistent with the requirements of the Oregon State Department of Environmental Quality.
- (3) Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one (1) above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-condition equipment shall be elevated to one (1) foot above the highest adjacent natural grade (within 5 feet) of the building site.

substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the criteria in subsection 178.090. The variance criteria of Section 122.020 of the Zoning Ordinance do not apply.

- (B) Marion County shall notify the applicant in writing over the signature of the Zoning Administrator that: 1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and 2) such construction below the base flood level increases risk to life and property. Such notification shall be maintained with a record of all variance actions as required in subsection (C).
- (C) Marion County shall: 1) maintain a record of all variance actions, including justification for their issuance; and 2) report such variances issued in its biennial report submitted to the NFIP Administrator.

178.090 VARIANCE CRITERIA. The following criteria shall be used to review variance applications.

- (A) Variances shall only be issued upon a showing that:
 - (1) There is a good and sufficient cause;
 - (2) That failure to grant the variance would result in exceptional hardship to the applicant;
 - (3) That the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws;
 - (4) The variance is the minimum necessary, considering the flood hazard, to afford relief;
 - (5) The variance will be consistent with the intent and purpose of the provision being varied;
 - (6) There has not been a previous land use action approved on the basis that variances would not be allowed; and
 - (7) The new construction or substantial improvement is not within any designated regulatory floodway, or if located in a floodway, no increase in base flood discharge will result.

178.100 WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this overlay zone is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by man-made or natural causes. This zone does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood

damages. This zone will not create liability on the part of Marion County, any officer or employee thereof or the Federal Insurance Administration for any flood damages that result from reliance on this chapter or any decision lawfully made thereunder.

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DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 179
GREENWAY MANAGEMENT OVERLAY ZONE

Revised _____
Revised 12/12/02

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SECTION 179.010 PURPOSE AND INTENT. The purpose of the Greenway Management (GM) Overlay Zone is to:

- (a) Protect the natural, scenic and recreation qualities of lands along the Willamette River in Marion County;
- (b) Preserve and allow the restoration of historical sites, structures and facilities along the Willamette River;
- (c) Implement the goals and policies of the State of Oregon's Willamette River Greenway Program;
- (d) Implement the goals and policies of Marion County's Comprehensive Plan;
- (e) Establish standards and requirements for the use of lands within the Willamette River Greenway in Marion County; and
- (f) Provide for the review of any intensification of use, change of use, or development on properties located within the Willamette River Greenway of Marion County.

SECTION 179.020 APPLICATION OF THE OVERLAY ZONE.

- (a) The provisions of the Chapter shall apply to all lands within the Willamette River Greenway Boundary of Marion County as shown on the official County zone map. The

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- (f) Provide for the review of any intensification of use, change of use, or development on properties located within the Willamette River Greenway of Marion County.

SECTION 179.020 APPLICATION OF THE OVERLAY ZONE.

- (a) The provisions of the Chapter shall apply to all lands within the Willamette River Greenway Boundary of Marion County as shown on the official County zone map. The

boundary is shown in detail on aerial photo maps on file with the Marion County Planning Division and the County Recorder. Interpretation of the exact location of the boundary shall be made by the Planning Director from these photo maps.

- (b) The provisions of this Chapter shall apply to lands within the Willamette River Greenway Boundary of Marion County in addition to any standards and requirements of the Floodplain Overlay Zone that may apply to such lands. Nothing in this Chapter shall be construed to constitute a waiver or suspension of the provisions of any primary zone or Floodplain Overlay Zone within the Willamette River Greenway. In the case of any conflict between the provisions of this Chapter and the provisions of any other chapter of this Ordinance, the more restrictive provisions shall apply.

179.030 USES. All activities, uses of land and site development requirements set forth in underlying specific zone districts within the Greenway Management Overlay Zone and houseboats and houseboat moorages shall be permitted subject to obtaining a Greenway development permit for all proposed development, change of use or intensification of land or water except for the following which need not have a Greenway permit:

- (a) Customary dredging and channel maintenance conducted under permit from the State of Oregon;
- (b) Seasonal increases in gravel operations as provided under permit from the State of Oregon;
- (c) The placing by a public agency of signs, markers, aids, etc. to serve the public;
- (d) Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses of public lands, except that a substantial increase in the level of development of existing public recreational, scenic, historical or natural uses on public lands shall require review as provided by this Chapter;
- (e) Erosion control operations not requiring a permit from the Division of State Lands;
- (f) Farm uses;
- (g) Reasonable emergency procedures necessary for the safety or protection of property;
- (h) Maintenance and repair usual and necessary for the continuance of an existing use;
- (i) Landscaping, construction of driveways, repair or maintenance of existing structures, and the construction or placement of accessory structures other than guest houses, provided that such activities are conducted in conjunction with uses already existing on the same property and that they are accomplished in a manner compatible with the purpose of this Chapter;
- (j) The propagation of timber or the cutting of timber which is done for public safety or personal non-commercial use or which does not require a permit in accordance with the Forest Practices Act;
- (k) Water intakes and utilities in conjunction with an agricultural use and single family residences;

boundary is shown in detail on aerial photo maps on file with the Marion County Planning Division and the County Recorder. Interpretation of the exact location of the boundary shall be made by the Planning Director from these photo maps.

- (b) The provisions of this Chapter shall apply to lands within the Willamette River Greenway Boundary of Marion County in addition to any standards and requirements of the Floodplain Overlay Zone that may apply to such lands. Nothing in this Chapter shall be construed to constitute a waiver or suspension of the provisions of any primary zone or Floodplain Overlay Zone within the Willamette River Greenway. In the case of any conflict between the provisions of this Chapter and the provisions of any other chapter of this Ordinance, the more restrictive provisions shall apply.

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- (i) Landscaping, construction of driveways, repair or maintenance of existing structures, and the construction or placement of accessory structures other than guest houses, provided that such activities are conducted in conjunction with uses already existing on the same property and that they are accomplished in a manner compatible with the purpose of this Chapter;
- (j) The propagation of timber or the cutting of timber which is done for public safety or personal non-commercial use or which does not require a permit in accordance with the Forest Practices Act;
- (k) Water intakes and utilities in conjunction with an agricultural use and single family residences;

- (l) Private docks and wharfs not more than two feet above water level, less than 100 square feet in area, not located on the main channel, not including any plumbing or electrical services and not more than one such facility per property ownership.

179.040 GREENWAY DEVELOPMENT PERMIT. Except as provided in Section 179.030 a Greenway Development Permit shall be obtained before any development, change of use or intensification commences within the Willamette River Greenway Boundary.

A Greenway Development Permit may be obtained by making application with the Marion County Planning Division on forms supplied by that office. Information contained in the application and supplied by the applicant shall include but not be limited to:

- (a) Plot plan showing the following:
 - (1) The area of the proposed use or activity;
 - (2) The proximity of the activity to the Willamette River at low and high water level and the location of the top of the terrace bank;
 - (3) The location of any existing vegetative fringe along the river bank or other significant vegetation.
- (b) Statements, drawings, or photos of the proposed external appearance of proposed activity as viewed from the river;
- (c) Statements demonstrating compliance with the provisions of this Chapter;
- (d) Any additional information determined by the Director to be necessary to demonstrate compliance with this Chapter.

179.050 USE MANAGEMENT CONSIDERATIONS AND CRITERIA. In reviewing an application for a Greenway Development permit, compliance with the following considerations and criteria shall be determined:

- (a) Agricultural lands shall be preserved and maintained for farm use.
- (b) Significant fish and wildlife habitats shall be protected.
- (c) Significant natural and scenic areas, viewpoints and vistas shall be preserved.
- (d) Areas of ecological, scientific, historical or archeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.
- (e) The quality of the air, water and land resources in and adjacent to the Greenway shall be preserved in the development, change of use or intensification of use of land within the Greenway Management Zone.
- (f) Areas of annual flooding, floodplains and wetlands shall be preserved in their natural state to the maximum possible extent to protect water retention, overflow and other natural functions.

- (l) Private docks and wharfs not more than two feet above water level, less than 100 square feet in area, not located on the main channel, not including any plumbing or electrical services and not more than one such facility per property ownership.

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- (a) Plot plan showing the following:
 - (1) The area of the proposed use or activity;
 - (2) The proximity of the activity to the Willamette River at low and high water level and the location of the top of the terrace bank;
 - (3) The location of any existing vegetative fringe along the river bank or other significant vegetation.
- (b) Statements, drawings, or photos of the proposed external appearance of proposed activity as viewed from the river;
- (c) Statements demonstrating compliance with the provisions of this Chapter;
- (d) Any additional information determined by the Director to be necessary to demonstrate compliance with this Chapter.

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- (c) Significant natural and scenic areas, viewpoints and vistas shall be preserved.
- (d) Areas of ecological, scientific, historical or archeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.
- (e) The quality of the air, water and land resources in and adjacent to the Greenway shall be preserved in the development, change of use or intensification of use of land within the Greenway Management Zone.
- (f) Areas of annual flooding, floodplains and wetlands shall be preserved in their natural state to the maximum possible extent to protect water retention, overflow and other natural functions.

- (g) The natural vegetative fringe along the river shall be maintained to the maximum extent that is practical in order to assure scenic quality, protection of wildlife, protection from erosion and screening of uses from the river.
- (h) The commercial harvesting of timber shall be done in a manner which will ensure that wildlife habitat and the natural scenic qualities of the Greenway will be maintained or will be restored. Only partial harvesting shall be permitted beyond the vegetative fringes. Limitations on the extent or type of harvest shall be those necessary to satisfy the appropriate use management consideration and criteria in Section 179.050.
- (i) The proposed development, change or intensification of use is compatible with existing uses on the site and the surrounding area.
- (j) Areas considered for development, change or intensification of use which have erosion potential shall be protected from loss by appropriate means which are compatible with the provisions of the Greenway Management Zone.
- (k) Extraction of aggregate deposits shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization stream flow, visual quality, noise and safety and to guarantee necessary reclamation.
- (l) Any public recreational use or facility shall not substantially interfere with the established uses on adjoining property.
- (m) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practical.
- (n) A minimum building setback line of 30 feet from the ordinary high water line of the Willamette River will be specified that will minimize adverse impacts upon the scenic qualities of lands along the river except for buildings and structures in conjunction with a water-related or a water-dependent use.
- (o) Public access to and along the river be considered in conjunction with subdivision, commercial and industrial development and public lands acquisition where appropriate. This access should be located and designed to minimize trespass and other adverse affects on adjoining property.
- (p) The development shall be directed away from the river to the greatest possible extent.
- (q) The development, change or intensification of use shall provide the maximum possible landscaped area, open space or vegetation between the activity and the river.
- (r) Private docks, wharfs, and covered storage shall be limited to one per property ownership, shall not extend more than ten (10) feet above water level, and shall be limited to 300 square feet of gross area. Walkways to the dock, wharf or covered storage shall be not more than five (5) feet wide. ~~When approving covered storage, criteria a, b, c, e and f shall be considered.~~

179.060 PERMIT REVIEW. The Marion County Planning Director is hereby appointed to administer and implement this Chapter by granting or denying Greenway Development permit

- (g) The natural vegetative fringe along the river shall be maintained to the maximum extent that is practical in order to assure scenic quality, protection of wildlife, protection from erosion and screening of uses from the river.
- (h) The commercial harvesting of timber shall be done in a manner which will ensure that wildlife habitat and the natural scenic qualities of the Greenway will be maintained or will be restored. Only partial harvesting shall be permitted beyond the vegetative fringes. Limitations on the extent or type of harvest shall be those necessary to satisfy the appropriate use management consideration and criteria in Section 179.050.
- (i) The proposed development, change or intensification of use is compatible with existing uses on the site and the surrounding area.
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179.060 PERMIT REVIEW. The Marion County Planning Director is hereby appointed to administer and implement this Chapter by granting or denying Greenway Development permit

applications in accordance with its provisions. The procedure for review of permit applications shall be by the Conditional Use process as defined in Chapter 119.100 of this Ordinance.

The Director shall review Greenway Development permits to determine that the requirements of this Ordinance have been met. The Director may impose conditions, restrictions or limitations upon a permit in order to accomplish the provisions of this Ordinance.

179.070 APPEAL. The Marion County Hearings Officer or Planning Commission shall hear and decide appeals of this Chapter in accordance with Chapter 119 of this Ordinance when it is alleged there is an error in any requirement, decision or determination made by the Planning Director in the enforcement or interpretation of this Chapter.

179.080 NOTIFICATION.

- (a) In addition to the notification requirements of Chapter 119.130 and 119.150 of this Ordinance, written notice including the Greenway Development permit application will be sent immediately to the Oregon Department of Transportation. Notice to the Department of Transportation will be sent by certified mail-return receipt requested. The Director shall allow ten (10) days from the date of mailing to respond before a decision is made.
- (b) Any of the affected agencies, or Planning Director may, during the ten day notice period, request a public hearing. If a written request for a hearing is received by the Director, the Director shall schedule a public hearing before the Hearings Officer or Planning Commission who shall hear and decide the application in the same manner as for an appeal.
- (c) Notice of the Planning Director's decision shall be mailed to the Department of Transportation in addition to those specified in Section 119.150.

179.090 DEFINITIONS

- (a) **Change of Use** means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building.

Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for the purpose of this Goal.

- (b) **Intensification** means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit was

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issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home.

Landscaping, construction of driveways, modification of existing structures or construction or placement of such subsidiary structures or facilities adjacent to the residences are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this Goal. Seasonal increases in gravel operations shall not be considered an intensification of use.

- (c) **Water-Dependent:** A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production or source of water.
- (d) **Water-Related:** Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

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DRAFT – 2/22/08
~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

CHAPTER 182
GEOLOGICALLY HAZARDOUS AREAS OVERLAY ZONE

Revised _____
Implemented 01/01/02

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182.010 **PURPOSE.** The purpose of this Chapter is to implement the Development Limitations goal and policies of the Rural Development Section of the Marion County Comprehensive Land Use Plan, and Statewide Land Use Planning Goal 7 - Areas Subject to Natural Disasters and Hazards. This chapter implements the strategy for reviewing development applications for properties within identified slide hazard and excessive slope areas to address the risk that a proposed land use activity may adversely affect the stability and landslide susceptibility of an area. The provisions of this chapter are intended to manage the risk of a landslide within identified slide hazard and excessive slope areas by requiring geological and/or geotechnical reports, but not act as a guarantee that the landslide hazard risk will be eliminated.

Landslide hazard and excessive slope areas constitute geologically hazardous areas of special concern to residents of the county. The intent of this chapter is to protect these hazard areas of the county by requiring professional evaluation and establishing requirements for development of sites which are identified in hazard areas, and thus promote the public health, safety, and welfare.

182.020 **DEFINITIONS.** The following definitions apply to this chapter only, and have no applicability to the same terms used in other chapters of this ordinance, unless specifically stated.

- (A) **Certified Engineering Geologist** is any Registered Geologist who is certified in the specialty of Engineering Geology under provisions of ORS 672.505 to 672.705.
- (B) **Clearing** is the cutting, moving on the site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting and removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth's surface of the site. In addition

to the above, clearing is an activity which does not require reforestation per an approved forest practices application and/or notification issued by the Department of Forestry.

- (C) **Development area** is the total area of alteration of the naturally occurring ground surface resulting from construction activities whether permanent or temporary.
- (D) **Engineering geology report** is a report prepared by a Certified Engineering Geologist. An engineering geology report must provide a detailed description of the geology of the site, professional conclusions and recommendations regarding the effect of geological conditions on the proposed development, and opinions and recommendations covering the adequacy of the site to be developed. An engineering geology report must be prepared in accordance with the Guidelines for Preparing Engineering Geology Reports in Oregon adopted by the Oregon State Board of Geologist Examiners. The engineering geology report may be incorporated into or included as an appendix to the geotechnical report.
- (E) **Erosion** is the wearing away of the earth's surface as a result of the movement of wind, water, or ice.
- (F) **Excavation** is any act by which earth, sand, gravel, rock or any similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated, or bulldozed, including the conditions resulting therefrom.
- (G) **Excessive slope areas** are areas with slopes greater than 20 percent.
- (H) **Fill or backfill** is a deposit of earth or other natural or manmade material placed by artificial means. Filling means the act of placing fill on any geologically hazardous area including temporary stockpiling of fill.
- (I) **Geological assessment** is an assessment prepared and stamped by a Certified Engineering Geologist detailing the surface and subsurface conditions of a site, delineating areas of a property that may be subject to specific geologic hazards, and furnish professional analysis of information to assess the suitability of the site for development. Geological assessment must be prepared in accordance with the report requirements identified in this chapter. The geological assessment may be incorporated into or included as an appendix to the geotechnical report.
- (J) **Geologically hazardous areas** are areas identified on the county zone maps that, because of their susceptibility to landslide, erosion or other geological events, may have inherent geologic constraints relevant to the siting of commercial, industrial, or residential development consistent with public health or safety concerns. These concerns may be mitigated by special considerations in siting, design, or construction.
- (K) **Geotechnical engineer** is a Professional Engineer registered in the State of Oregon as provided by ORS 672.002 to 672.325, who by training, education, and experience, is qualified in the practice of geotechnical or soils engineering practices.
- (L) **Geotechnical report** is a report prepared and stamped by a Geotechnical Engineer evaluating the site conditions and recommending design measures necessary to reduce the risks associated with development and to facilitate a safe and stable development. A geotechnical report must be prepared in accordance with the report requirements identified in this chapter. A geological assessment or engineering geology report may be incorporated into or included as an appendix to the geotechnical report.

- (M) **Grading** is the act of excavating and filling of the earth's surface.
- (N) **Landslide** is the downslope movement of soil, rocks, or other surface matter on a site. Landslides may include, but are not limited to, slumps, mudflows, earthflows, debris flows, and rockfalls.
- (O) **Landslide hazard areas** are areas identified on county zone maps that are susceptible ground movement due to a combination of geologic, topographic, and hydrologic factors.
- (P) **Mitigation** is action designed to reduce risk posed by geologic hazards through specific design, siting or avoidance.
- (Q) **Registered Geologist** is a person who is registered as a geologist under the provisions of ORS 672.505 to 672.705.
- (R) **Regulated activities** are activities occurring in a geologically hazardous area that are subject to the provisions of this chapter. Regulated activities generally include but are not limited to any filling, dredging, dumping or stockpiling, draining, excavation, flooding, and construction or reconstruction.
- (S) **Slope** is an inclined earth surface, the inclination of which is expressed as the ratio of horizontal (H) distance to vertical (V) distance. In these regulations, slopes are expressed as a percentage, with percentage of slope referring to a given rise in elevation over a given run in distance, multiplied by 100. A forty percent slope, for example, refers to a forty-foot rise in elevation over a distance of one hundred feet (H/V x 100). A one-hundred percent slope equals a forty-five degree angle. Slopes are measured across a horizontal rise and run calculation within any horizontal twenty-five foot distance.

182.030 APPLICABILITY. The provisions of this chapter shall apply to all phases of development altering the physical landscape of lands within the landslide hazard and excessive slope areas as shown on the official county zoning maps and as designated or identified as landslide hazard areas by the County where information provided by a licensed geologist, geological report, hazard inventory, or landslide hazard studies indicate an elevated hazard risk exists.

The presence of landslide hazard and excessive slope areas and the applicability of the provisions of this chapter are determined by the classification criteria and categories established for these hazard areas as detailed on the maps adopted as part of this chapter. The maps indicate the location of areas susceptible to landslides, areas of known landslide hazards, and excessive slope areas. These maps are based on the best available information and may be amended based upon receipt of corrected, updated or refined data, or upon the revision of studies upon which the maps were initially based.

In the event of any conflict between the location, designation, or classification of a landslide hazard area shown on the county maps and the classification categories of this chapter, the categories and the determination of the geological assessment or report shall prevail. The County shall make the final decision as to whether a lot or parcel is within or outside the mapped hazard areas. A lot or parcel that is both in and out of the hazard area shall be subject to the provisions of this chapter only if the proposed development on the lot or parcel is within the mapped hazard area. Within the mapped hazard areas, an applicant may demonstrate through submittal of a geological assessment that the proposed development will not occur within an identified landslide hazard or excessive slope area, then the requirements of this chapter may be waived.

182.40 REGULATED ACTIVITIES AND USES; EXEMPTIONS

(A) Regulated activities and uses. The county shall grant approval to alter the condition of any land, water or vegetation, or to construct or alter any structure or improvement including, but not limited to, the following regulated activities within identified landslide hazard and excessive slope areas and as permitted in the underlying zone and applicable overlay zones, after receipt of an approved site assessment, engineering geology report, or geotechnical report as required by this chapter that concludes development does not pose an elevated hazard risk to property.

- (1) Building permits: buildings customarily provided in conjunction with farm use, residential, commercial, or industrial;
- (2) Excavation;
- (3) Filling;
- (4) Subdivisions, partitions, planned unit developments (PUDs), mobile home parks, and recreational vehicle (RV) parks;
- (5) Construction, reconstruction, or alteration of the size of any structure of public infrastructure;
- (6) Location, construction, reconstruction, and maintenance of on-site sewage disposal systems including drainage, where there is a need to review and investigate test pits;
- (7) Construction of any new public or private road or driveway;
- (8) Construction or enlargement of ponds;
- (9) Grading activities for all phases of development pursuant to provisions of the Uniform Building Code - the Oregon Structural Specialty Code adopted and applied by the County.

(B) Exemptions. The following activities and uses are exempt from provisions of this chapter:

- (1) Activities and uses conducted pursuant to the Oregon State Forest Practices Act and its rules and regulations, where state law specifically limits local authority, except with regard to development and conversions requiring local approval when the County is the lead agency for environmental review and permits;
- (2) Existing and on-going agricultural activities and uses;
- (3) Maintenance, operation, reconstruction of existing public and private roads, streets, driveways, utility lines, and existing structures, provided that reconstruction of any such facilities does not extend outside the previously disturbed area;
- (4) Installation, construction or replacement of utility lines in improved county rights-of-way, not including electric substations;
- (5) Maintenance of ground cover or other vegetation in a landslide hazard area that was disturbed prior to the adoption of this chapter, provided that no further disturbance is created outside the previously disturbed area;
- (6) Site investigative work required by a city, county, state or federal agency, or any other applicant such as surveys, test borings, percolation tests, and other related activities provided disturbed areas are restored to the pre-existing conditions promptly after tests are concluded;

- (7) Passive recreational uses, hunting, scientific or educational review, or similar minimum impact, non-development activities;
- (8) Emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter when it is necessary to:
 - (a) Prevent an imminent threat to public health or safety, or
 - (b) Prevent imminent danger to public or private property, or
 - (c) Prevent an imminent threat of serious environmental degradation;
- (9) A residential building permit for a lot or parcel which was subject to previous reports and assessments as required under the ordinance provisions in effect at the time;
- (10) Existing development, activities and uses involving permit or land use approvals prior to the adoption of the provisions of this chapter.

182.050 APPROVAL REQUIREMENTS. The level of geological review and procedural requirements for regulated development activities and uses are related to geologic and physiographic conditions and the type of development activity for a property. Development activities and uses having the greatest potential for impacting public safety and property, and that are located on lands with an elevated landslide hazard, have the strictest review and development requirements.

The 182-1 Graduated Response Table (Parts I to VI, attached) shall be used to determine the level of site investigation for various types of regulated activity on property, any portion of which is shown on the Landslide Hazard and Excessive Slope Area Maps. Using a rating system, slope and physiographic conditions at the site are evaluated in relationship to a proposed activity. If a rating meets or exceeds quantified thresholds provided in the Table, a geological assessment, engineering geology report, or geotechnical report or a combination thereof shall be provided by the applicant and actions specified in the report(s) undertaken and ensured before any regulated activity may be permitted or approved. Where any portion of the property on which regulated activities are proposed is identified under two slope conditions or two or more physiographic and geologic categories, the highest condition or category will apply.

The Graduated Response Table (Part VI) provides the following landslide risk assessment, investigation, and review requirements for identified hazard areas and regulated activities:

- (1) For Low Landslide Risk Assessments (Category A), all regulated activities may proceed without further investigation, permitting, or approval requirements of this chapter.
- (2) For Moderate Landslide Risk Assessments (Category B), a geological assessment shall be submitted. If the geological assessment indicates landslide hazards pose an elevated risk on the site or where mitigation measures are necessary to safely undertake a regulated activity, the High Landslide Risk Assessment (Category C) requirements shall be met. If the geological assessment indicates that no mitigation measures are necessary to safely undertake the regulated activity, the activity may proceed without further requirements of this chapter.
- (2) For High Landslide Risk Assessments (Category C), an engineering geology report and/or a geotechnical report shall be submitted for all regulated activity. The geological assessment or engineering geology report may be incorporated into or included as an appendix to the geotechnical report.

182.060 REVIEW PROCEDURE AND PEER REVIEW. Development permits for regulated activities and uses within identified landslide hazard and excessive slope areas shall be reviewed for compliance with this chapter. Applications for regulated activity permits or approvals required by the Zoning Code shall be deemed complete upon the submittal and approval of a geological assessment, engineering geology report or geotechnical report as required by this chapter.

In order for the county to accept a geological assessment, engineering geology report, or a geotechnical report from an applicant pursuant to this chapter, the assessment or report shall be prepared and stamped by a licensed professional with the necessary expertise to prepare a report meeting the requirements of this chapter.

The required geological assessment, engineering geology report or geotechnical report for regulated activities and uses within Risk Assessment Categories B and C of the Graduated Response Table shall be reviewed and accepted through the peer review process before any regulated activity will be allowed. The review will be conducted by a professional or professional firm of the County's choice that meets the qualifications listed in this chapter. The review will be at the applicant's expense.

The Board will establish a fee for the review of geological and geotechnical reports for regulated activities and uses

Review of report submittals shall include examination to ensure that the following criteria are met:

- (1) Required elements are completed;
- (2) Geologic report procedures and assumptions are accepted;
- (3) All conclusions and recommendations are supported and reasonable.

Conclusions and recommendations stated in an approved assessment or report shall then be directly incorporated as permit conditions or provide the basis for conditions of approval for the regulated activity or use.

Where an approved assessment or report as defined and required by this chapter has been prepared within the last five years for a specific site, and where the proposed land use activity and surrounding site conditions are unchanged, that report may be utilized and a new report is not required. Should environmental conditions associated with the site or surrounding the site change, or if the proposed land use activity or development has materially changed, the applicant shall submit an amendment to the required assessment or report, which shall be reviewed and approved through the peer review process.

182.070 ASSESSMENT OR REPORT APPEALS PROCESS. A geological assessment, engineering geology report, or geotechnical report under the provisions of this chapter is a privately funded report created at the request of a property owner to meet a development requirement, and is not a land use action. As such, the assessment or report has no appeal process associated with its publication or acceptance by the County.

182.080 DECLARATORY STATEMENT. Before a building permit is issued for property in a landslide hazard or excessive slope area as identified and regulated in this chapter, the property owner shall record a declaratory statement with the county clerk that the property and the approved development lies within a landslide hazard or excessive slope area as defined by this chapter. The statement shall indicate that restrictions on use or the alteration of the site may exist due to natural conditions of the site and resulting regulation, and that all approved assessments or reports for such property are on file with the county.

182.090 COMPLIANCE. No regulated activity or use requiring an engineering geology report or geotechnical report shall receive final approval and/or occupancy until the county receives a written statement from the professional preparing the report that all performance, mitigation, or monitoring measures contained in the approved report are completed, in place, and operable.

182.100 ENFORCEMENT. The county is authorized to make site inspections and take such actions as necessary to enforce the provisions of this chapter. A county representative may enter onto private property with the consent of the owner or occupant or pursuant to warrant. The county shall have the authority to order restoration, rehabilitation or replacement measures to compensate for the destruction or degradation of identified landslide hazard and excessive slope area lands at the property owner's expense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and pose a risk to the public health, safety and welfare.

182.110 SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this regulation or the application of the provision to other persons or circumstances shall not be affected.

TABLE 182-1 GRADUATED RESPONSE TABLE

Directions:

Step 1. Select one assigned point value from Part I and proceed to Part II

PART I.	Earthquake-Induced Landslide Susceptibility Ratings
References:	
Interpretive Map Series (IMS-17) - Earthquake Induced Slope Instability: Relative Hazard Map Western Portion of Salem Hills, Marion County	
Physiographic and Geologic Categories	Assigned Point Value
Property identified under Very Low or Low Categories on IMS-17 or outside the boundaries of the map.	0 Points
Property identified under a Moderate Category on IMS-17.	2 Points
Property identified under a High Category on IMS-17.	3 Points

Step 2. Select one assigned point value from PART II and Proceed to PART III.

PART II.	Slope Ratings
References:	
Excessive Slope Areas within Marion County (map)	
Slope Conditions	Assigned Point Value
Slopes 20% or less and properties outside the boundaries of excessive slope areas.	0 Points
Slopes over 20%	3 Points

Step 3. Select one assigned point value from PART III and Proceed to PART IV.

PART III.	Water-Induced Landslide Susceptibility Ratings
References:	
Interpretive Map Series (IMS-6) - Water Induced Landslide Hazards, Western Portion of the Salem Hills, Marion County	
Active/Inactive Slide Hazard Areas Map (DOGAMI Open File Report 0-77-4)	
Excessive Slope Areas within Marion County (map)	
Physiographic and Geologic Categories	Assigned Point Value
Property identified under Category 1 on IMS-6 Report.	0 Points
Property identified under Categories 2 or 3 on IMS-6 Report.	2 Points
Property identified under Categories 4, 5a, 5b, or 6 on IMS-6 Report.	3 Points
Property outside the boundaries of IMS-6 and excessive slope areas, but within identified active/inactive slide hazard areas mapped in DOGAMI 0-77-4 Report .	3 Points

Step 4. Select one assigned point value from PART IV. Select the development activity with the greatest potential for impacting public safety and property and Proceed to PART V.

PART IV.		Activity Ratings For Potential Site Impact
Type of Activity	Assigned Point Value	
Residential Single Family, Duplex, and Buildings Customarily Provided in Conjunction with Farm Use Building Permits (including Structural Expansions and Additions and Accessory Structures)	1 Point	
On-site Sewage Disposal Systems and Ponds (Construction or Enlargement)	1 Point	
Infrastructure, Including Roads and Driveways	1 Point	
Multiple Family Building Permits (including Structural Expansions and Additions)	2 Points	
Partition	2 Points	
Subdivision, Planned Unit Development, Manufactured Dwelling Park	3 Points	
Schools, Hospital and Public Building Permits (including Structural Expansion and Additions)	3 Points	
Commercial and Industrial Building Permits (including Structural Expansion and Additions)	3 Points	
Grading (as Independent Activity) as Regulated by Uniform Building Code	3 Points	

Step 5. Add Sub-totals From PARTS I, II, III, and IV. Proceed to PART V.

PART V. Cumulative Score			
Part I. Earthquake-Induced Landslide Susceptibility Ratings	Part II. Slope Ratings	Part III. Water-Induced Landslide Susceptibility Ratings	Part IV. Type of Activity
Points	Points	Points	Points

Step 6. Determine Landslide Hazard Risk

PART VI.	Total Risk Assessment	
	Policy Provision	
Category A - Low Landslide Risk (4 or less point value)	Category B - Moderate Landslide Risk Risk (5 - 8 point value)	Category C - High Landslide Risk (9 or greater point value)
No Requirements.	Geologic Assessment * * If the Geologic Assessment indicates landslide hazards on the site, the Planning Director or Building Inspection Official shall specify the requirements of a High Landslide Risk Assessment.	Engineering Geology Report Geotechnical Report