

## Chapter 55

### Exclusive Farm Use Zone (EFU)

**55.005 Exclusive Farm Use Zone.** (1) The Exclusive Farm Use Zone (EFU) shall preserve and protect lands for continued and future commercial agricultural production and related uses, and conserve and protect open space, wildlife habitats, and other uses associated with agriculture. Except as otherwise provided by this code, the Exclusive Farm Use Zone shall preserve and maintain areas classified for farm use free from conflicting nonfarm uses and influences.

(2) Uses of land not compatible with the purpose of the Exclusive Farm Use Zone shall be prohibited to minimize potential hazards of damage from erosion, pollution, conflicting land uses, and further depletion of agricultural land resources. [Ord 26, Ord 90-0069]

#### APPLICATION OF THE ZONE

**55.015 Standards for Application of the Exclusive Farm Use Zone.** (1) The Exclusive Farm Use Zone is applied to lands classified by the U.S. Soil Conservation Service as predominantly Class I-IV soils which are not otherwise subject to an exception of the statewide planning goals. The Exclusive Farm Use Zone is also applied to other lands necessary to preserve and maintain farm use consistent with existing and future needs for agricultural production. Soil capability classifications are indicated by the nature and type of soil, size and location of the property, the suitability of the terrain, and other similar factors. The Exclusive Farm Use Zone is also applied to intervening lands in different soil classes which are suitable for farm use or needed to permit farm practices to be undertaken on adjacent or nearby agricultural lands. [Ord 26, Ord 90-0069, Ord 93-0098]

(2) High-value farmland means land in a tract:

(a) Composed predominantly of soils that are classified prime, unique, Class I or Class II when irrigated or not irrigated; or

(b) Located east of the summit of the Coast Range, and composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described above and the following soils:

(A) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hullt, Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill:

(B) Subclassification IIIw, specifically, Concord, Conser, Cornelius Variant, Dayton (thick surface) and Sifton (occasionally flooded);

(C) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and

(D) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti and Whiteson; or

(c) Located west of the summit of the Coast Range, and growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa; or

(d) Located west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, and composed predominantly of the following soils or a combination of the soils identified in subsection (2)(a) and the following soils:

- (A) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;
- (B) Subclassification IIIw, specifically, Brennar and Chitwood;
- (C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and
- (D) Subclassification IVw, specifically, Coquille.

[Ord 94-0108; 2000-0157]

(3) For purposes of approving a land use application under the lot-of-record provisions of BCC 55.230, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner:

- (a) Submits a statement of agreement from the Natural Resources Conservation Service (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
- (b) (A) 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  
(B) Submits a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subparagraph (A) of this paragraph and finds the analysis in the report to be soundly and scientifically based.

[Ord 2000-0157; 2001-0174]

(4) For the purposes of review of a land use application under Benton County Code Sections 55.230, soil classes, ratings or other soil designations used in or made pursuant to this section are those of the NRCS in its most recent publication for that class, rating or designation before November 4, 1993 except for changes made pursuant to subsection (3) of this section.

(5) For the purposes of determining whether a tract is "High-value farmland" during review of a land use application under Benton County Code Sections 55.105, 55.106, 55.107, 55.108, 55.109, 55.110, 55.111, 55.112, 55.115, 55.205, 55.210, 55.220, and 55.328, soil classes, ratings or other soil designations used in or made pursuant to this section are those of the NRCS in its most recent publication for that class, rating or designation.

(6) For purposes of determining soil capability other than those described in subsections (3) through (5) of this section, the County may use more detailed soils data provided it is related to the NRCS land capability classification and is prepared by a soils scientist certified for changing soil designations by the Oregon Department of Agriculture.

[Ord 2000-0157; 2001-0174; 2006-0214]

**55.030 Date of Creation and Existence.** When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract. [Ord 2006-0214]

**55.050 Notice of Pending Action.** Notice of all applications for new permanent dwellings and land divisions in the Exclusive Farm Use Zone shall be mailed to the Department of Land Conservation and Development at their Salem office at least ten (10) days prior to the date of the decision or permit issuance. The notice shall contain the information set forth in BCC 51.615. [Ord 94-0108, Ord 2006-0214]

**55.075 Period of Validity of Discretionary Decisions.**

(1) A discretionary decision, except for a dwelling listed in subsection (2) of this section or a land division, approving a proposed development on Exclusive Farm Use land outside an urban growth boundary is void two years from the date of final decision, if the development action is not initiated in that period.

(2) A land use decision approving a dwelling pursuant to BCC 55.106(5)(b)(B) (replacement dwelling), 55.220 (non-farm dwelling), or 55.230 (lot-of-record dwelling), shall be void four years from the date of final decision, if the development action is not initiated in that period. An extension may be granted for two additional years. "Development action" typically means the property owner has submitted a complete application for a building permit or manufactured dwelling placement permit for the dwelling.

[Ord 94-0108, Ord 2006-0214]

**55.085 Extension of the Approval Period for Discretionary Decisions.** The Planning Official may grant one extension for a period of up to 12 months if the applicant makes a written request for an extension prior to the expiration of the approval period. The applicant must state the reasons that prevented them from initiating or continuing development within the approval period. The Planning Official must determine that the applicant was unable to initiate or continue development during the approval period for reasons for which the applicant was not responsible, in order to approve the extension. Approval of an extension is not a land use decision and is not subject to appeal as a land use decision. Additional one year extensions may be authorized where applicable criteria for the decision have not changed. [Ord 94-0108; 2001-0174]

**55.105 Permitted Uses.** The following uses are allowed in the Exclusive Farm Use Zone:

- (1) Farm use.
- (2) The propagation or harvesting of a forest product.
- (3) Non-residential structures customarily provided in conjunction with farm or forest use.
- (4) Climbing and passing lanes within right-of-way existing as of July 1, 1987.
- (5) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels or lots result.
- (6) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as they are no longer needed.
- (7) Minor improvements to existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public owned property which supports the operation and maintenance of public roads and highways.
- (8) Creation of, restoration of, or enhancement of wetlands. [Ord 2009-0232]
- (9) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b). [Ord 94-0108]
- (10) Processing of farm crops into biofuel, as defined by ORS 315.141, if:

- (a) Only the crops of the landowner are being processed;
- (b) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or
- (c) The landowner is custom-processing crops from other landowners in the area into biofuel for their use or sale. [Ord 2009-0232]

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

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

(13) Onsite filming and activities accessory to onsite filming for 45 days or less. A decision of the County issuing any permits necessary for activities under this provision is not a land use decision. For purposes of this section, “on-site filming and activities accessory to on-site filming”:

(a) Includes:

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

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

(b) Does not include:

(A) Facilities for marketing, editing and other such activities that are allowed only as a home occupation; or

(B) Construction of new structures that requires a building permit.

(14) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a land use decision as defined in ORS 197.015(10) or subject to review under this Chapter.

(15) A firearms training facility as defined in ORS 197.770 in existence on September 9, 1995 shall be allowed to continue operating until such time as the facility is no longer used as a firearms training facility.

(16) Implementation of a wildlife habitat conservation and management plan approved by the Oregon Department of Fish and Wildlife pursuant to ORS 308A.403 through 308A.430.

(17) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a County Register as historic property as defined in ORS 358.480. In order to meet the requirements specified in the statute, a historic dwelling must be listed on the National Register of Historic Places and the Benton County Register of Historic Resources. The existing dwelling shall cease to be used as a dwelling within three months after completion of the replacement dwelling. The landowner shall sign a covenant as required by BCC 55.405(6).

(18) Existing hunting preserve, as follows:

(a) A person who owns a private hunting preserve that was licensed under ORS 497.248 on or before July 28, 2003, and that has not been submitted to the County for land use approval may continue to operate the hunting preserve without local land use approval. The hunting preserve may include one sport clay station that existed on July 28, 2003, is used during the hunting season only for shooting practice in conjunction with hunting and is subordinate to the use of the land as a hunting preserve.

(b) A person engaged in farm or forest practices on lands devoted to farm or forest use may file a complaint with the County, alleging that the operation of the hunting preserve has:

- (A) (i) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- (ii) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(B) Adversely affected the complainant.

(c) The County shall process a complaint filed under this section in the manner described in BCC 55.218(2) through (5).

[Ord 2001-0174, Ord 2006-0214, Ord 2009-0232]

**55.106 Uses permitted in the Exclusive Farm Use Zone subject to review by the Planning Official pursuant to BCC 53.160.** Uses in this section are permitted, provided the standards listed below are met.

(1) Wineries.

(a) A winery authorized under this section is a facility that produces wine with a maximum annual production of:

(A) Less than 50,000 gallons and that:

- (i) Owns an on-site vineyard of at least 15 acres;
- (ii) Owns a contiguous vineyard of at least 15 acres;
- (iii) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
- (iv) Obtains grapes from any combination of subparagraph (i), (ii) or (iii) of this paragraph; or

(B) At least 50,000 gallons and no more than 100,000 gallons and that:

- (i) Owns an on-site vineyard of at least 40 acres;
- (ii) Owns a contiguous vineyard of at least 40 acres;
- (iii) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
- (iv) Obtains grapes from any combination of subparagraph (i), (ii) or (iii) of this paragraph.

(b) A winery shall allow only the sale of wines produced in conjunction with the winery and items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant as defined in ORS 624.010.

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

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

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

(B) Provision of direct road access, internal circulation and parking.

(e) The Planning Official shall also apply local criteria regarding flood plains, geologic hazards, the Willamette River Greenway, solar access, airport safety or other regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

[Ord 90-0069; 2001-0174; 2006-0214]

(2) Farm Stand. A farm stand may be approved if:

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

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

(c) 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 product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon.

[Ord 94-0108; 2001-0174; 2006-0214]

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

(a) A public right of way;

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

(c) the property to be served by the utility. [Ord 2001-0174]

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

(A) Technical and engineering feasibility;

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

(C) Lack of available urban and nonresource lands;

- (D) Availability of existing rights-of-way;
- (E) Public health and safety; and
- (F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (a) 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.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section 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.

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

(e) In addition to the provisions of subsections (a) to (d) of this rule, 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.

(f) The provisions of subsections (a) to (d) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

[Ord 2001-0174]

(5) Replacement of existing dwellings, subject to the following provisions.

(a) To be eligible for replacement, an existing dwelling shall have:

- (A) been legally established;
- (B) intact exterior walls and roof structure;
- (C) indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (D) interior wiring for interior lights;
- (E) a heating system;

(b) Replacement must occur within one year of removal or destruction of the structure, and shall be through one of the following procedures:

(A) Application for a building permit or placement permit for the new dwelling, accompanied by documentation demonstrating that the existing dwelling meets criteria of subsection (a) of this section. The dwelling to be replaced shall be removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling.

(B) Application for a deferred replacement permit, pursuant to the procedures for Administrative Review in BCC 53.160. Within three months of the approval of the deferred

replacement permit, the existing dwelling shall be removed or demolished; if the existing dwelling is not removed or demolished within three months, the permit becomes void. An approved deferred placement permit allows construction of the replacement dwelling at any time during the period of validity specified in BCC 55.075(2); however, the replacement dwelling must comply with all building, plumbing and sanitation codes and other requirements relating to health and safety, and siting standards, applicable at the time of construction. The deferred replacement permit ensures the new dwelling will be approved for zoning purposes; however, the property owner must still obtain all required permits for building or placement of the new dwelling. The deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

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

(d) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may be replaced only by a manufactured dwelling.

(e) The landowner shall sign a covenant as required by BCC 55.405(6).

[Ord 94-0108; 2001-0174; 2006-0214]

(6) A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141. The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. The County shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located. [Ord 2001-0174, Ord 2009-0232]

(7) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. 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 preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings, and facilities. As used in this 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. [Ord 2001-0174, Ord 2009-0232]

(8) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. [Ord 2001-0174]

(9) 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 EFU zone is allowed subject to:

- (a) 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
- (b) in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251.

(10) Churches or other nonresidential places of worship, and cemeteries in conjunction with such places of worship. This use shall not be approved on High-Value Farmland, nor within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirement of law.

(a) A place of worship allowed pursuant to this subject may reasonably be used 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 prekindergarten through grade 12 or higher education.

(b) A place of worship shall be allowed only upon determination by the Planning Official that the level of public facilities, including transportation, water supply, sewer and storm drain systems, is adequate for the proposed use, including the activities customarily associated therewith (as described in subsection (a) above). If conditions of approval restricting or limiting the proposed use are necessary to ensure adequacy of public facilities, the Planning Official shall approve the use and impose the necessary conditions rather than deny the use.

[Ord 2001-0174; 2006-0214]

**55.107 Transportation Facilities, Services and Improvements.** Except for facilities, services and improvements specifically listed elsewhere in this chapter, transportation facilities, services and improvements shall be allowed, limited or prohibited as prescribed in OAR 660-012-0065. [Ord 2006-0214]

**55.108 Uses not permitted on High-Value farmland.** (1) The following uses are not permitted to be established on high-value farmland:

- (a) Commercial Dog Kennels
- (b) Destination Resorts.
- (c) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
- (d) Public or private schools, including all buildings essential to the operation of a school.
- (e) Churches and cemeteries in conjunction with churches.
- (f) Private parks, playgrounds, hunting and fishing preserves and campgrounds.
- (g) Golf courses.
- (h) Composting facilities for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-96-020.

[Ord 2001-0174, Ord 2009-0232]

(2) Existing facilities of the uses in BCC 55.108(a)-(i) may be maintained, enhanced or expanded on the same tract, subject to BCC 53.215, BCC 53.220, and BCC 55.215. An existing golf course may be expanded consistent with the requirements of BCC 55.215 and BCC 55.210(2), but shall not be expanded to contain more than 36 total holes. [Ord 94-0108; 2001-0174]

## **FARM-RELATED DWELLINGS**

### **55.109 Farm Related Dwelling on High Value Farmland (\$80,000 Income Test).**

(1) On land identified as high-value farmland, a dwelling considered customarily provided in conjunction with farm use may be allowed subject to review by the Planning Official, pursuant to BCC 53.160, for compliance with the following criteria:

(a) The subject tract is currently employed for the farm use, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years;

(b) In addition to the subject parcel or lot, other parcels or lots in the same ownership may be used to demonstrate the gross farm income required by subsection (a) of this section. If multiple parcels or lots are used, they shall be subject to BCC 55.113. Parcels or lots noncontiguous to the subject tract may be used provided they are zoned for farm use and are located in Benton, Linn, Lane, Lincoln or Polk Counties;

(c) Except as permitted for seasonal farm worker housing that has been approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on lands zoned Exclusive Farm Use or Multi-Purpose Agriculture owned by the farm or ranch operator or on the farm or ranch operation;

(d) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in BCC 55.109(1)(a);

(e) In determining the gross income required by BCC 55.109(1)(a):

(A) Gross income only from land zoned EFU and/or MPA, and owned by the farm or ranch operation, not leased or rented, shall be counted;

(B) The cost of purchased livestock shall be deducted from the total gross income; and

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

(f) The subject parcel or lot is legally established; and [Ord 94-0108]

(g) The landowner shall sign a covenant as required by BCC 55.405(6).

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

(3) If a farm or ranch operation does not qualify under the criteria of this section, BCC 55.114 provides an alternative ownership history option. [Ord 2001-0174; 2006-0214]

**55.110 Farm Related Dwelling on 160 Acres or More of Non-High-Value Farmland.** (1) One farm related dwelling may be permitted on a legally established parcel or lot in the Exclusive Farm Use Zone on land not identified as high value, subject to review by the Planning Official, pursuant to BCC 53.160, for compliance with the following criteria:

(a) The parcel or lot on which the dwelling will be located is at least 160 acres, and not designated as rangeland;

- (b) The subject property is currently employed in farm use;
- (c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and
- (d) Except as provided for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract. [Ord 94-0108]
- (e) The landowner shall sign a covenant as required by BCC 55.405(6).  
[Ord 2001-0174]  
[Ord 94-0108; 2001-0174; 2006-0214]

**55.111 Commercial Dairy Farm Dwelling.**

(1) A dwelling may be allowed in conjunction with a commercial dairy farm, as defined by subsection (2) of this section, if:

- (a) The subject tract will be employed as a commercial dairy as defined by subsection (2) of this section; 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 for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), 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 use activities necessary to the operation of the commercial dairy farm; and
- (e) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and
- (f) The Oregon Department of Agriculture has approved the following:
  - (A) A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and
  - (B) A Producer License for the sale of dairy products under ORS 621.072.

(2) "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 BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable, from the sale of fluid milk. [Ord 2006-0214]

**55.112 Farm Related Dwelling on Non-High-Value Farmland (\$40,000 Income Test).** One farm related dwelling is permitted on a legally established parcel or lot of non-High Value farmland, subject to review by the Planning Official pursuant to BCC 53.160. Note there is an alternative ownership history option available under BCC 55.114.

(1) On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

- (a) The subject tract is currently employed for the farm use, that produced in the last two years or three of the last five years the lower of the following:

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

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

(b) Except as permitted for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on lands zoned Exclusive Farm Use or Multi-Purpose Agriculture owned by the farm or ranch operator or on the farm or ranch operation; and

(c) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in BCC 55.112(1)(a).

(d) In determining the gross income required by BCC 55.112(1)(a):

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

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

(C) Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used. [Ord 94-0108]

(e) The landowner shall sign a covenant as required by BCC 55.405(6).

(2) As used in this section, "farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203.

[Ord 2001-0174; 2006-0214]

### **55.113 Covenant for Multiple Parcels.**

(1) Prior to the issuance of a building or placement permit for a dwelling authorized by BCC 55.109 or 55.112 for which one or more contiguous or non contiguous lots or parcels of a farm or ranch operation were used to demonstrate compliance with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" to this chapter has been recorded in the deed records of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:

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

(b) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

(2) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.

(3) Enforcement of the covenants, conditions and restrictions may be undertaken by the Oregon Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located;

(4) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section;

(5) The Planning Official shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office. [Ord 2006-0214; 2006-0214]

#### **55.114 Alternative Ownership History for Income-Test Dwellings.**

(1) A dwelling may be considered customarily provided in conjunction with farm use 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 BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable;

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

(A) Currently employed for the farm use that produced in the last two years or three of the last five years the gross farm income required by BCC 55.109(2)(a) or 55.112(1)(a), whichever is applicable; and

(B) At least the size of the applicable minimum lot size; and

(c) Except as permitted for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract; and

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

(e) In determining the gross income required by subsections (1)(a) and (1)(b)(A) of this section:

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

(B) Gross income only from land owned, not leased or rented, shall be counted.

[Ord 2006-0214]

#### **ACCESSORY FARM DWELLINGS**

**55.115 Accessory Farm-Related Dwellings for Year-Round and Seasonal Farmworkers.** Accessory farm related dwellings are permitted in the Exclusive Farm Use Zone subject to review by the Planning Official pursuant to BCC 53.160.

(1) Accessory farm dwellings are permitted on a legally established parcel or lot if each accessory dwelling meets all the following requirements:

(a) The subject property and contiguous property in the same ownership are in farm use;

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

(c) The accessory dwelling will be located:

(A) On the same lot or parcel as the dwelling of the primary farm operator; or

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

(C) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to a manufactured dwelling with a deed restriction. The deed restriction shall be filed in the Benton County Deed Records and shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

(D) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under this subparagraph 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 under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable.

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

(e) The principal farm dwelling to which the proposed dwelling would be accessory meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, that produced in the last two years or three of the last five years the lower of the following:

(i) At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) It is located on a commercial dairy farm as defined by BCC 55.111(2); and

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

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

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

(f) The landowner shall sign a covenant as required by BCC 55.405(6). [Ord 2009-0232]

(2) An accessory farm dwelling approved pursuant to subsection (1) of this section shall be sited in compliance with the following criteria. These siting criteria shall not be applied in such a way as to prevent an otherwise-approved accessory farm dwelling from being sited on the property.

(a) The Planning Official shall approve a dwelling site that, to the greatest extent practicable, minimizes impacts to the following (in order of decreasing priority):

(A) Resource uses on the subject property and neighboring properties;

(B) Other legally established uses on the subject property and neighboring properties.

(b) The approved dwelling site shall comply with the building setbacks required by BCC 55.405

(c) In the event that the approved site does not, in the Planning Official's determination, adequately minimize impacts to uses on neighboring properties, the Planning Official shall impose reasonable and appropriate mitigating conditions of approval including but not limited to:

(A) Fencing, screening and landscape separations;

(B) Height of the dwelling.

(3) The governing body shall not approve a division of land that would separate the accessory farm dwelling approved pursuant to BCC 55.115 from the parcel or lot on which the dwelling of the farm operator is located, unless the dwelling meets the criteria for a principal farm related dwelling. [Ord 26, Ord 90-0069, Ord 94-0108]

(4) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to BCC 55.220.

(5) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

[Ord 2001-0174, Ord 2006-0214, Ord 2009-0232]

**55.120 Farm-Help Dwelling for a Relative of the Farm Operator.** A dwelling may be permitted in the Exclusive Farm Use zone, subject to review by the Planning Official, pursuant to BCC 53.160, for compliance with the following criteria:

(1) The dwelling will be located on property used for farm use;

(2) The dwelling will be located on the same lot or parcel as the dwelling of the farm operator, and occupied by a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse, whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator;

(3) The farm operator shall continue to play the predominant role in the management and farm use of the farm. For purposes of this section, 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.

(4) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements of the zone, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to

create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect. For the purpose of this section, "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

(5) The landowner shall sign a covenant as required by BCC 55.405(6).

[Ord 2001-0174; 2006-0214]

## CONDITIONAL USES

**55.205 Conditional Uses Reviewed by the Planning Official subject to BCC 53.215, BCC 53.220, and BCC 55.215.** The following uses may be allowed in the Exclusive Farm Use Zone by conditional use permit approved by the Planning Official, except as otherwise prohibited by BCC 55.108:

(1) Commercial activity in conjunction with farm use, including the processing of farm crops into biofuel not permitted under BCC 55.105(10) or BCC 55.106(6). [Ord 2001-0174; 2006-0214; 2009-0232]

(2) Commercial utility facility for the purpose of generation of power for public use by sale. A power generation facility shall not preclude more than 12 acres of high-value farmland nor more than 20 acres of other land from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR 660, Division 4. [Ord 2001-0174]

(3) Personal use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation. [Ord 2006-0214]

(4) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon the tract where the primary processing facility is located. [Ord 2001-0174]

(5) Transmission towers over 200 feet in height.

(6) Commercial kennels, except on High-Value Farmland. [Ord 2001-0174]

(7) Residential home or facility, as defined in ORS 197.660, in an existing dwelling. The property owner shall sign a covenant as required by BCC 55.405(6). [Ord 2001-0174]

(8) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the State Department

of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application. [Ord 2001-0174; 2006-0214]

(9) Construction of additional passing and travel lanes requiring the acquisition of right-of-way, but not resulting in the creation of new land parcels or lots.

(10) 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 or lots.

(11) Improvement of public roads and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required, but not resulting in the creation of new land parcels or lots.

(12) One manufactured dwelling, recreational vehicle, or temporary use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or relative of the resident, subject to the standards of BCC 91.545 and 91.550 and the following:

(a) Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under BCC 55.106(5). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(b) The property owner shall sign a covenant as required by BCC 55.405(6). [Ord 2001-0174]

(13) A home occupation, subject to the standards of BCC 91.205 - 91.230 and this section. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons. [Ord 2001-0174; 2006-0214]

(14) Room and board arrangements for a maximum of five unrelated persons in existing residences. The property owner shall sign a covenant as required by BCC 55.405(6). [Ord 2001-0174]

(15) Private family burial grounds. Lots shall not be offered for sale in a private family burial ground. Every private family burial ground shall:

(a) Comply with State regulations for burial on private property;

(b) Be located at least 100 feet from wells, springs, and other water sources used for drinking, fifty (50) feet from any stream, river, lake, or pond, and twenty-five (25) feet from property lines;

(c) Be documented by a Notice of Family Burial Grounds. A map shall accompany the Notice, showing the location of the burial grounds. The Notice shall indicate whether the gravesites are marked or unmarked. The Notice and map shall be recorded in the County Deed Records and the applicant shall pay the recording fees.

(16) A dwelling in conjunction with a wildlife habitat conservation and management plan authorized by ORS 215.802(1), provided the proposed dwelling:

(a) Will be situated on a lot or parcel existing on November 4, 1993, that qualifies for a farm dwelling under BCC 55.109 through 55.112 or a non-farm dwelling under BCC 55.220; and

- (b) Will not be established on a lot or parcel that is 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;
- (c) Complies with BCC 55.215; and
- (d) Is the only dwelling situated on the affected lot or parcel. [Ord 2001-0174]

(17) On-site filming and activities accessory to on-site filming that exceed 45 days on any site within a one-year period or involve erection of sets that would remain in place for longer than 45 days. In addition to other activities described in the definition of "on-site filming" in BCC 55.105 (13), these activities may include office administrative functions such as payroll and scheduling, and the use of campers, truck trailers or similar temporary facilities. Temporary facilities may be used as temporary housing for security personnel.

(18) A landscaping 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.

(19) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located. This use shall not be approved on High-Value Farmland. This use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.

Public or private schools legally existing prior to January 1, 2010 may be continued, altered, restored, replaced, or expanded subject to the provisions of BCC 53.317. [Ord 2009-0232]

[Ord 26, Ord 90-0069, Ord 90-0075, Ord 94-0108, Ord 99-0146; Ord 2001-0174; Ord 2006-0214, Ord 2009-0232]

**55.210 Conditional Uses Approved by the Planning Commission, subject to BCC 53.215, BCC 53.220, and BCC 55.215.** The following uses may be allowed in the Exclusive Farm Use Zone by conditional use permit approved by the Planning Commission, except as otherwise prohibited by BCC 55.108:

(1) Extension of a new water line where it is found that the water system is a rural water system. [Ord 90-0069]

(2) Golf courses, except on high-value farmland. For the purposes of this section, a golf course is defined as 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. The course shall be a nine or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

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

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,200 yards, and a par of 32 to 36 strokes.

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses, and driving ranges.

(d) Accessory uses to golf courses shall be limited consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods and services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms, lockers, and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course. Accessory uses to a golf course do not include; sporting facilities unrelated to golfing, such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; housing.

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

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment. [Ord 2001-0174; 2006-0214]

(3) Destination Resort which is approved consistent with the requirements of statewide planning Goal 8. This use is not permitted on high-value farmland. [Ord 2001-0174]

(4) Aids to navigation and aviation.

(5) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects. However, no application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement 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.

(6) Operations conducted for:

(a) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under BCC 55.105;

(b) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to BCC 91.910;

(c) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement. However, no application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within two miles of a planted vineyard. This restriction does not apply to operations for batching and blending of mineral and aggregate under a local land use approval on the effective date of this code, or subsequent renewal of an existing approval. 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 ; and

(d) Processing of other mineral resources and other subsurface resources. [Ord 2001-0174]

(7) Private parks, playgrounds, fishing preserves, and campgrounds, except on high-value farmland.

(a) 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 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential

purposes and is established on a site 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. 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. Campgrounds authorized under this section shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores, or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (c) of this rule.

(c) Subject to the approval of the Planning Commission, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of the Board of County Commissioners, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in BCC 55.210(7), "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance. [Ord 2001-0174; 2006-0214]

(8) Public parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120, and OAR 660-034-0035 or 660-034-0040 (whichever is applicable). [Ord 2001-0174; 2006-0214]

(9) Hunting preserves, except on high-value farmland. Note that a private hunting preserve that existed as of July 28, 2003, may continue to operate pursuant to BCC 55.105(18) and subject to the following:

(a) A person engaged in farm or forest practices on lands devoted to farm or forest use may file a complaint with the Board of Commissioners or the Planning Official, alleging that the operation of the hunting preserve has:

(A) (i) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(ii) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(B) Adversely affected the complainant.

(b) The local governing body or its designee shall process a complaint filed under this section in the manner described in ORS 215.296 (4) to (7). [Ord 2006-0214, Ord 2009-0232]

(10) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. [Ord 2006-0214]

(11) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Oregon Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation. [Ord 94-0108]

(12) A mass gathering, defined as a gathering, any part of which is held in open spaces, which involves more than 3000 people and which continues or can reasonably be expected to continue for more than 120 hours in any three-month period.

(a) A mass gathering shall be allowed by the Planning Commission if:

(A) The organizer makes application for a permit to the Planning Commission.

(B) The applicant demonstrates to the Planning Commission that the applicant has complied or can comply with the requirements for an outdoor mass gathering permit of ORS 433.750.

(C) The Planning Commission shall make findings that:

(i) Any permits required by the applicable land use regulations have been granted; and

(ii) The proposed gathering is compatible with existing land uses and does not materially alter the stability of the overall land use pattern of the area.

(b) In reviewing an application for a permit to hold an outdoor mass gathering, the county may require such plans, specifications and reports as it may deem necessary for proper review and it may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as it may deem necessary. If the county determines upon examination of the permit application that the outdoor mass gathering creates a potential for injury to persons or property, the county may require organizers to obtain an insurance policy in an amount commensurate with the risk, but not exceeding \$1 million. The policy of casualty insurance shall provide coverage against liability for death, injury or disability of any human or for damage to property arising out of the outdoor mass gathering. The county shall be named as an additional insured under the policy.

(c) In the event of failure to remove all debris or residue and repair any damage to personal or real property arising out of the outdoor mass gathering within 72 hours after its termination and to remove any temporary structures used at the outdoor mass gathering within three weeks after its termination, the county governing body may file suit against the organizer for financial settlement as is needed to remove debris, residue or temporary structures and to repair such damage to real or personal property of persons not attending the outdoor mass gathering. The organizer shall be wholly responsible for payment of any fines imposed under ORS 433.990 (7). [Ord 2001-0174; 2006-0214]

(13) Composting facilities for which a permit has been granted by the Department of Environmental Quality under ORS 429.245 and OAR 340-96-020. This use is not allowed on high-value farmland. Except for those composting facilities that are a "farm use" as defined in BCC 51.020, the type of operations and facilities allowed are those defined by the Environmental Quality Commission under OAR 340-096-0024(1), (2) or (3). 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. [Ord 2001-0174; 2006-0214]

**55.215 Conditional Use Criteria.** (1) A use allowed under BCC 55.205 or 55.210 may be approved only upon findings that the use meets the Conditional Use Criteria of BCC 53.215 and will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

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

(2) An applicant for a use allowed under BCC 55.205 or 55.210 may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

(3) The standards set forth in subsection (1) of this section shall not apply to farm or forest uses conducted within:

(a) Lots or parcels with a single-family residential dwelling approved under BCC 55.220 or 55.230;

(b) An exception area approved under ORS 197.732; or

(c) An acknowledged urban growth boundary.

[Ord 90-0069, Ord 94-0108, Ord 2001-0174]

### **55.218 Complaint Regarding Conditional Approval.**

(1) A person engaged in farm or forest practices on lands devoted to farm or forest use, but not a person residing in a single-family residential dwelling which was approved under BCC 55.220 or 55.230 or is within either an exception area approved under ORS 197.732 or an acknowledged urban growth boundary, may file a complaint with the local governing body alleging:

(a) That a condition imposed pursuant to BCC 55.215(2) of this section has been violated;

(b) That the violation has:

(A) Forced a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(B) Significantly increased the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(c) That the complainant is adversely affected by the violation.

(2) Upon receipt of a complaint, the Planning Official shall:

(a) Forward the complaint to the operator of the use;

(b) Review the complaint in the manner set forth in ORS 215.402 to 215.438; and

(c) Determine whether the allegations made pursuant to subsection (1) of this section are true.

(3) Upon a determination that the allegations of the complaint are true, the Planning Official at a minimum shall notify the violator that a violation has occurred, direct the violator to correct the conditions that led to the violation within a specified time period and warn the violator against the commission of further violations.

(4) If the conditions that led to a violation are not corrected within the time period specified pursuant to subsection (3) of this section, or if there is a determination pursuant to subsection (2) of this section

following the receipt of a second complaint that a further violation has occurred, the County at a minimum shall assess a fine against the violator.

(5) If the conditions that led to a violation are not corrected within 30 days after the imposition of a fine pursuant to subsection (4) of this section, or if there is a determination pursuant to subsection (2) of this section following the receipt of a third or subsequent complaint that a further violation has occurred, the Planning Official shall at a minimum order the suspension of the use until the violator corrects the conditions that led to the violation.

(6) If a use allowed under BCC 55.205 or 55.210 is initiated without prior approval pursuant to BCC 55.215, the Planning Official at a minimum shall notify the user that prior approval is required, direct the user to apply for approval within 21 days and warn the user against the commission of further violations. If the user does not apply for approval within 21 days, the Planning Official shall order the suspension of the use until the user applies for and receives approval. If there is a determination pursuant to subsection (2) of this section following the receipt of a complaint that a further violation occurred after approval was granted, the violation shall be deemed a second violation and the County at a minimum shall assess a fine against the violator.

[Ord 2001-0174]

## **NON-FARM DWELLINGS**

### **55.220 Nonfarm Dwellings: Notice, Criteria and Conditions.**

(1) A dwelling not provided in conjunction with farm use may be allowed in the Exclusive Farm Use Zone by conditional use permit approved by the Planning Commission. The decision to approve a conditional use permit for a nonfarm dwelling shall be based on findings that the proposed dwelling complies with BCC 53.215, BCC 53.220, BCC 55.215, and the following criteria:

(a) East of the summit of the Coast Range

- (A) 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.
- (B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated; To address this standard, the county shall:
  - (i) 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 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 nonresource uses shall not be included in the study area.

- (ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsection 55.220 and subsection 55.230 of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). 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 nonfarm dwellings under this subparagraph;
- (iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm 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 nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

- (C) The dwelling is situated on land generally unsuitable for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.; If the parcel or lot is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel or lot; and
- (D) The dwelling will be sited on a lot or parcel created before January 1, 1993;
- (E) The dwelling complies with conditions imposed pursuant to BCC 53.220.

(b) West of the summit of the Coast Range:

- (A)
  - (i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or a portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and
  - (ii) A lot or parcel or a portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or a portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or a portion of a lot or parcel is presumed to be suitable if it is composed predominantly of Class I-IV soils. Just because a lot or parcel or a portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

- (iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;
- (B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in BCC 55.220(1)(a)(B). If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in BCC 55.220(1)(a)(B); and
- (C) The dwelling complies with conditions imposed pursuant to BCC 53.220.
- (D) The dwelling will be sited on a lot or parcel created before January 1, 1993, or will be sited on a parcel created under BCC 55.328.

[Ord 2000-0157; Ord 2001-0174; 2006-0214]

(2) Where a proposed nonfarm dwelling would be located in a significant big game habitat area as identified in the Natural Resources and Hazards Background Report, the Planning Official shall provide the Oregon Department of Fish and Wildlife an opportunity to comment on consistency with significant habitat values. The County will make findings regarding consistency. The Department of Fish and Wildlife shall be provided a minimum of ten (10) working days notice prior to the decision on the conditional use permit.

(3) As a condition of final approval of a conditional use permit to establish a nonfarm dwelling, the owner of the subject parcel or lot shall disqualify the parcel or lot for valuation for farm use or forest use. The County shall not issue a building permit for the construction of a nonfarm dwelling without evidence the parcel or lot has been disqualified from farm use valuation, and any additional tax or penalty imposed by the County Assessor, as required by State law, has been paid. [Ord 26, Ord 90-0069, Ord 93-0098, Ord 94-0108, Ord 2000-0157]

(4) If a single-family dwelling is established on a lot or parcel as set forth in BCC 55.220 or BCC 55.230, no additional permanent dwelling may later be sited on the same lot or parcel under the non-farm dwelling (BCC 55.220) or lot-of-record (BCC 55.230) provisions. [Ord 94-0108; 2001-0174]

(5) The property owner shall sign a covenant as required by BCC 55.405(6).

[Ord 2001-0174; 2006-0214]

## **LOT OF RECORD DWELLINGS**

### **55.230 Lot of Record Dwellings.**

(1) A Lot of Record Dwelling may be approved if:

(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner (as defined in BCC 55.230(6)):

(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 since prior to January 1, 1985;

(b) The tract on which the dwelling will be sited does not include a dwelling;

(c) If 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.

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

(e) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in BCC 55.230(9) and (10); and

(f) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based. Note: The Benton County Comprehensive Plan policies for big game habitat currently do not apply to land in the Exclusive Farm Use zone.

(2) 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.

(3) The property owner shall sign a covenant as required by BCC 55.405(6).

(4) If a single-family dwelling is established on a lot or parcel as set forth in BCC 55.220 or BCC 55.230, no additional permanent dwelling may later be sited on the same lot or parcel under the non-farm dwelling (BCC 55.220) or lot-of-record (BCC 55.230) provisions.

(5) A dwelling allowed under BCC 55.230 may be denied approval in any area where it is determined that approval of the dwelling would:

(a) Exceed the facilities and service capabilities of the area;

(b) Materially alter the stability of the overall land use pattern of the area; or

(c) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(6) For purposes of BCC 55.230(1) only, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members.

(7) The county assessor shall be notified that the governing body intends to allow the dwelling.  
[Ord 94-0108]

(8) A property that has been granted an approval for a single-family dwelling under the provisions of BCC 55.230 may be sold or otherwise transferred to any other person. Unless the land use decision specifies a period of validity, the land use approval remains valid for the period allowed by law.

[Ord 2001-0174; 2006-0214]

## **LOT OF RECORD DWELLING ON HIGH-VALUE FARMLAND CLASS I AND II SOILS.**

(9) Notwithstanding the requirements of BCC 55.230(1)(e), a single-family dwelling may be sited on high-value farmland if:

- (a) It meets the other requirements of BCC 55.230 (1) through (4);
- (b) The lot or parcel is protected as high-value farmland as defined in BCC 55.015(2)(a); and
- (c) The Planning Commission, determines that:

(A) 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 of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

(B) The dwelling will comply with the provisions of BCC 55.215.

(C) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in BCC 55.220(1)(a)(B).

(d) The County shall provide notice of all applications for dwellings allowed under this subsection to the State Department of Agriculture. Notice shall be provided in accordance with BCC 51.605 through 51.630, but shall be mailed at least 20 calendar days prior to the public hearing before the Planning Commission.

[Ord 2001-0174]

#### **LOT OF RECORD DWELLING ON HIGH VALUE FARMLAND CLASS III AND IV SOILS.**

(10) Notwithstanding the requirements of BCC 55.230(1)(e), a single-family dwelling may be sited on high-value farmland if:

- (a) It meets the other requirements of BCC 55.230(1) and (2);
- (b) The tract on which the dwelling will be sited is:
  - (A) Identified in BCC 55.015(2)(b) or (d); and
  - (B) Not high-value farmland defined in BCC 55.015(2)(a); and
  - (C) Twenty-one acres or less in size.
- (c) (A) The tract is 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 January 1, 1993; or  
  
(B) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. 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, or

(C) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 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 County 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:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "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 that side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

[Ord 2001-0174; 2006-0214]

## **CREATION OF NEW PARCELS ; PROPERTY LINE ADJUSTMENTS**

### **55.305 General Provisions.**

(1) A property line adjustment or land partition may be permitted in the Exclusive Farm Use Zone pursuant to this code. Subdivisions and planned unit developments are not consistent with the purpose and intent of the Exclusive Farm Use Zone and are prohibited.

(2) No new parcel shall be created from a lot or parcel containing:

- (a) A farm help dwelling for a relative (BCC 55.120);
- (b) A temporary medical hardship dwelling (BCC 55.205(12)),
- (c) A non-farm dwelling (BCC 55.220) unless the land division is approved under the rules for creating a non-farm parcel (BCC 55.328); or
- (d) A farm processing facility (BCC 55.106(6)) if the land division would separate the processing facility from the farm operation.

[Ord 26, Ord 90-0069, Ord 94-0108, Ord 96-0118, Ord 2001-0174]

### **55.310 Creation of Farm Parcels in the Exclusive Farm Use Zone.**

- (1) A parcel for farm use may be created in the Exclusive Farm Use Zone, subject to approval by the Planning Official.
- (2) The size of any new or remaining parcels, unless approved for non-farm use, shall be at least the minimum parcel or lot size of 80 acres

[Ord 26, Ord 90-0069, Ord 93-0098, Ord 94-0108, Ord 2001-0174]

**55.328 Creation of a Non-Farm Parcel for Residential Use.** A division of land for a dwelling or dwellings not provided in conjunction with farm use may be approved, subject to the following:

(1) East of the summit of the Coast Range:

- (a) The dwelling to be sited on the new parcel has been approved under the requirements for dwellings not in conjunction with farm use in BCC 55.220(1) - (5);

- (b) Series partitions (as defined in ORS 92.305) and subdivisions for non-farm dwellings are not allowed.
- (c) The originating farm parcel or lot is equal to or larger than the applicable minimum lot or parcel size;
- (d) Is not stocked to the requirements under ORS 527.610 to 527.770;
- (e) Is composed of at least 95% Class VI through Class VIII soils; and
- (f) Is composed of at least 95% soils not capable of producing 50 cubic feet per acre per year of wood fiber; and
- (g) The new lot or parcel will not be smaller than 20 acres.
- (h) A new parcel may be allowed only if the remaining farm parcel is equal to or larger than the applicable minimum lot or parcel size. [Ord 94-0108; 2001-0174; 2006-0214]

(2) West of the summit of the Coast Range, either of the following may be approved:

- (a) Up to two new parcels smaller than the minimum size may be created, each to contain a dwelling not provided in conjunction with farm use if:
  - (A) The nonfarm dwellings have been approved under BCC 55.220;
  - (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
  - (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum parcel size;
  - (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum parcel size; and
  - (E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land; or
- (b) A lot or parcel may be divided into two parcels, each to contain one dwelling not provided in conjunction with farm use if:
  - (A) The nonfarm dwellings have been approved under BCC 55.220(1)(b);
  - (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
  - (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;
  - (D) The parcels for the nonfarm dwellings are:

- (i) Not capable of producing more than at least 50 cubic feet per acre per year of wood fiber; and
- (ii) Composed of at least 90 percent Class VI through VIII soils;
- (E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and
- (F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

[Ord 94-0108; 2001-0174; 2006-0214]

**55.330 Creation of a Parcel for Nonfarm Non-residential Use.**

(1) A nonfarm parcel for non-farm uses, except dwellings, listed in ORS 215.283(2) may be created in the Exclusive Farm Use Zone, subject to approval by the Planning Official. The parcel shall be the minimum size necessary for the nonfarm use . If the nonfarm use is not existing, a permit for the nonfarm use shall be approved pursuant to BCC 55.215 prior to creation of the nonfarm parcel. [Ord 26, Ord 90-0069, Ord 94-0108]

(2) In addition to the uses listed in (1) above, a non-farm parcel may be created for a church or for open space purposes, subject to the following:

(a) A parcel smaller than minimum parcel size may be created for the purpose of establishing a church, including cemeteries in conjunction with the church if:

(A) The church has been approved under ORS 215.283 (1);

(B) The newly created lot or parcel is not larger than five acres; and

(C) The remaining lot or parcel, not including the church, meets the minimum lot or parcel size described in BCC 55.310(2) either by itself or after it is consolidated with another lot or parcel.

(b) A parcel may be created for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase, subject to the following:

(A) A parcel created by the land division that contains a dwelling shall be large enough to support continued residential use of the parcel.

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

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

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

(iii) 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

(iv) May not be smaller than 25 acres unless the purpose of the land division is:

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

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

(C) The owner of any parcel involved in the land division and not containing a dwelling shall sign and record in the deed records for the County an irrevocable deed restriction prohibiting the owner and the owner's successors in interest from pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which no claim or action is allowed under ORS 30.936 or 30.937.

[Ord 2001-0174]

**55.335 Creation of a Parcel for an Existing Dwelling.** A parcel may be created for an existing dwelling to be used:

(1) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under ORS 215.213 (3) or 215.284 (1), (2), (3) or (4); or

(2) For historic property that meets the requirements of ORS 215.283 (1)(L). [Ord 2001-0174]

**55.340** No final approval of a division of land for nonfarm use under this section shall be given unless additional taxes imposed upon the change in use have been paid. [Ord 94-0108; 2001-0174]

## **SITING STANDARDS**

**55.405 Siting Standards and Requirements.** All structures allowed in the Exclusive Farm Use Zone shall be sited in compliance with BCC Chapter 99 and the following additional standards:

(1) A dwelling shall be placed at least thirty (30) feet from a property line and at least forty-five (45) feet from the edge of a roadway. Architectural features shall not project more than two (2) feet into a required setback.

(2) Non-residential structures shall be placed at least twenty (20) feet from any property line, except that no setback is required for a structure of 120 square feet or less. A side or rear setback for a non-residential structure may be reduced to three (3) feet if the structure:

(a) Is detached from other buildings by five (5) feet or more;

(b) Does not exceed a height of twenty (20) feet; and

(c) Does not exceed an area of 500 square feet.

(3) A structure which is not a water dependent use shall be placed at least fifty (50) feet from the ordinary high water line of a river or major stream. In the case of a creek or minor stream, a structure which is not a water dependent use shall be placed at least twenty-five (25) feet from the ordinary high water line. [Ord 94-0108]

(4) A dwelling located within 200 feet of a forested area shall be provided with a spark arrestor on each chimney and a fire-retardant roof. [Ord 26, Ord 90-0069]

(5) A minimum thirty (30) foot fire break shall be maintained. [Ord 94-0108]

(6) Approval of any dwelling in the EFU zone shall include a condition of approval requiring the landowner for the dwelling to sign and record in the deed records for the county a document binding the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. [Ord 2001-0174]

(7) A nonfarm dwelling shall be sited at least 300 feet from property zoned for resource use, or shall conform to this standard to the greatest extent possible. This requirement shall not be applied to setbacks adjacent to an improved public road except when required by an approved conditional use permit. [Ord 2001-0174]

**Exhibit A**

**Declaration of Covenants, Conditions and Restrictions Form**

Whereas, the undersigned \_\_\_\_\_ hereinafter referred to as Declarant, is owner in fee simple of the property described in Exhibit A attached hereto and incorporated by reference herein and

Whereas, the Declarant desires to declare their intention to create certain covenants, conditions and restrictions in order to effectuate and comply with the requirements of Oregon Administrative Rule (OAR 660, Division 033).

Declarant hereby declares that all of the property described on Exhibit A 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 except for accessory farm dwellings; relative farm assistance dwellings; temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215 or to use any gross farm income earned on this lot or parcel to qualify another lot or parcel for the construction or siting of a primary farm 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 created by this instrument.

In witness whereof, the undersigned, being Declarant herein, has heretofore set their hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

State of                    )  
County                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_.

Notary Public for Oregon  
My Commission expires: \_\_\_\_\_