

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**ORDINANCE NO. 1036**

Amending MCC Chapter 36, Land Use Code, West of Sandy River Rural Plan Area, to Update the Zoning Code to Include Changes to the Oregon Statutes and Administrative Rules Regarding Land Uses on Lands Zoned Exclusive Farm Use and Commercial Forest Use

(Language ~~stricken~~ is deleted; double- underlined language is new.)

**The Multnomah County Board of Commissioners Finds:**

- a. Under the Oregon Statewide Land Use Planning Program, protection of farm and forest lands for resource use is based upon regulation of land uses found in state statute and Oregon Administrative Rules. Multnomah County then administers those farm and forest regulations from the County's own adopted zoning code.
- b. Periodically, the State Legislature and the State Land Conservation and Development Commission modify and amend the statutes and rules. Thereafter, mandated sections of those amended state regulations are required to be administered by counties directly from the state codes if they are not adopted into county codes. Timely integration of those state amendments into the County zoning code is desirable for land owners to have available all land use regulations that apply to their property in one set of regulations.
- c. The Planning Commission is authorized by MCC 36.0140 and by ORS 215.110 to recommend to the Board of County Commissioners the adoption of ordinances to implement the Multnomah County Comprehensive Plan. The Planning Commission held a public hearing on the amendments contained in this ordinance where all interested persons were given an opportunity to appear and be heard. Notice of the public hearing was mailed to all property owners of lands zoned Exclusive Farm Use (EFU) and Commercial Forest Use (CFU). At that hearing the Planning Commission approved the code amendments for recommendation to the Board.
- d. The amendments in this ordinance are found by the Board to be needed updates to the zoning code to comply with changed state statutes and administrative rules.

**Multnomah County Ordains as follows:**

**Section 1. § 36.0005 is amended as follows:**

**§ 36.0005 DEFINITIONS**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

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(D)(1) **Date of Creation and Existence** – As used in the EFU and CFU districts and applicable only to certain standards for approval of a dwelling in those districts, 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 of Record 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 of record or tract.

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**Section 2. § 36.2010 is amended as follows:**

**§ 36.2010 DEFINITIONS**

As used in MCC 36.2000 through 36.2110, unless otherwise noted, the following words and their derivations shall have the following meanings:

~~(A)~~ **Auxiliary** - For the purposes of MCC 36.2020 (A) (2) to (3), the use or alteration of a structure or land which provides temporary help, or is directly associated with the conduct of a particular forest practice. An auxiliary structure shall be located on site, be temporary in nature, and be designed not to remain for the entire growth cycle of the forest from planting to harvesting. An auxiliary use shall be removed when the particular forest practice for which it was approved is concluded.

~~(B)~~ **Campground** - An area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. A campground shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

~~(C)~~ **Commercial Tree Species** - Trees recognized under rules adopted under ORS 527.715 (1996) for commercial production.

~~(D)~~ **Contiguous** - Refers to parcels or lots which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels or lots separated only by an alley, street or other right-of-way.

~~(E)~~ **Cubic Foot Per Acre** - The average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Soil Conservation Service. Where SCS data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data and be approved by the Department of Forestry.

~~(F)~~ **Cubic Foot Per Tract Per Year** - The average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Soil Conservation Service. Where SCS data are not available or are shown to be inaccurate, an alternative method for determining productivity may be used. An alternative method must provide equivalent data and be approved by the Department of Forestry.

~~(G)~~ **Forest Operation** - Any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620 (6) (1996).

~~(H)~~ **Same Ownership** - Refers to greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title. Ownership shall be deemed to exist when a person or entity owns or controls ten percent or more of a lot or parcel, whether directly or through ownership or control or an entity having such ownership or control.

~~(F)-~~ **Tract** - One or more contiguous Lots of Record in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. Lots that are contiguous with a common boundary of only a single point are not a tract.

**Section 3. § 36.2030 is amended as follows:**

**§ 36.2030      CONDITIONAL USES**

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

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(D) The following Community Service Uses pursuant to the applicable provisions of MCC 36.2045, 36.2105, 36.6000 through 36.6020. The applicable criteria of 36.6010 shall be limited to (A) through (H) for uses in this section.

(1) Private park and private Campground. In addition to the approval standards listed in MCC 36.2030(D) above, a private campground shall be subject to the following:

(a) Except on a lot or parcel contiguous to a lake or reservoir, the campground 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.

(b) The campground shall be an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes.

(c) The campground 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.

(d) The 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.

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

(f) The campground shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

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~~(9) State and Local Parks, including a public or private wildlife and fisheries resources conservation area with accessory structures for educational or instructional use.~~

(a) Uses allowed in a State Park, subject to a state master plan as described in OAR 660 Division 34, are:

1. All uses allowed under Statewide Planning Goal 4, provided the uses are also allowed under OAR 736, Division 18; and

2. The uses, as authorized in a state master plan adopted by the Oregon Parks and Recreation Department (OPRD), listed in OAR 660-034-0035;

3. A "State Park" is any property owned or managed by OPRD and that has been determined by OPRD to have outstanding natural, cultural, scenic and/or recreational resource values that support the state park system mission and role. For the purposes of this subsection, endowment properties and administrative sites are not state parks.

(b) Uses allowed in a Local Park are those specified in OAR 660-034-0040. A Local Park is a public area intended for open space and outdoor recreation use that is owned and managed by a city, county, regional government, or park district and that is designated as a public park in the applicable comprehensive plan and zoning ordinance [OAR 660-034-0010(8)].

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**Section 4. § 36.2040 is amended as follows:**

**§ 36.2040 TEMPLATE AND HERITAGE TRACT DWELLINGS.**

(A) A template dwelling may be sited on a tract, subject to the following:

(1) The lot or lots in the tract shall meet the lot of record standards of MCC ~~35.2075~~36.2075 and have been lawfully created prior to January 25, 1990;

(2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with the development standards of MCC ~~35.2105~~36.2105 with minimum yards of 60 feet to the centerline of any adjacent public or private road serving two or more properties and 130 feet to all other property lines. Exceptions to this standard shall be pursuant to MCC 36.2110, as applicable;

(3) The tract shall meet the following standards:

(a) ~~The tract shall be~~If the tract is predominantly composed primarily of soils which are capable of producing 0 to 49 cubic feet of Douglas Fir timber per acre per year (cf/ac/yr); and

1. The lot upon which the dwelling is proposed to be sited and at least all or part of 3 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and

2. At least three dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings, or

(b) ~~The tract shall be~~If the tract is predominantly composed primarily of soils which are capable of producing 50 to 85 cf/ac/yr of Douglas Fir timber; and

1. The lot upon which the dwelling is proposed to be sited and at least all or part of 7 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and

2. At least three dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings, or

(c) ~~The tract shall be~~ If the tract is predominantly composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and

1. The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and

2. At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings.

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(i) Pursuant to the definition of "Date of Creation and Existence" in MCC 36.0005, if the lot, parcel or tract does not qualify for a dwelling under the standards in MCC 36.2040(A), any reconfiguration after November 4, 1993 cannot in any way enable the tract to meet the criteria for a new dwelling.

(j) Pursuant to the definition of "Date of Creation and Existence" in MCC 36.0005, lots, parcels and tracts that are reconfigured after November 4, 1993 cannot be counted as meeting the "other lawfully created lots" existing on January 1, 1993 standard in MCC 36.2040(A)(3)(a), (b), and (c): 3, 7, and 11 lots respectively.

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(B) A heritage tract dwelling may be sited, subject to the following:

(1) On a tract:

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(c) That is located within 1,500 feet of a dedicated public right-of-way that provides or will provide access to the subject tract. ~~4. The road within the public right-of-way shall be maintained to the standards set forth in the County Right-of-Way Access Permit and be, as applicable, either paved or surfaced with rock, and The road shall not be:~~

1. A U.S. Bureau of Land Management road; or

2. The public right of way shall not be a U.S. Forest Service road or Bureau of Land Management road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(d) For which deeds or other instruments creating the lots or parcels were recorded with the ~~Department of General Services~~ County Recorder, or were in recordable form prior to January 1, 1985; and

(e) That is comprised of lots or parcels that were lawfully created and pursuant to the definition of "Date of Creation and Existence" in MCC 36.0005, if the lot, parcel or tract does not qualify for a dwelling under the standards in MCC 36.2040(B), any reconfiguration after November 4, 1993 cannot in any way enable the tract to meet the criteria for a new dwelling; and

(f) Notwithstanding the same ownership grouping requirements of the Lot of Record section, that the tract was acquired and owned continuously by the present owner:

1. Since Pprior to January 1, 1985; or
2. By devise or by intestate succession by an antecedent of the from a person who acquired the lot or parcel since prior to January 1, 1985.
3. For purposes of this subsection, "antecedent" "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

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

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**Section 5. § 36.2055 is added as follows:**

**§ 36.2055 Single Family Dwellings Condition of Approval – Prohibition on Claims Alleging Injury From Farm or Forest Practices**

As a condition of approval of a single family dwelling, the landowner for the dwelling shall 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.

**Section 6. § 36.2065 is amended as follows:**

**§ 36.2265 LOTS OF EXCEPTION**

An exception to permit the creation of a lot of less than the minimum 80 acre parcel size for new parcels may be authorized as provided in (A) or (B) below and subject to the following:

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(B) A parcel that contains two dwellings may be divided provided that:

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(4) At least one dwelling is located on each lot or parcel created under this paragraph; and

(5) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the Multnomah County Recorder. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the county planning director indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use;

(6) The new property line proposed to divide the existing parcel shall be located such that:

(a) Forest Practices Setback dimensional requirements in MCC 36.2060(C) are met as nearly as possible considering parcel size and location of existing dwellings and other structures;

(b) Adverse impacts on forest practices will be minimized. Factors to consider in that evaluation include the location of: existing and potential logging access roads, existing and potential log landing areas, steep topography, and the size of the respective timber management areas; and

(7) The development standards for dwellings and structures in MCC 36.2105, the exception standards for secondary fire safety zones in MCC 36.2110, and the land division requirement that "the tentative plan complies with the area and dimensional requirements of the underlying zoning district" shall not apply as approval criteria. The land division shall be reviewed as either a Category 1 or 3 land division, as applicable;

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**Section 7. § 36.2075 is amended as follows:**

**§ 36.2075 LOT OF RECORD**

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

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4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990,

(4)(3) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot Size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

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**Section 8. § 36.2105 is amended as follows:**

**§ 36.2105 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES**

Except as provided for the alteration, replacement or restoration of dwellings under MCC 36.2020 (D) and 36.2025 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the requirements of this section. Application of these requirements shall be processed pursuant to the provisions for Type II or Type III decisions as applicable.

(A) The dwelling or structure shall be located such that:

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(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

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(c) Maintenance of a primary and a secondary fire safety zone on the subject tract.

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5. Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line) on land surrounding the dwelling that is owned or controlled by the home owner.

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**Section 9. § 36.2620 is amended as follows:**

**§ 36.2620 ALLOWED USES**

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(O) Churches and cemeteries in conjunction with churches, consistent with ORS 441, wholly within an EFU district may be maintained, enhanced or expanded:

(5) Activities customarily associated with the practice of religious activity include worship services, religion classes, weddings, funerals, child care and meal programs, but do not include private or parochial school education for prekindergarten through grade 12 or higher education.

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(V) Fire service facilities providing primarily rural fire protection services subject to satisfying the requirements of MCC 36.4100 through 36.4215 (off-street parking), MCC 36.6020(A) (yards), MCC 36.7000 through MCC 36.7060 (design review), and MCC 36.7450 (signs).

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(Z) Land application of reclaimed water, agricultural or industrial process water or biosolids.

Subject to the issuance of a license, permit or other approval by the Oregon Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in exclusive farm use zones under OAR Chapter 660 Division 33.

#### **Section 10. § 36.2625 is amended as follows:**

#### **§ 36.2625 REVIEW USES**

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(C) A farm help dwelling for a relative on real property used for farm use if the dwelling is:

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(3) Notwithstanding ORS 92.010 to 92.190 or the minimum lot size requirements of MCC 36.2660, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. However, pursuant to MCC 36.2675(D), the area of land with the homesite created by the foreclosure shall not be deemed a Lot of Record, and shall be subject to all restrictions on development associated with that designation.

(D) A dwelling, including a mobile or modular home, customarily provided in conjunction with a farm use:

(1) High-value farmland soils, \$80,000 income. On lands 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, as defined in ORS 215.203, that produced at least \$80,000 ~~(1994 dollars)~~ in gross annual income from the sale of farm products in the last two years or three of the last five years; and

(b) Except as permitted in ORS 215.283 (1) (p) ~~(1999 Edition)~~ (i.e. seasonal farmworker housing), there is no other dwelling on the subject tract ~~and designated for exclusive farm use that is owned by the farm or ranch operator, or that is on the farm or ranch operation. "Farm or ranch operation" shall mean 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; and~~

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

~~(d) In determining the gross income required by subsection (a) of this subsection:~~

~~1. The cost of purchased livestock shall be deducted from the total gross income attributed to the tract farm or ranch operation;~~

~~2. Only gross income from land owned, not leased or rented, shall be counted; and~~

~~3. 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; and~~

~~4. For the purposes of this subsection, lots or parcels zoned for farm use in Multnomah County or contiguous counties may be used to meet the gross income requirements.~~

~~(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as "Exhibit A" in OAR 660-033-0135(9) has been recorded with the county clerk 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.~~

~~1. The covenants, conditions and restrictions shall preclude all future rights to construct a dwelling except for accessory farm dwellings, relative farm help dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215.~~

~~2. The covenants, conditions and restrictions shall preclude the use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.~~

~~3. 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.~~

~~4. Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located.~~

5. 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.

6. The County Planning Director shall maintain a copy of the covenants, conditions and restrictions that have been filed in the county deed records pursuant to this subsection and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(2) Not high-value farmland soils, 160 acres. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:

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(d) Except as permitted in ORS 215.283 (1) (p) (1999 Edition) (i.e. seasonal farm worker housing), there is no other dwelling on the subject tract; ~~or,~~

(3) Not high-value farmland soils, capable of producing the median level of annual gross sales. On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:

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(e) Except as permitted in ORS 215.283(1)(p) (1999 Edition) (i.e. seasonal farmworker housing), there is no other dwelling on the subject tract; and

(f) 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

(g) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by subsection (c) of this section; ~~or,~~

(4) Not high-value farmland soils, \$40,000 income or mid-point of median income range. 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, 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:

1. At least \$40,000 (~~1994 dollars~~) in gross annual income from the sale of farm products; or

2. 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 in ORS 215.283(1)(p) (1999 Edition) (i.e. seasonal farmworker housing), there is no other dwelling on ~~the subject tract~~ lands designated for exclusive farm use pursuant to ORS 215 owned by the farm or ranch operator or on the farm or ranch operation. "Farm or ranch operation" shall mean 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; and

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

(d) In determining the gross income required by subsection (a) of this subsection:

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

2. Only costs and sale prices of livestock that are within a reasonable range of prevailing costs and sale prices in the Oregon and Washington region shall be counted in the determination of gross income. This may be done by comparing actual sales documents to such published livestock value sources as made available by the Oregon Agricultural Statistics Services or the Oregon State Extension Service; and

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

4. 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; and

5. For the purposes of this subsection, lots or parcels zoned for farm use in Multnomah County or contiguous counties may be used to meet the gross income requirements; and

(e) Prior to the final approval for a dwelling, the applicant shall provide evidence that the covenants, conditions and restrictions form referred to as "Exhibit A" in OAR 660-033-0135(9) has been recorded with the county clerk 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.

1. The covenants, conditions and restrictions shall preclude all future rights to construct a dwelling except for accessory farm dwellings, relative farm help dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215.

2. The covenants, conditions and restrictions shall preclude the use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

3. 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.

4. 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.

5. 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.

6. The County Planning Director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting 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.

(5) Commercial dairy farm. A dwelling may be considered customarily provided in conjunction with a commercial dairy farm if:

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

1. On land not identified as high-value farmland, at least \$40,000 in gross annual income or the gross annual income of at least the midpoint of the median income range of gross annual sales for farms in Multnomah County with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; or

2. On land identified as high-value farmland, at least \$80,000 in gross annual income; and

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

(c) Except as permitted by 215.283(1)(p) (1999 Edition) (seasonal farmworker housing), there is no other dwelling on the subject tract; and

(d) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm 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 a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230 and has approved a Producer License for the sale of dairy products under ORS 621.072.

(g) "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 OAR 660-033-0135(5)(a) or (7)(a), whichever is applicable, from the sale of fluid milk.

(6) Move to a new farm. 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:

1. On land not identified as high-value farmland, at least \$40,000 in gross annual income from the sale of farm products; or

2. On land not identified as high-value farmland, the gross annual income of at least the midpoint of the median income range of gross annual sales for farms in Multnomah County with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; or

3. On land identified as high-value farmland, at least \$80,000 in gross annual income from the sale of farm products; and

(b) The subject lot or parcel on which the dwelling will be located is a minimum lot size of 80 acres and is currently employed for the farm use, as defined in ORS 215.203, that produced in the last two years or three of the last five years:

1. On land not identified as high-value farmland, at least \$40,000 in gross annual income from the sale of farm products; or

2. On land not identified as high-value farmland, the gross annual income of at least the midpoint of the median income range of gross annual sales for farms in Multnomah County with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; or

3. On land identified as high-value farmland, at least \$80,000 in gross annual income from the sale of farm products; and

(c) Except as permitted in ORS 215.283(1)(p) (1999 Edition) (seasonal farmworker housing), there is no other dwelling on the subject tract; and

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

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

1. The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and

2. Only gross income from land owned, not leased or rented, shall be counted.

(E) ~~An accessory farm help dwellings, including a mobile or modular home~~ which includes all types of residential structures allowed by the applicable state building code, customarily provided in conjunction with farm use if each accessory farm dwelling meets all the following requirements:

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

(2) The accessory ~~help~~ farm dwelling shall be located:

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

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

(c) On a lot or parcel on which the ~~principal~~primary farm dwelling is not located, when:

1. The accessory farm dwelling is limited to only a manufactured dwelling; and

2. A deed restriction is filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party; and

3. The manufactured dwelling may remain if it is reapproved; or

~~(d) An accessory farm dwelling approved pursuant to this rule may not be occupied by a person or persons who will not be principally engaged in the farm use of the land and whose assistance in the management of the farm use is not or will not be required by the farm operator. The manufactured dwelling may remain if it is reapproved; and~~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 such farm labor housing may exist on the farm or ranch operation that is registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under this subparagraph shall be removed, demolished or converted to 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 80 acres in area and the lot or parcel complies with the applicable gross farm income requirements in MCC 36.2625(E)(4) below; and

(3) 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; and

(4) In addition to the requirements in (1) through (3) in this section, The ~~principal~~the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

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

1. At least \$40,000 ~~(1994 dollars)~~ in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

2. Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income,

the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(b) On land identified as high-value farmland, the ~~principal~~primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 (~~1994 dollars~~) 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 OAR 660-033-0135(11); and

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

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

3. A Producer License for the sale of dairy products under ORS 621.072 has been obtained.

(5) The approval authority shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of MCC 36.2625 (D), a parcel may be created consistent with the minimum parcel size requirements in MCC 36.2660.

(F) Notwithstanding the same ownership grouping requirements of the Lot of Record section, a single family heritage tract dwelling may be allowed on land not identified as high-value farmland when:

(1) The lot or parcel on which the dwelling will be sited meets the following requirements:

(a) A deed or other instrument creating the lot or parcel was recorded with the Department of General Services, or was in recordable form prior to January 1, 1985; and

(b) The lot or parcel satisfies all applicable laws when the lot or parcel was created; and

(c) ~~The lot or parcel is held under the same ownership and which was acquired by the present owner prior to January 1, 1985; and~~ The lot or parcel was acquired and owned continuously by the present owner;

1. Since prior to January 1, 1985; or

2. 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; and

\*\*\*\*\*

(8) For purposes of this subsection, and of dwellings considered under MCC 36.2630 (J) and (K), the following definitions apply:



(a) Owner includes a person who acquired the lot or parcel by devise or intestate succession from a person who acquired the lot or parcel prior to January 1, 1985 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.

(b) 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.

Therefore, if the lot, parcel or tract does not qualify for a dwelling under the Heritage Tract Dwelling standards, any reconfiguration after November 4, 1993 cannot in any way enable the tract to meet the approval criteria for a new dwelling.

(G) Seasonal farmworker housing as defined in ORS 197.675 when found to meet the following requirements:

(1) ~~The housing will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use is or will be required by the farm operator; and~~

(2) ~~The seasonal farmworker housing is located on the same parcel, lot or tract as the principal farm dwelling which houses the farm operator; and~~

(3) ~~The principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years; and~~

(4) ~~The seasonal farmworker housing can only be occupied for 273 days per calendar year.~~

\*\*\*\*\*

(ON) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. The siting standards are the requirements of MCC 36.4100 through MCC 36.4215 (off-street parking), MCC 36.2660(C), (D)&(E) (yards), and MCC 36.7450 (signs).

(PO) One manufactured dwelling in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. A manufactured dwelling allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS Chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. The Planning Director shall review the

permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the Planning Director shall require the removal of such manufactured homes. A temporary residence approved under this section is not eligible for replacement under MCC 36.2620(J), (L), and (M). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this subsection "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(1) The health hardship will not:

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

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

~~(2) As a condition of approval, the landowner shall 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 practices for which no action or claim is allowed under ORS 30.936 or 30.937.~~

~~(QP)~~ Parking of no more than seven log trucks shall be allowed in an exclusive farm use zone notwithstanding any other provision of law except for health and safety provisions, unless the log truck parking will:

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

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

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#### **Section 11. § 36.2630 is amended as follows:**

#### **§ 36.2630      CONDITIONAL USES**

The following uses may be permitted when approved by the approval authority to satisfy the applicable provisions in MCC 36.6300 to 36.6335 or the criteria listed for the use:

\*\*\*\*\*

(A) Commercial activities that are in conjunction with a farm use, except for facilities for processing crops that meet the standards for crop source, building size, and other applicable siting standards pursuant to 36.2625(~~ON~~) above. Uses under this provision shall be subject to the approval criteria in MCC 36.6315(1) through (7).

\*\*\*\*\*

(G) Dog kennels not described in section MCC 36.2625 (~~HG~~). Existing facilities wholly within an EFU district may be maintained, enhanced or expanded, subject to other requirements of law. New facilities may be allowed only on non-high-value lands.

\*\*\*\*\*

(J) Notwithstanding the same ownership grouping requirements of the Lot of Record section, a single family heritage tract dwelling may be allowed on land identified as high-value farmland when:

(Note: MCC 36.6315 Conditional Use Approval Criteria does not apply)

(1) The lot or parcel meets the requirements of MCC 36.2625 (F) (1) through (8); and

(2) 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; and

\*\*\*\*\*

(K) Notwithstanding the same ownership grouping requirements of the Lot of Record section, a single family heritage tract dwelling may be allowed on land identified as high-value farmland when:

(Note: 36.6315 Conditional Use Approval Criteria does not apply)

(1) The lot or parcel meets the requirements of 36.2625 (F) (1) through (8); and

(2) The tract on which the dwelling will be sited is:

(a) Not composed predominately of irrigated or non-irrigated soils classified prime, unique, Class I or Class II; and

(b) Less than twenty-one acres in size; and

(c) Is bordered on at least 67% of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(d) Is not a flag lot and the tract is bordered on at least 25% 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

(e) The tract is a flag lot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that

provides access to the subject tract. For purposes of this section, the center of the subject tract is the geographic center of the flag lot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flag lot. 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. As used in this subsection:

1. "Flag lot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract; and

2. "Geographic center of the flag lot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flag lot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flag lot.

**Section 12. § 36.2655 is added to read as follows:**

**§ 36.2655 Single Family Dwellings Condition of Approval – Prohibition on Claims Alleging Injury From Farm or Forest Practices**

As a condition of approval of a single family dwelling, the landowner for the dwelling shall 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.

**Section 13. § 36.2665 is amended as follows:**

**§ 36.2665 Exceptions to Lot Size for Specific Uses**

(A) Lots less than the minimum lot size specified in MCC 36.2660 (A) may be created for uses listed in ~~MCC 36.2625 (A) and~~ MCC 36.2630 (C) based upon:

- (1) The site size needs of the proposed use;
- (2) The nature of the proposed use in relation to its impact on nearby properties; and
- (3) Consideration of the purposes of this district.

\*\*\*\*\*

**Section 14. § 36.2675 is amended as follows:**

**§ 36.2675 LOT OF RECORD**

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

\*\*\*\*\*

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(3)(4) Exception to the standards of (A)(2) above:

(a) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

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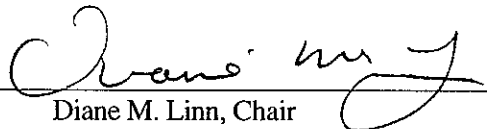
FIRST READING:

May 6, 2004

SECOND READING AND ADOPTION:

May 13, 2004

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
Sandra N. Duffy, Assistant County Attorney