

## **Appendix A**

### **Applicable Rules, Policies and Codes**

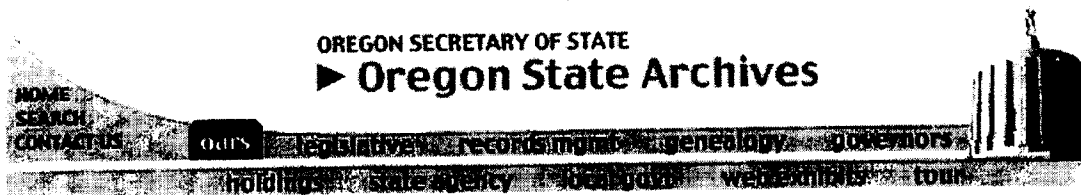
**Oregon Administrative Rule Chapter 660, Division 16**

**Oregon Administrative Rule Chapter 660, Division 23**

**Multnomah County Comprehensive Framework Plan Policy #16-B**

**Multnomah County Code Chapter 35 – East of Sandy River Rural Plan  
Area (Excerpted)**





The Oregon Administrative Rules contain OARs filed through August 15, 2002

## LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

### DIVISION 16

#### REQUIREMENTS AND APPLICATION PROCEDURES FOR COMPLYING WITH STATEWIDE GOAL 5

660-016-0000

##### Inventory Goal 5 Resources

(1) The inventory process for Statewide Planning Goal 5 begins with the collection of available data from as many sources as possible including experts in the field, local citizens and landowners. The local government then analyzes and refines the data and determines whether there is sufficient information on the location, quality and quantity of each resource site to properly complete the Goal 5 process. This analysis also includes whether a particular natural area is "ecologically and scientifically significant", or an open space area is "needed", or a scenic area is "outstanding", as outlined in the Goal. Based on the evidence and local government's analysis of those data, the local government then determines which resource sites are of significance and includes those sites on the final plan inventory.

(2) A "valid" inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. Some Goal 5 resources (e.g., natural areas, historic sites, mineral and aggregate sites, scenic waterways) are more site-specific than others (e.g., groundwater, energy sources). For site-specific resources, determination of *location* must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.

(3) The determination of *quality* requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of *quantity* requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or "obtainable".

(4) The inventory completed at the local level, including options in subsections (5)(a), (b), and (c) of this rule, will be adequate for Goal compliance unless it can be shown to be based on inaccurate data, or does not adequately address location, quality or quantity. The issue of adequacy may be raised by the

Department or objectors, but final determination is made by the Commission or the Land Use Board of Appeals as provided by law.

(5) Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:

(a) Do Not Include on Inventory: Based on information that is available on location, quality and quantity, the local government might determine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information;

(b) Delay Goal 5 Process: When some information is available, indicating the possible existence of a resource site, but that information is not adequate to identify with particularity the location, quality and quantity of the resource site, the local government should only include the site on the comprehensive plan inventory as a special category. The local government must express its intent relative to the resource site through a plan policy to address that resource site and proceed through the Goal 5 process in the future. The plan should include a time-frame for this review. Special implementing measures are not appropriate or required for Goal 5 compliance purposes until adequate information is available to enable further review and adoption of such measures. The statement in the plan commits the local government to address the resource site through the Goal 5 process in the post-acknowledgment period. Such future actions could require a plan amendment;

(c) Include on Plan Inventory: When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory and indicate the location, quality and quantity of the resource site (see above). Items included on this inventory must proceed through the remainder of the Goal 5 process.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81; LCDC 3-1990, f. & cert. ef. 6-6-90

**660-016-0005**

### **Identify Conflicting Uses**

It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences:

(1) Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which insure preservation of the resource site.

(2) Determine the Economic, Social, Environmental, and Energy Consequences: If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

660-016-0010

### **Develop Program to Achieve the Goal**

Based on the determination of the economic, social, environmental and energy consequences, a jurisdiction must "develop a program to achieve the Goal". Assuming there is adequate information on the location, quality, and quantity of the resource site as well as on the nature of the conflicting use and ESEE consequences, a jurisdiction is expected to "resolve" conflicts with specific sites in any of the following three ways listed below. Compliance with Goal 5 shall also be based on the plan's overall ability to protect and conserve each Goal 5 resource. The issue of adequacy of the overall program adopted or of decisions made under sections (1), (2) and (3) of this rule may be raised by the Department or objectors, but final determination is made by the Commission, pursuant to usual procedures:

(1) Protect the Resource Site: Based on the analysis of the ESEE consequences, a jurisdiction may determine that the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site and possibly within the impact area identified in OAR 660-016-0000(5)(c). Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(2) Allow Conflicting Uses Fully: Based on the analysis of ESEE consequences and other Statewide Goals, a jurisdiction may determine that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. This approach may be used when the conflicting use for a particular site is of sufficient importance, relative to the resource site. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(3) Limit Conflicting Uses: Based on the analysis of ESEE consequences, a jurisdiction may determine that both the resource site and the conflicting use are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource site to some desired extent. To implement this decision, the jurisdiction must designate with certainty what uses and activities are allowed fully, what uses and activities are not allowed at all and which uses are allowed conditionally, and what specific standards or limitations are placed on the permitted and conditional uses and activities for each resource site. Whatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses and activities are allowed, not allowed, or allowed conditionally and under what clear and objective conditions or standards. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

#### **660-016-0015**

##### **Post-Acknowledgment Period**

(1) All data, findings, and decisions made by a local government prior to acknowledgment may be reviewed by that local government in its periodic update process. This includes decisions made as a result of OAR 660-016-0000(5)(a), 660-016-0005(1), and 660-016-0010. Any changes, additions, or deletions would be made as a plan amendment, again following all Goal 5 steps.

(2) If the local government has included in its plan items under OAR 660-016-0000(5)(b), the local government has committed itself to take certain actions within a certain time frame in the post-acknowledgment period. Within those stated time frames, the local government must address the issue as stated in its plan, and treat the action as a plan amendment.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

#### **660-016-0020**

##### **Landowner Involvement**

(1) The development of inventory data, identification of conflicting uses and adoption of implementing measures must, under Statewide Planning Goals 1 and 2, provide opportunities for citizen involvement and agency coordination. In addition, the adoption of regulations or plan provisions carries with it basic legal notice requirements. (County or city legal counsel can advise the planning department and governing body of these requirements.) Depending upon the type of action involved, the form and method of landowner notification will vary. State statutes and local charter provisions contain basic notice requirements. Because of the nature of the Goal 5 process as outlined in this paper it is important to provide for notification and involvement of landowners, including public agencies, at the earliest possible opportunity. This will likely avoid problems or disagreements later in the process and improve the local decision-making process in the development of the plan and implementing measures.

(2) As the Goal 5 process progresses and more specificity about the nature of resources, identified conflicting uses, ESEE consequences and implementing measures is known, notice and involvement of affected parties will become more meaningful. Such notice and landowner involvement, although not identified as a Goal 5 requirement is in the opinion of the Commission, imperative.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

**660-016-0030****Mineral and Aggregate Resources**

(1) When planning for and regulating the development of aggregate resources, local governments shall address ORS 517.750 to 517.900 and OAR Chapter 632, Divisions 1 and 30.

(2) Local governments shall coordinate with the State Department of Geology and Mineral Industries to ensure that requirements for the reclamation of surface mines are incorporated into programs to achieve the Goal developed in accordance with OAR 660-016-0010.

(3) Local governments shall establish procedures designed to ensure that comprehensive plan provisions, land use regulations, and land use permits necessary to authorize mineral and aggregate development are coordinated with the State Department of Geology and Mineral Industries. Local governments shall amend comprehensive plans and land use regulations, as necessary, no later than January 1, 1993.

(4) The provisions of this rule shall be effective immediately.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCDC 3-1992, f. & cert. ef. 6-10-92

---

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State. Terms and Conditions of Use

---

**Alphabetical Index by Agency Name**

**Numerical Index by OAR Chapter Number**

**Search the Text of the OARs**

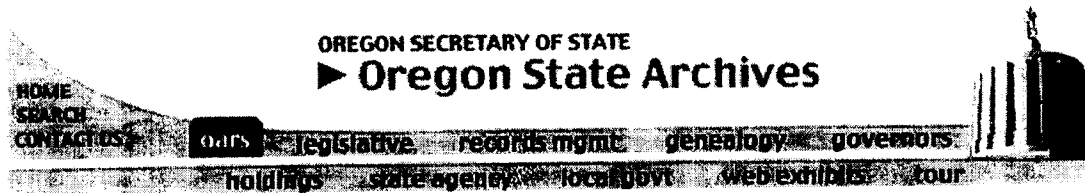
**Questions about Administrative Rules?**

**Link to the Oregon Revised Statutes (ORS)**

**Return to Oregon State Archives Home Page**







The Oregon Administrative Rules contain OARs filed through August 15, 2002

## LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

### DIVISION 23

### PROCEDURES AND REQUIREMENTS FOR

### COMPLYING WITH GOAL 5

**660-023-0000**

#### **Purpose and Intent**

This division establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. This division explains how local governments apply Goal 5 when conducting periodic review and when amending acknowledged comprehensive plans and land use regulations.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

**660-023-0010**

#### **Definitions**

As used in this division, unless the context requires otherwise:

(1) "Conflicting use" is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses.

(2) "ESEE consequences" are the positive and negative economic, social, environmental, and energy

(ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

(3) "Impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.

(4) "Inventory" is a survey, map, or description of one or more resource sites that is prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features associated with such sites. As a verb, "inventory" means to collect, prepare, compile, or refine information about one or more resource sites. (See resource list.)

(5) "PAPA" is a "post-acknowledgment plan amendment." The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

(6) "Program" or "program to achieve the goal" is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as part of the comprehensive plan and land use regulations (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).

(7) "Protect," when applied to an individual resource site, means to limit or prohibit uses that conflict with a significant resource site (except as provided in OAR 660-023-0140, 660-023-0180, and 660-023-0190). When applied to a resource category, "protect" means to develop a program consistent with this division.

(8) "Resource category" is any one of the cultural or natural resource groups listed in Goal 5.

(9) "Resource list" includes the description, maps, and other information about significant Goal 5 resource sites within a jurisdiction, adopted by a local government as a part of the comprehensive plan or as a land use regulation. A "plan inventory" adopted under OAR 660-016-0000(5)(c) shall be considered to be a resource list.

(10) "Resource site" or "site" is a particular area where resources are located. A site may consist of a parcel or lot or portion thereof or may include an area consisting of two or more contiguous lots or parcels.

(11) "Safe harbor" has the meaning given to it in OAR 660-023-0020(2).

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & 197.225 - 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## **660-023-0020**

### **Standard and Specific Rules and Safe Harbors**

(1) The standard Goal 5 process, OAR 660-023-0030 through 660-023-0050, consists of procedures and requirements to guide local planning for all Goal 5 resource categories. This division also provides

specific rules for each of the fifteen Goal 5 resource categories (see OAR 660-023-0090 through 660-023-0230). In some cases this division indicates that both the standard and the specific rules apply to Goal 5 decisions. In other cases, this division indicates that the specific rules supersede parts or all of the standard process rules (i.e., local governments must follow the specific rules rather than the standard Goal 5 process). In case of conflict, the resource-specific rules set forth in OAR 660-023-0090 through 660-023-0230 shall supersede the standard provisions in OAR 660-023-0030 through 660-023-0050.

(2) A "safe harbor" consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process. For example, a jurisdiction may choose to identify "significant" riparian corridors using the safe harbor criteria under OAR 660-023-0090(5) rather than follow the general requirements for determining "significance" in the standard Goal 5 process under OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## 660-023-0030

### Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal 5 resource sites;
- (b) Determine the adequacy of the information;
- (c) Determine the significance of resource sites; and
- (d) Adopt a list of significant resource sites.

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified

sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

- (a) Notify state and federal resource management agencies and request current resource information; and
- (b) Consider other information submitted in the local process.

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.

(b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.

(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

(a) The quality, quantity, and location information;

(b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and

(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments

shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## 660-023-0040

### ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

(a) Identify conflicting uses;

(b) Determine the impact area;

(c) Analyze the ESEE consequences; and

(d) Develop a program to achieve Goal 5.

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the

identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## 660-023-0050

### Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## 660-023-0060

### Notice and Land Owner Involvement

Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

#### **660-023-0070**

##### **Buildable Lands Affected by Goal 5 Measures**

(1) If measures to protect significant resource sites inside urban growth boundaries affect the inventory of buildable lands in acknowledged plans required by Goals 9, 10 and 14, a local government outside of the Metro UGB, and Metro inside the Metro UGB, prior to or at the next periodic review, shall:

(a) Amend its urban growth boundary to provide additional buildable lands sufficient to compensate for the loss of buildable lands caused by the application of Goal 5;

(b) Redesignate other land to replace identified land needs under Goals 9, 10, and 14 provided such action does not take the plan out of compliance with other statewide goals; or

(c) Adopt a combination of the actions described in subsections (a) and (b) of this section.

(2) If a local government redesignates land for higher density under subsections (1)(b) or (c) of this rule in order to meet identified housing needs, the local government shall ensure that the redesignated land is in locations appropriate for the housing types, and is zoned at density ranges that are likely to be achieved by the housing market.

(3) Where applicable, the requirements of ORS 197.296 shall supersede the requirements of sections (1) and (2) of this rule.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

#### **660-023-0080**

##### **Metro Regional Resources**

(1) For purposes of this rule, the following definitions apply:

(a) "Metro" is the Metropolitan Service District organized under ORS Chapter 268, and operating under



the 1992 Metro Charter, for 24 cities and certain urban portions of Multnomah, Clackamas, and Washington counties.

(b) "Regional resource" is a site containing a significant Goal 5 resource, including but not limited to a riparian corridor, wetland, or open space area, which is identified as a regional resource on a map adopted by Metro ordinance.

(2) Local governments shall complete the Goal 5 process in this division for all regional resources prior to or during the first periodic review following Metro's adoption of a regional resources map, unless Metro adopts a regional functional plan by ordinance to establish a uniform time for all local governments to complete the Goal 5 process for particular regional resource sites.

(3) Metro may adopt one or more regional functional plans to address all applicable requirements of Goal 5 and this division for one or more resource categories and to provide time limits for local governments to implement the plan. Such functional plans shall be submitted for acknowledgment under the provisions of ORS 197.251 and 197.274. Upon acknowledgment of Metro's regional resource functional plan, local governments within Metro's jurisdiction shall apply the requirements of the functional plan for regional resources rather than the requirements of this division.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

**660-023-0090**

### **Riparian Corridors**

(1) For the purposes of this rule, the following definitions apply:

(a) "Fish habitat" means those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.

(b) "Riparian area" is the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

(c) "Riparian corridor" is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.

(d) "Riparian corridor boundary" is an imaginary line that is a certain distance upland from the top bank, for example, as specified in section (5) of this rule.

(e) "Stream" is a channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

(f) "Structure" is a building or other major improvement that is built, constructed, or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components, that are not customarily regulated through zoning ordinances.

(g) "Top of bank" shall have the same meaning as "bankfull stage" defined in OAR 141-085-0010(2).

(h) "Water area" is the area between the banks of a lake, pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

(2) Local governments shall amend acknowledged plans in order to inventory riparian corridors and provide programs to achieve Goal 5 prior to or at the first periodic review following the effective date of this rule, except as provided in OAR 660-023-0250(5).

(3) Local governments shall inventory and determine significant riparian corridors by following either the safe harbor methodology described in section (5) of this rule or the standard inventory process described in OAR 660-023-0030 as modified by the requirements in section (4) of this rule. The local government may divide the riparian corridor into a series of stream sections (or reaches) and regard these as individual resource sites.

(4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Local governments may postpone determination of the precise location of the riparian area on lands designated for farm or forest use until receipt of applications for local permits for uses that would conflict with these resources. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:

- (a) Oregon Department of Forestry stream classification maps;
- (b) United States Geological Service (USGS) 7.5 minute quadrangle maps;
- (c) National Wetlands Inventory maps;
- (d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;
- (e) Federal Emergency Management Agency (FEMA) flood maps; and
- (f) Aerial photographs.

(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

- (a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.
- (b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.
- (c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

(d) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, local governments shall apply OAR 660-023-0030 rather than apply the safe harbor provisions of this section.

(6) Local governments shall develop a program to achieve Goal 5 using either the safe harbor described in section (8) of this rule or the standard Goal 5 ESEE process in OAR 660-023-0040 and 660-023-0050 as modified by section (7) of this rule.

(7) When following the standard ESEE process in OAR 660-023-0040 and 660-023-0050, a local government shall comply with Goal 5 if it identifies at least the following activities as conflicting uses in riparian corridors:

(a) The permanent alteration of the riparian corridor by placement of structures or impervious surfaces, except for:

(A) Water-dependent or water-related uses; and

(B) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area; and

(b) Removal of vegetation in the riparian area, except:

(A) As necessary for restoration activities, such as replacement of vegetation with native riparian species;

(B) As necessary for the development of water-related or water-dependent uses; and

(C) On lands designated for agricultural or forest use outside UGBs.

(8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt an ordinance to protect a significant riparian corridor as follows:

(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

(A) Streets, roads, and paths;

(B) Drainage facilities, utilities, and irrigation pumps;

(C) Water-related and water-dependent uses; and

(D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:

(A) Removal of non-native vegetation and replacement with native plant species; and

(B) Removal of vegetation necessary for the development of water-related or water-dependent uses;

(c) Notwithstanding subsection (b) of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4;

(d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance; and

(e) The ordinance may authorize the permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (5)(a) of this rule upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## 660-023-0100

### Wetlands

(1) For purposes of this rule, a "wetland" is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Local governments shall amend acknowledged plans and land use regulations prior to or at periodic review to address the requirements of this division, as set out in OAR 660-023-0250(5) through (7). The standard inventory process requirements in OAR 660-023-0030 do not apply to wetlands. Instead, local governments shall follow the requirements of section (3) of this rule in order to inventory and determine significant wetlands.

(3) For areas inside urban growth boundaries (UGBs) and urban unincorporated communities (UUCs), local governments shall:

(a) Conduct a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 through 141-086-0240 and adopt the LWI as part of the comprehensive plan or as a land use regulation; and

(b) Determine which wetlands on the LWI are "significant wetlands" using the criteria adopted by the Division of State Lands (DSL) pursuant to ORS 197.279(3)(b) and adopt the list of significant wetlands as part of the comprehensive plan or as a land use regulation.

(4) For significant wetlands inside UGBs and UUCs, a local government shall:

(a) Complete the Goal 5 process and adopt a program to achieve the goal following the requirements of

OAR 660-023-0040 and 660-023-0050; or

(b) Adopt a safe harbor ordinance to protect significant wetlands consistent with this subsection, as follows:

(A) The protection ordinance shall place restrictions on grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and

(B) The ordinance shall include a variance procedure to consider hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions under paragraph (A) of this subsection for any lands demonstrated to have been rendered not buildable by application of the ordinance.

(5) For areas outside UGBs and UUCs, local governments shall either adopt the statewide wetland inventory (SWI; see ORS 196.674) as part of the local comprehensive plan or as a land use regulation, or shall use a current version for the purpose of section (7) of this rule.

(6) For areas outside UGBs and UUCs, local governments are not required to amend acknowledged plans and land use regulations in order to determine significant wetlands and complete the Goal 5 process. Local governments that choose to amend acknowledged plans for areas outside UGBs and UUCs in order to inventory and protect significant wetlands shall follow the requirements of sections (3) and (4) of this rule.

(7) All local governments shall adopt land use regulations that require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory, as per ORS 227.350 and 215.418, or on the SWI as provided in section (5) of this rule.

(8) All jurisdictions may inventory and protect wetlands under the procedures and requirements for wetland conservation plans adopted pursuant to ORS 196.668 et seq. A wetlands conservation plan approved by the director of DSL shall be deemed to comply with Goal 5 (ORS 197.279(1)).

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## **660-023-0110**

### **Wildlife Habitat**

(1) For purposes of this rule, the following definitions apply:

(a) "Documented" means that an area is shown on a map published or issued by a state or federal agency or by a professional with demonstrated expertise in habitat identification.

(b) "Wildlife habitat" is an area upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites.

(2) Local governments shall conduct the inventory process and determine significant wildlife habitat as

set forth in OAR 660-023-0250(5) by following either the safe harbor methodology described in section (4) of this rule or the standard inventory process described in OAR 660-023-0030.

(3) When gathering information regarding wildlife habitat under the standard inventory process in OAR 660-023-0030(2), local governments shall obtain current habitat inventory information from the Oregon Department of Fish and Wildlife (ODFW), and other state and federal agencies. These inventories shall include at least the following:

(a) Threatened, endangered, and sensitive wildlife species habitat information;

(b) Sensitive bird site inventories; and

(c) Wildlife species of concern and/or habitats of concern identified and mapped by ODFW (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs).

(4) Local governments may determine wildlife habitat significance under OAR 660-023-0040 or apply the safe harbor criteria in this section. Under the safe harbor, local governments may determine that "wildlife" does not include fish, and that significant wildlife habitat is only those sites where one or more of the following conditions exist:

(a) The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;

(b) The habitat has documented occurrences of more than incidental use by a species described in subsection (a) of this section;

(c) The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to ORS 527.710 (Oregon Forest Practices Act) and OAR 629-024-0700 (Forest Practices Rules);

(d) The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or

(e) The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, or pigeon springs).

(5) For certain threatened or endangered species sites, publication of location information may increase the threat of habitat or species loss. Pursuant to ORS 192.501(13), local governments may limit publication, display, and availability of location information for such sites. Local governments may adopt inventory maps of these areas, with procedures to allow limited availability to property owners or other specified parties.

(6) As set out in OAR 660-023-0250(5), local governments shall develop programs to protect wildlife habitat following the standard procedures and requirements of OAR 660-023-0040 and 660-023-0050. Local governments shall coordinate with appropriate state and federal agencies when adopting programs intended to protect threatened, endangered, or sensitive species habitat areas.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 297.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## 660-023-0120

### Federal Wild and Scenic Rivers

(1) At each periodic review, local governments shall amend acknowledged plans and land use regulations to address any federal Wild and Scenic River (WSR) and associated corridor established by the federal government that is not addressed by the acknowledged plan. The standards and procedures of OAR 660-023-0030 through 660-023-0050 apply to WSRs, except as provided in this rule.

(2) Local governments shall not inventory WSRs using the standard process under OAR 660-023-0030, except that local governments shall follow the requirements of OAR 660-023-0030(5) by designating all WSRs as significant Goal 5 resources.

(3) A local government may delay completion of OAR 660-023-0040 and 660-023-0050 for a WSR until the federal government adopts a management plan for the WSR. Prior to the federal government adoption of a management plan, the local government shall notify the federal government of proposed development and changes of land use within the interim WSR corridor.

(4) Prior to or at the first periodic review following adoption of a management plan by the federal government for an established WSR, the local government shall adopt a program to protect the WSR and associated corridor by following the ESEE standards and procedures of OAR 660-023-0040 and 660-023-0050. The impact area determined under OAR 660-023-0040(3) shall be the WSR corridor that is established by the federal government. Notwithstanding the provisions of OAR 660-023-0040(5), the local program shall be consistent with the federal management plan.

(5) For any lands in a designated WSR corridor that are also within the impact area of a designated Oregon Scenic Waterway, the local government may apply the requirements of OAR 660-023-0130 rather than the applicable requirements of this rule in order to develop a program to achieve Goal 5.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## 660-023-0130

### Oregon Scenic Waterways

(1) At each periodic review, local governments shall amend acknowledged plans and land use regulations to address any Oregon Scenic Waterway (OSW) and associated corridor that is not addressed by the acknowledged plan. The standards and procedures of OAR 660-023-0030 through 660-023-0050 apply to OSWs, except as provided in this rule.

(2) Local governments shall not inventory OSWs following all the steps of the standard inventory process under OAR 660-023-0030. Instead, local governments shall follow only the requirements of OAR 660-023-0030(5) by designating OSWs as significant Goal 5 resources.

(3) A local government may delay completion of the Goal 5 process (OAR 660-023-0040 and 660-023-0050) for an OSW until the Oregon Parks and Recreation Commission (OPRC) adopts a management plan for the OSW. Prior to the OPRC adoption of a management plan for the OSW, the local government shall:

(a) Notify the Oregon Parks and Recreation Department (OPRD) of proposed developments and changes of land use on land within the interim OSW corridor; and

(b) Inform landowners who apply to the local government for development approval or changes of land use within the OSW corridor of their notice obligations under ORS 390.845.

(4) Prior to or at the first periodic review following adoption of a management plan by the OPRC for an established OSW, the local government shall adopt a Goal 5 program for the OSW and associated corridor by following either the ESEE standards and procedures of OAR 660-023-0040 and 660-023-0050 or the safe harbor provisions in section (5) of this rule. The impact area determined under OAR 660-023-0040(3) shall be the scenic waterway and adjacent lands as set forth in ORS 390.805(2) and (3). Notwithstanding the provisions of OAR 660-023-0040(5), the local program for the OSW shall be consistent with the management plan adopted by OPRC.

(5) As a safe harbor, a local government may adopt only those plan and implementing ordinance provisions necessary to carry out the management plan adopted by OPRC rather than follow the ESEE standards and procedures of OAR 660-023-0040 and 660-023-0050.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

## **660-023-0140**

### **Groundwater Resources**

(1) For purposes of this rule, the following definitions apply:

(a) "Delineation" is a determination that has been certified by the Oregon Health Division pursuant to OAR 333-061-0057, regarding the extent, orientation, and boundary of a wellhead protection area, considering such factors as geology, aquifer characteristics, well pumping rates, and time of travel.

(b) "Groundwater" is any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water.

(c) "Protect significant groundwater resources" means to adopt land use programs to help ensure that reliable groundwater is available to areas planned for development and to provide a reasonable level of certainty that the carrying capacity of groundwater resources will not be exceeded.



(d) "Public water system" is a system supplying water for human consumption that has four or more service connections, or a system supplying water to a public or commercial establishment that operates a total of at least 60 days per year and that is used by 10 or more individuals per day.

(e) "Wellhead protection area" is the surface and subsurface area surrounding a water well, spring, or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach that water well, spring, or wellfield.

(2) Local governments shall amend acknowledged plans prior to or at each periodic review in order to inventory and protect significant groundwater resources under Goal 5 only as provided in sections (3) through (5) of this rule. Goal 5 does not apply to other groundwater areas, although other statewide Goals, especially Goals 2, 6, and 11, apply to land use decisions concerning such groundwater areas. Significant groundwater resources are limited to:

(a) Critical groundwater areas and ground-water-limited areas designated by the Oregon Water Resources Commission (OWRC), subject to the requirements in section (3) of this rule applied in conjunction with the requirements of OAR 660-023-0030 through 660-023-0050; and

(b) Wellhead protection areas, subject to the requirements in sections (4) and (5) of this rule instead of the requirements in OAR 660-023-0030 through 660-023-0050.

(3) Critical groundwater areas and groundwater-limited areas designated by order of the OWRC pursuant to ORS 537.505 et seq. are significant groundwater resources. Following designation by OWRC, and in coordination with the Oregon Water Resources Department (WRD), local plans shall declare such areas as significant groundwater resources as per OAR 660-022-0030(5). Following the requirements of OAR 660-023-0040 and 660-023-0050 and this rule, local governments shall develop programs to protect these significant groundwater resources.

(4) A local government or water provider may delineate a wellhead protection area for wells or wellfields that serve lands within its jurisdiction. For the delineation of wellhead protection areas, the standards and procedures in OAR Chapter 333, Division 61 (Oregon Health Division rules) shall apply rather than the standards and procedures of OAR 660-023-0030.

(5) A wellhead protection area is a significant groundwater resource only if the area has been so delineated and either:

(a) The public water system served by the wellhead area has a service population greater than 10,000 or has more than 3,000 service connections and relies on groundwater from the wellhead area as the primary or secondary source of drinking water; or

(b) The wellhead protection area is determined to be significant under criteria established by a local government, for the portion of the wellhead protection area within the jurisdiction of the local government.

(6) Local governments shall develop programs to resolve conflicts with wellhead protection areas described under section (5) of this rule. In order to resolve conflicts with wellhead protection areas, local governments shall adopt comprehensive plan provisions and land use regulations, consistent with all applicable statewide goals, that:

(a) Reduce the risk of contamination of groundwater, following the standards and requirements of OAR

Chapter 340, Division 40; and

(b) Implement wellhead protection plans certified by the Oregon Department of Environmental Quality (DEQ) under OAR 340-040-0180.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

#### 660-023-0150

##### Approved Oregon Recreation Trails

(1) For purposes of this rule, "recreation trail" means an Oregon Recreation Trail designated by rule adopted by the Oregon Parks and Recreation Commission (OPRC).

(2) Recreation trails are designated by OPRC in cooperation with local governments and private land owners. Local governments are not required to inventory recreation trails under OAR 660-023-0030. Instead, local governments shall designate all recreation trails designated by OPRC as significant Goal 5 resources. At each periodic review, local governments shall amend acknowledged plans to recognize any recreation trail designated by OPRC subsequent to acknowledgment or a previous periodic review.

(3) Local governments are not required to amend acknowledged plans or land use regulations in order to supplement OPRC protection of recreation trails. If a local government chooses to supplement OPRC protection, it shall follow the requirements of OAR 660-023-0040 and 660-023-0050.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

#### 660-023-0160

##### Natural Areas

(1) For purposes of this rule, "natural areas" are areas listed in the Oregon State Register of Natural Heritage Resources.

(2) At periodic review, local governments shall consider information about natural areas not addressed at acknowledgment or in previous periodic reviews. Local governments shall inventory such areas as significant and develop a program to achieve the goal following the standard Goal 5 process in OAR 660-023-0040 and 660-023-0050.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

**660-023-0170****Wilderness Areas**

- (1) For purposes of this rule, "wilderness areas" are those areas designated as wilderness by the federal government.
- (2) Local governments are not required to inventory wilderness areas using the procedures of OAR 660-023-0030, except that local governments shall list all federally designated wilderness areas as significant Goal 5 resources as provided under OAR 660-023-0030(5).
- (3) At periodic review, local governments shall amend acknowledged plans to recognize any wilderness areas designated after the last periodic review or acknowledgment.
- (4) A local government need not complete the Goal 5 process in OAR 660-023-0040 and 660-023-0050 for wilderness areas unless it chooses to provide additional protection for the wilderness area, such as the regulation of conflicting uses in an impact area adjacent to the wilderness area.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040 & ORS 197.225 - ORS 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96

**660-023-0180****Mineral and Aggregate Resources**

- (1) For purposes of this rule, the following definitions apply:
  - (a) "Aggregate resources" are naturally occurring concentrations of stone, rock, sand and gravel, decomposed granite, lime, pumice, cinders, and other naturally occurring solid materials used in road building.
  - (b) "Conflicting use" is a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site (as specified in sections 4(b) and (5) of this rule).
  - (c) "Existing site" is a significant aggregate site that is lawfully operating, or is included on an inventory in an acknowledged plan, on the applicable date of this rule.
  - (d) "Expansion area" is an aggregate mining area contiguous to an existing site.
  - (e) "Mining" is the extraction and processing of mineral or aggregate resources, in the manner provided under ORS 215.298(3).
  - (f) "Minimize a conflict" means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels) to "minimize a conflict" means to ensure conformance to the applicable standard.

(g) "Mining area" is the area of a site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas on a parcel where mining is not authorized.

(h) "Processing" means the activities described in ORS 517.750(11).

(i) "Protect" means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site and to limit or prohibit new conflicting uses within the impact area of the site.

(j) "Width of aggregate layer" means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and nonaggregate overburden.

(k) "Willamette Valley" means Benton, Clackamas, Columbia, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties and the portion of Lane County east of the summit of the Coast Range.

(2) Local governments are not required to amend acknowledged inventories or plans with regard to mineral and aggregate resources except in response to an application for a PAPA, or at periodic review as specified in OAR 660-023-0180(7). The requirements of this rule either modify, supplement, or supersede the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, as follows:

(a) A local government may inventory mineral and aggregate resources throughout its jurisdiction, or in a portion of its jurisdiction. When a local government conducts an inventory of mineral and aggregate sites in all or a portion of its jurisdiction, it shall follow the requirements of OAR 660-023-0030 as modified by subsection (b) of this section. When a local government is following the inventory process for a mineral or aggregate resource site filed under a PAPA, it shall follow only the applicable requirements of OAR 660-023-0030, except as provided in sections (3) and (6) of this rule;

(b) Local governments shall apply the criteria in section (3) of this rule rather than OAR 660-023-0030 (4) in determining whether an aggregate resource site is significant;

(c) Local governments shall follow the requirements of section (4) of this rule in deciding whether to authorize the mining of a significant mineral or aggregate resource site; and

(d) For significant mineral and aggregate sites where mining is allowed, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses.

(3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

(a) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley;

(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or

(c) The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan on the applicable date of this rule.

(d) Notwithstanding subsections (a) through (c) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996 had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:

(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or

(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule, unless the average width of the aggregate layer within the mining area exceeds:

(i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;

(ii) 25 feet in Polk, Yamhill, and Clackamas counties; or

(iii) 17 feet in Linn and Benton counties.

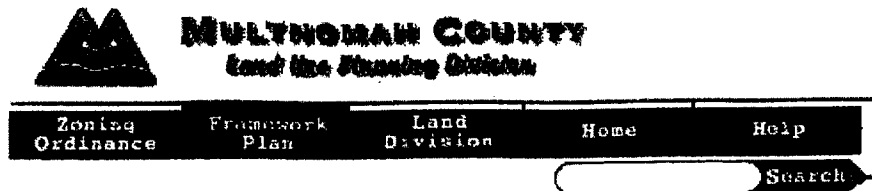
(4) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving a significant aggregate site, the process for this decision is set out in subsections (a) through (g) of this section. For a PAPA involving a significant aggregate site, a local government must complete the process within 180 days after receipt of a complete application that is consistent with section (6) of this rule, or by the earliest date after 180 days allowed by local charter. The process for reaching decisions about aggregate mining is as follows:

(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.

(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) t





NATURAL ENVIRONMENT POLICIES TOC • CFP INDEX

## **POLICY 16-B: Mineral And Aggregate Resources**

It is the County's policy to protect and ensure appropriate use of mineral and aggregate resources of the County, and minimize conflict between surface mining activities and surrounding land uses.

### **Strategies**

- A. The County shall protect significant gravel and mineral resources consistent with Statewide Planning Goal 5 and Oregon Administrative Rules Chapter 660, Division 16.
- B. As a part of the ongoing planning program the County will maintain an inventory of mineral and aggregate resource sites within the County. The comprehensive plan inventory is to include four classifications of sites:
  1. "Potential sites" are sites for which information about the location, quality, and quantity of a resource site is not adequate to allow a determination of significance (Goal 5 Process Flow Chart designation of "1B");
  2. "Not significant sites" are sites for which information about the location, quality, and quantity of a resource site shows that the site is not a significant resource (Goal 5 Process Flow Chart designation of "1A");
  3. "Protected sites" are significant resource sites which are identified through the Goal 5 process as resources that the County will protect from conflicting uses (Goal 5 Process Flow Chart designations "2A," "3A," and "3C"); and
  4. "Not protected sites" are significant resource sites for which the decision of the ESEE analysis is to not protect the resource from conflicting uses (Goal 5 Process Flow Chart designation of "3B").
- C. A resource site may include all or portions of a parcel, and may include contiguous parcels in different ownerships.
- D. For sites on the "potential sites" inventory, the County shall review available information about aggregate and mineral resources, and if the information on location, quantity, and quality is adequate, determine if the site is significant. Initiation of this process shall occur either:
  1. As part of the next scheduled periodic review; or
  2. When a record owner or the authorized agent of the record owner submits information concerning the significance of a resource site and applies for a comprehensive plan amendment.
- E. The County will judge the significance of mineral and aggregate resources on a case by case basis, under the standards and procedures in LCDC's Goal 5 interpretive rules.
- F. For each site determined to be significant, the County shall complete the remainder of the Goal 5 process of identifying conflicting uses, analyzing the Economic, Social, Environmental, and Energy (ESEE) consequences of the conflicting use(s), and designating a level of protection from conflicting uses. If the final decision concerning the site is to preserve fully or partially protect the resource from conflicting uses, the County shall zone the site and the designated ESEE impact area with the Protected Aggregate and Mineral Resources Overlay Zoning Subdistrict (PAM).
- G. Mining and the associated processing of aggregate and mineral materials, in excess of the limited exemptions in Subsection H below, may only be allowed at sites included on the "protected sites" inventory. Approval of a mining operation at a "protected site" shall be reviewed as a conditional use. The general conditional use provisions regarding time limits, conditions, restrictions, and approval criteria, (MCC .7110(C), .7110(E), .7115, .7120, .7122, and .7125, October, 1994), shall not apply.
- H. Exemptions
  1. The following activities are exempt from the approval requirements and development standards of this policy:
    - a. Mining auxiliary to forest practices.

- b. Lawful mining operating under a DOGAMI "Grant of Total Exemption" on (the effective date of the Ordinance) on property owned or controlled by the operator. Abandonment, restoration, or alteration of this use shall be in compliance with the non-conforming use provisions of MCC .8805 and .8810.
- 2. Mining less than 1,000 cubic yards of material in conjunction with mining an area of less than one acre is exempt from the approval requirements and development standards of this policy. However, the mining activity shall require approval of a Hillside and Erosion Control permit and any other permits as may be required in any overlay subdistrict.
- 3. Mining a quantity and area in excess of 2 above, but less than 5,000 cubic yards of material or disturbing less than one acre of land within a period of 12 consecutive months until mining affects five or more acres is exempt from the approval requirements and development standards of this policy which require review by and issuance of an operating permit from DOGAMI. However, mining at this level of activity shall:
  - a. Be on a "protected site" as determined by, and subject to restrictions warranted by, the Goal 5 process;
  - b. Be approved as a mining conditional use; and
  - c. Obtain approval of a Hillside and Erosion Control Permit in conjunction with the mining conditional use approval. The Hillside and Erosion Control permit shall be required in place of all references in the plan and code to obtaining a DOGAMI operating permit in recognition that this level of mining activity is exempted by DOGAMI rules for such a permit.
- I. To approve surface mining at a site zoned Exclusive Farm Use (EFU) the County shall find, as part of the conditional use approval criteria, that the proposed activity:
  - 1. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
  - 2. Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.
- J. To approve surface mining at a site zoned Commercial Forest Use (CFU), the County shall find, as part of the conditional use approval criteria, that:
  - 1. The proposed mining will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
  - 2. The proposed mining will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and
  - 3. A written statement recognizing the rights of adjacent and nearby property owners to conduct accepted forest practices has been recorded with the property deed in accordance with OAR 660-06-025 (1994).
- K. The County shall not independently apply the Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM) to land within another County, or within a city or its urban growth boundary. The County shall encourage protection of significant sites through cooperative agreements with another County or a city where the resource or its impact area extends across jurisdictional boundaries.
- L. The County shall require increased setbacks, insulation, screening, or similar measures as conditions of approval for any new conflicting use within an impact area surrounding an aggregate or mineral resource site when such measures are necessary to resolve conflicts identified in a site-specific Goal 5 analysis.
- M. The County shall impose conditions on surface mining when necessary to lessen conflicts identified as part of a site-specific Goal 5 analysis. Where such conditions conflict with criteria and standards in the Protected Aggregate and Mineral Resources Overlay, the conditions developed through the Goal 5 process shall control.
- N. Based upon the Goal 5 ESEE analysis and the existing base zoning district, the County shall determine the appropriate post-mining use of the site.
- O. The County recognizes the jurisdiction of the Department of Geology and Mineral Industries (DOGAMI) over mined land reclamation pursuant to ORS 517.750 to 517.900 (1994) and the rules adopted thereunder.
- P. Unless specifically determined on a case by case basis, it shall be the policy of the County, that DOGAMI delay its final decision on approval of a reclamation plan and issuance of an operating permit until the County decides all comprehensive plan amendments and/or conditional use approvals. It is also the policy of Multnomah County to participate in and
- Q. cooperate with DOGAMI in their review of a permit application to that agency.
- R. No surface mining or processing activity, as defined by the zoning ordinance, shall begin without land use approval from the County, and approval of a reclamation plan and issuance of an operating permit by DOGAMI and Department of Environmental Quality.
- S. When the aggregate or mineral site has been reclaimed, the County may rezone land to remove the Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM) without revising the ESEE Analysis for the site. Rezoning shall not relieve requirements on the part of the owner or operator to reclaim the site in accordance with ORS 517.750 through 517.900 and the rules adopted thereunder.

[Back to Top](#)



## COMMERCIAL FOREST USE (CFU-4) (MCC 35.2200)

### § 35.2215 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC 35.2220 through 35.2240 when found to comply with MCC 35.2245 through 35.2310.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

### § 35.2220 Allowed Uses

- (A) The following uses pursuant to the Forest Practices Act and Statewide Planning Goal 4:
- (1) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;
  - (2) Temporary on site structures which are auxiliary to and used during the term of a particular forest operation; or
  - (3) Physical alterations to the land auxiliary to forest practices including, but not limited to, those for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities;
- (B) A temporary portable facility for the primary processing of forest products;
- (C) Farm use, as defined in ORS 215.203;
- (D) Alteration, maintenance, or expansion of an existing lawfully established habitable dwelling subject to the following:
- (1) The dimensional standards of MCC 35.2260 are satisfied; and
  - (2) The development standards of MCC 35.2305(A)(5) and (B) are satisfied if the expansion exceeds 400 square feet of ground coverage.
- (E) Replacement of an existing lawfully established habitable dwelling on the same lot, subject to the following:
- (1) The replacement dwelling will be located within 200 feet of the existing dwelling; and
  - (2) The existing dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling; and
  - (3) The replacement dwelling shall satisfy the dimensional standards of MCC 35.2260 and the development standards of MCC 35.2305.
- (F) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources, including a public or private wildlife and fisheries resources conservation area;
- (G) An uninhabitable structure accessory to fish and wildlife enhancement;
- (H) A caretaker residence for a public park or a fish hatchery;

- (I) Local distribution lines (e.g., electric, telephone, natural gas, etc.) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups;
- (J) Climbing and passing lanes within the right of way existing as of July 1, 1987;
- (K) Reconstruction or modification of public roads and highways, not including the addition of vehicular travel lanes, where no removal or displacement of buildings will occur, or no new land parcels result;
- (L) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed;
- (M) Minor betterment of existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, within a right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways;
- (N) A lookout tower for forest fire protection;
- (O) A water intake facility, canal and distribution lines for farm irrigation and ponds;
- (P) A temporary forest labor camp;
- (Q) Exploration for mineral and aggregate resources as defined in ORS Chapter 517;
- (R) Exploration for geothermal resources;
- (S) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.
- (T) Type A home occupations pursuant to the definition and restrictions of MCC 35.0005 (H) (6) (a) and 35.2045. Home occupations as defined by MCC 35.0005 (H) (6) (a) do not allow the level of activity defined in ORS 215.448.
- (U) Other structures or uses determined by the Planning Director to be customarily accessory or incidental to any use permitted or approved in this district.
- (V) Actions taken in response to an emergency/disaster event as defined in MCC 35.0005 pursuant to the provisions of MCC 35.0535.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### § 35.2225 Review Uses

- (A) Replacement of an existing lawfully established habitable dwelling on the same lot more than 200 feet from the existing dwelling, subject to the following:
  - (1) The existing dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling; and
  - (2) The location of the replacement dwelling shall satisfy the dimensional standards of MCC 35.2260 and the development standards of MCC 35.2305.

- (B) Restoration or replacement of a lawfully established habitable dwelling on the same lot when the restoration or replacement is made necessary by fire, other casualty or natural disaster, subject to the following:
  - (1) Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster; and
  - (2) A replacement dwelling located more than 200 feet from the prior dwelling location shall satisfy the dimensional standards of MCC 35.2260 and the development standards of MCC 35.2305.
- (C) A mobile home, in conjunction with an existing dwelling, upon obtaining an annual Temporary Health Hardship Permit pursuant to MCC 35.0515 and 35.2245.
- (D) An asphalt and concrete batch plant accessory to a specific highway project pursuant to 35.2245.
- (E) A mobile home for a period not to exceed two years when in conjunction with the construction or reconstruction of a residence allowed under MCC 35.2220(D) or (E), 35.2225(B), or 35.2230(A), (B) or (C) provided that the mobile home is removed, demolished or converted to an allowable nonresidential use which satisfies all applicable dimensional and locational standards within three months of the completion of the dwelling.
- (F) Signs, pursuant to the provisions of MCC 35.7400 through 35.7505.
- (G) Off-street parking and loading as required by MCC 35.4100 through 35.4220.
- (H) Lot Line Adjustment pursuant to the provisions of MCC 35.2270.
- (I) Placement of structures necessary for continued public safety, or the protection of essential public services or protection of private or public existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals for such structures shall be submitted within 12 months following an emergency/disaster event. Applicants are responsible for all other applicable local, state and federal permitting requirements.
- (J) Wireless communications facilities when found to satisfy the requirements of MCC 35.6175 through 35.6188.

(Ord. 982, Amended, 05/16/2002; Ord. 958, Amended, 02/15/2001; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### § 35.2230 Conditional Uses

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

- (A) A Large Acreage Dwelling pursuant to the provisions of MCC 35.2235, 35.2245(B) and 35.2305.
- (B) A Template Dwelling pursuant to the provisions of MCC 35.2240(A), 35.2245(B) and 35.2305.
- (C) A Heritage Tract Dwelling pursuant to the provisions of MCC 35.2240(B), 35.2245(B) and 35.2305.
- (D) The following Community Service Uses pursuant to the provisions of MCC 35.2245, 35.2305, 35.6000 through 35.6010, and 35.6100 through 35.6230.

- (1) Campground.
- (2) Cemetery.
- (3) Fire station for rural and forest fire protection.
- (4) Aid to navigation and aviation.
- (5) Water intake facility, related treatment facility, pumping station, and distribution line.
- (6) Reservoir and water impoundment.
- (7) New distribution line (e.g., gas, oil, geothermal) with a right-of-way 50 feet or less in width or new electric transmission line with a right-of-way width of up to 100 feet as specified in ORS 772.210.
- (8) Forest management research and experimentation facility as defined by ORS 526.215.
- (9) Park, including a public or private wildlife and fisheries resources conservation area with accessory structures for educational or instructional use.
- (10) Utility facility for the purpose of generating power provided the facility not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660, Division 4.
- (11) Radio and television transmission towers subject to the definitions, restrictions and standards CFU-3 and CFU-4: 35.6015(A)(15) and 35.6100 through 35.6130, and wireless communications facilities when found to satisfy the requirements of 35.6175 through 35.6188.
- (12) Refuse dump or sanitary landfill for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.
- (13) Regional Sanitary Landfill for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation subject to the definitions, restrictions and standards in MCC 35.6200 through 35.6230.
- (14) Private hunting and fishing operation without any lodging accommodations.
- (15) Private seasonal accommodations for a fee hunting operation or fishing, provided:
  - (a) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
  - (b) Only minor incidental and accessory retail sales are permitted;
  - (c) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons or fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission; and
  - (d) Accommodations for fishing must be located within 1/4 mile of fish bearing Class I waters.

- (16) Mining, processing and production of geothermal resources.
- (E) The following uses pursuant to the provisions of MCC 35.2245, 35.2305, 35.6300 through 35.6315, 35.6325 through 35.6340, and 35.6500 through 35.6535.
  - (1) Mining and processing of aggregate and other mineral or subsurface resources as defined in ORS Chapter 517;
  - (2) Permanent facility for the primary processing of forest products;
  - (3) Permanent logging equipment repair and storage;
  - (4) Log scaling and weigh stations;
  - (5) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels;
  - (6) 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;
  - (7) 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; and
  - (8) Expansion of aircraft landing areas auxiliary to forestry practices, notwithstanding the provisions of MCC 35.4010 through 35.4040.
- (F) Type B home occupation pursuant to MCC 35.6650 through 35.6660 and provided:
  - (1) That no sale of merchandise is made from the premise; and
  - (2) That noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the activity is not detectable at any property line.
- (G) Lots of Exception pursuant to the provisions of MCC 35.2265.

(Ord. 958, Amended, 02/15/2001; Ord. 953 §2, Reorg&Renum, 11/30/2000)

**EXCLUSIVE FARM USE (EFU) (MCC 35.2600)**

§ 35.2620 Allowed Uses

- (A) Farm use, as defined in ORS 215.203.
- (B) Buildings other than dwellings customarily provided in conjunction with farm use.
- (C) The propagation or harvesting of forest products.
- (D) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

- (E) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be the basis for an exception under ORS 197.732 (1)(a) or (b).
- (F) Climbing and passing lanes within the right of way existing as of July 1, 1987.
- (G) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and 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 will occur, or no new land parcels result.
- (H) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- (I) Minor betterment of 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 utilized to support the operation and maintenance of public roads and highways.
- (J) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a historic property inventory as defined in ORS 358.480 and listed on the National Register of Historic Places.
- (K) Creation of, restoration of or enhancement of wetlands.
- (L) Alteration, restoration or replacement of a lawfully established habitable dwelling. In the case of a replacement dwelling, the existing dwelling must be removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling.
- (M) Replacement of an existing lawfully established single family dwelling on the same lot not more than 200 feet from the original building site when the dwelling was unintentionally destroyed by fire, other casualty or natural disaster. The dwelling may be reestablished only to its previous nature and extent, and the reestablishment shall meet all other building, plumbing, sanitation and other codes, ordinances and permit requirements. A building permit must be obtained within one year from the date of the event that destroyed the dwelling.
- (N) Public or private schools, including all buildings essential to the operation of a school wholly within an EFU district may be maintained, enhanced or expanded:
  - (1) Except that no new use may be authorized within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4; and
  - (2) No new use may be authorized on high value farmland; and
  - (3) Must satisfy the requirements of MCC 35.4100 through MCC 35.4220, MCC 35.6020(A), MCC 35.7000 through MCC 35.7070 and MCC 35.7450.
  - (4) The maintenance, enhancement or expansion shall not adversely impact the right to farm on surrounding EFU lands.
- (O) Churches and cemeteries in conjunction with churches wholly within an EFU district may be maintained, enhanced or expanded:
  - (1) Except that no new use may be authorized within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4; and
  - (2) No new use may be authorized on high value farmland; and

- (3) Must satisfy the requirements of MCC 35.4100 through MCC 35.4220, MCC 35.6020(A), MCC 35.7000 through MCC 35.7070 and MCC 35.7450.
- (4) The maintenance, enhancement or expansion shall not adversely impact the right to farm on surrounding EFU lands.
- (P) Structures such as garages, carports, studios, pergolas, private workshops, barns, loafing sheds, storage buildings, greenhouses or similar structures, whether attached or detached, when in accordance with the yard requirements of this district;
- (Q) Structures or fenced runs for the shelter or confinement of poultry or livestock;
- (R) Type A home occupation pursuant to the definition and restrictions of MCC 35.0005(H)(6)(a). Home occupations as defined by MCC 35.0005(H)(6)(a) do not allow the level of activity defined in ORS 215.448.
- (S) Actions taken in response to an emergency/disaster event as defined in MCC 35.0005 pursuant to the provisions of MCC 35.0535.
- (T) Wildlife Habitat Conservation and Management Plan pursuant to ORS 215.800 to 215.802 and ORS 215.806 to 215.808. (Note: A proposed single-family residential dwelling in conjunction with a wildlife habitat conservation and management plan is not authorized by this section.)

(Ord. 982, Amended, 05/16/2002; Ord. 977, Amended, 02/07/2002, eff. 3/9/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### § 35.2625 Review Uses

- (A) Utility facilities necessary for public service, 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 as follows:
  - (1) Radio and television towers 200 feet and under when found to satisfy the requirements of ORS 215.275 "Utility facilities necessary for public service; criteria; mitigating impact of facility" and MCC 35.6100 through 35.6130.
  - (2) Wireless communications facilities 200 feet and under when found to satisfy the requirements of MCC 35.6175 through 35.6188.
  - (3) All other utility facilities and transmission towers 200 feet and under in height subject to the following.
    - (a) The facility satisfies the requirements of ORS 215.275, "Utility facilities necessary for public service; criteria; mitigating impact of facility"; and
    - (b) The facility satisfies the requirements of MCC 35.4100 through 35.4220; 35.6020(A); 35.7000 through 35.7070 and 35.7450.
- (B) Deleted 2001, Ord. 958 § 1.
- (C) A farm help dwelling for a relative on real property used for farm use if the dwelling is:
  - (1) Located on the same lot or parcel as the dwelling of the farm operator; and is

- (2) Occupied by a grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, and whose assistance in the management of the farm use is or will be required by the farm operator.
- (D) A dwelling, including a mobile or modular home, customarily provided in conjunction with a farm use:
- (1) 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) (i.e. seasonal farmworker housing), there is no other dwelling on the subject tract; 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;
    - (d) In determining the gross income required by subsection (a) of this subsection, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
  - (2) On land not identified as high-value farmland a dwelling may be considered customarily provided in conjunction with farm use if:
    - (a) The parcel on which the dwelling will be located is at least 160 acres; and
    - (b) The subject tract is currently employed for farm use, as defined in ORS 215.203; and
    - (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 permitted in ORS 215.283 (1) (p) (i.e. seasonal farm worker housing), there is no other dwelling on the subject tract; or
  - (3) 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 at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract [the median size of commercial farm and ranch tracts shall be determined pursuant to OAR 660-33-135(3)]; and
    - (b) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in subsection (a) of this section; and
    - (c) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in subsection (b) of this section; and
    - (d) The subject lot or parcel on which the dwelling is proposed is not less than ten acres; and



- (e) Except as permitted in ORS 215.283 (1) (p) (i.e. seasonal farmworker housing), there is no other dwelling on the subject tract; and
  - (f) 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) 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) (i.e. seasonal farmworker housing), there is no other dwelling on the subject tract; 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;
  - (d) In determining the gross income required by subsection (a) of this subsection, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
- (E) An accessory farm help dwelling, including a mobile or modular home customarily provided in conjunction with farm use if:
- (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 assistance in the management of the farm use is or will be required by the farm operator; and
  - (2) The accessory help dwelling shall be located:
    - (a) On the same lot or parcel as the dwelling of the principal farm dwelling; or
    - (b) On the same tract as the principal 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 farm dwelling is not located, when:
      - 1. The accessory farm dwelling is 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.
    - (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

- (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) 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 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 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 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.

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 35.2625(D), a parcel may be created consistent with the minimum parcel size requirements in MCC 35.2660.

- (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 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
  - (2) The tract on which the dwelling will be sited does not include a dwelling; and
  - (3) The proposed dwelling is not prohibited by, and will comply with, the requirements of the Comprehensive Plan, land use regulations, and other provisions of law; and
  - (4) The lot or parcel on which the dwelling will be sited does not lie within an area designated by the Comprehensive Plan as a Big Game habitat area; and

- (5) The lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single parcel when the dwelling is allowed; and
- (6) The County Assessor shall be notified when the permit is approved.
- (7) Approval of the dwelling would not:
  - (a) Exceed the facilities and service capabilities of the area; and
  - (b) Materially alter the stability of the overall land use pattern of the area; and
  - (c) Create conditions or circumstances that are found to be contrary to the purpose or intent of the Comprehensive Plan or MCC Chapter 35.
- (8) For purposes of this subsection, and of dwellings considered under MCC 35.2630(O) and (P), 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.
  - (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.
- (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.
- (H) Facilities wholly within an EFU district used for the breeding, kenneling and training of greyhounds for racing may be maintained, enhanced or expanded except no new facilities may be authorized on high value farmland and provided that the following requirements are satisfied:
  - (1) MCC 35.6420 (A) and (B); and
  - (2) MCC 35.7450; and
  - (3) MCC 35.7000 through MCC 35.7070; and
  - (4) Minimum Dimensional standards:
    - (a) Area: Two acres.

- (b) Width: Two hundred fifty feet.
- (c) Depth: Two hundred fifty feet.
- (d) Setback from all lot lines: One hundred feet.

(I) Farm Stands when found that:

- (1) The structures are designed and used for the sale of farm crops and livestock grown on farms in the local agricultural area, including the sale of retail incidental items, if the sales of the incidental items make up no more than 25 percent of the total sales of the farm stand; and
- (2) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(J) On-site filming and activities accessory to on-site filming if the activity would involve no more than 45 days on any site within any one-year period or does not involve erection of sets that would remain in place for longer than any 45-day period. On-site filming and activities accessory to on-site filming may be considered to 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.

"On-site filming and activities accessory to on-site filming" includes: filming and site preparation, construction of sets, staging, makeup and support services customarily provided for on-site filming and 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. On-site filming and activities accessory to on-site filming" does not include: facilities for marketing, editing and other such activities that are allowed only as a home occupation or construction of new structures that requires a building permit.

- (K) A winery, as described in ORS 215.452.
- (L) Signs, pursuant to the provisions of MCC 35.7400 through 35.7505.
- (M) Off-street parking and loading pursuant to MCC 35.4100 through 35.4220.
- (N) Lot Line Adjustment pursuant to the provisions of MCC 35.2670.
- (O) Placement of Structures necessary for continued public safety, or the protection of essential public services or protection of private or public existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals for such structures shall be submitted within 12 months following an emergency/disaster event. Applicants are responsible for all other applicable local, state and federal permitting requirements.

(Ord. 982, Amended, 05/16/2002; Ord. 958, Amended, 02/15/2001; Ord. 953 §2, Reorg&Renum, 11/30/2000)

§ 35.2630 Conditional Uses

The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC 35.6300 to 35.6335:

- (A) Commercial activities that are in conjunction with a farm use.
- (B) Operations conducted for:
  - (1) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under this section; and
  - (2) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
- (C) Residential home as defined in ORS 197.660, in existing dwellings.
- (D) Private parks, playgrounds, hunting and fishing preserves, campgrounds and, parks, playgrounds or community centers owned and operated by a nonprofit community organization. Existing facilities wholly within an EFU district may be maintained, enhanced or expanded. New facilities may be allowed but not on high value lands. Campgrounds authorized by this provision shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.
- (E) Parks, playgrounds or community centers owned and operated by a governmental agency.
- (F) Type B home occupation as provided for in MCC 35.6650 and provided:
  - (1) That no sale of merchandise is made from the premise; and
  - (2) That noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the activity is not detectable at any property line.

A home occupation located on high-value farmland may employ only residents of the home.

- (G) A facility for the primary processing of forest products, provided that such facility and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature.

The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market.

Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

- (H) 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. When the hardships end, the Planning Director shall require the removal of such manufactured homes. 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.
- (I) Transmission towers over 200 feet in height, except as follows: .

- (1) Radio and television towers if found to satisfy the requirements of MCC 35.6100 through 35.6130; and
- (2) Wireless communications facilities 200 feet and over are not allowed.
- (J) Dog kennels not described in section MCC 35.2625 (H). 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.
- (K) The propagation, cultivation, maintenance and harvesting of aquatic species.
- (L) 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.
- (M) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
- (N) Parking of seven or fewer log trucks.
- (O) 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 35.6315 Conditional Use Approval Criteria does not apply)

- (1) The lot or parcel meets the requirements of MCC 35.2625 (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; and
- (3) The dwelling 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
- (4) The dwelling will not materially alter the stability of the overall land use pattern of the area.
- (P) 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: 35.6315 Conditional Use Approval Criteria does not apply)

- (1) The lot or parcel meets the requirements of 35.2625 (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 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.

(Ord. 982, Amended, 05/16/2002; Ord. 958, Amended, 02/15/2001; Ord. 953 §2, Reorg&Renum, 11/30/2000)

## **MULTIPLE USE AGRICULTURE (MUA-20) (MCC 35.2800)**

### **§ 35.2820 Allowed Uses**

- (A) Farm uses, as defined in ORS 215.203 (2) (a) for the following purposes only:
  - (1) Raising and harvesting of crops;
  - (2) Raising of livestock and honeybees; or,
  - (3) Any other agricultural or horticultural purpose or animal husbandry purpose or combination thereof, except as provided in MCC 35.2830 (B);
- (B) The propagation or harvesting of forest products;
- (C) Residential use consisting of a single family dwelling constructed on a Lot of Record;
- (D) Public and private conservation areas and structures for the protection of water, soil, open space, forest and wildlife resources;
- (E) Type A home occupations pursuant to the definition and restrictions of MCC 35.0005(H)(6)(a);
- (F) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district;
- (G) Family Day Care;
- (H) Actions taken in response to an emergency/disaster event as defined in MCC 35.0005 pursuant to the provisions of MCC 35.0535.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

### **§ 35.2825 Review Uses**

- (A) Residential use, consisting of a single family dwelling constructed off-site, including a mobile or modular home placed on a Lot of Record, subject to the following conditions:
  - (1) Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200, relating to mobile homes.
  - (2) The dwelling shall be attached to a foundation for which a building permit has been obtained.
  - (3) The dwelling shall have a minimum floor area of 600 square feet.

(B) Temporary uses when approved pursuant to MCC 35.0510 and 35.0515.

(C) Wholesale or retail sales of farm or forest products raised or grown on the premises or in the immediate vicinity, subject to the following condition:

The location and design of any building, stand or sign in conjunction with wholesale or retail sales shall be subject to approval of the Planning Director on a finding that the location and design are compatible with the character of the area; provided that the decision of the Planning Director may be appealed to the approval authority, pursuant to MCC 35.0785 and 35.0790.

(D) Signs, pursuant to the provisions of MCC 35.7400 through 35.7505.

(E) Off-street parking and loading.

(F) Property Line Adjustment pursuant to the provisions of MCC 35.2860.

(G) Placement of structures necessary for continued public safety, or the protection of essential public services or protection of private or public existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals for such structures shall be submitted within 12 months following an emergency/disaster event. Applicants are responsible for all other applicable local, state and federal permitting requirements.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### § 35.2830 Conditional Uses

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

(A) Community Service Uses pursuant to the provisions of MCC 35.6000 through 35.6230;

(B) The following Conditional Uses pursuant to the provisions of MCC 35.6300 through 35.6660:

- (1) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005; or exploration, mining and processing of aggregate and other mineral or subsurface resources;
- (2) Commercial processing of agricultural products primarily raised or grown in the region;
- (3) Raising any type of fowl or processing the by-products thereof for sale at wholesale or retail;
- (4) Feed lots;
- (5) Raising of four or more swine over four months of age;
- (6) Raising of fur bearing animals for sale at wholesale or retail;
- (7) Commercial dog kennels; and
- (8) Commercial processing of forest products primarily grown in the region.

(C) The following Conditional Uses may be permitted on lands not predominantly of Agricultural Capability Class I, II, or III soils:



- (1) Planned Development for single family residences, as provided in MCC 35.4300 through 35.4360 and the applicable current “planned unit developments” standards within the Oregon Administrative Rules Chapter 660, Division 004;
- (2) Pursuant to the provisions of MCC 35.6300 through 35.6350:
  - (a) Cottage industries,
  - (b) Limited rural service commercial uses such as local stores, shops, offices, repair services and similar uses, and
  - (c) Tourist commercial uses such as restaurants, gas stations, motels, guest ranches and similar uses.
- (D) Type B home occupation as provided for in MCC 35.6650 through 35.6660.
- (E) Large Fills as provided for in MCC 35.6700 through 35.6720.
- (F) Lots of Exception pursuant to the provisions of MCC 35.2860.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### **RURAL RESIDENTIAL (RR) (MCC 35.3100)**

##### **§ 35.3120 Allowed Uses**

- (A) Farm use, as defined in ORS 215.203 (2) (a) for the following purposes only:
  - (1) Raising and harvesting of crops;
  - (2) Raising of livestock and honeybees; or
  - (3) Any other agricultural or horticultural purpose or animal husbandry purpose or combination thereof, except as provided in MCC 35.3130 (B).
- (B) The propagation or harvesting of forest products;
- (C) Residential use consisting of a single family dwelling constructed on a Lot of Record;
- (D) Public and private conservation areas and structures for the protection of water, soil, open space, forest and wildlife resources;
- (E) Type A home occupations pursuant to the definition and restrictions of MCC 35.0005(H)(6)(a);
- (F) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district;
- (G) Family Day Care;
- (H) Actions taken in response to an emergency/disaster event as defined in MCC 35.0005 pursuant to the provisions of MCC 35.0535.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

##### **§ 35.3125 Review Uses**

- (A) Residential use, consisting of a single family dwelling constructed off-site, including a mobile or modular home placed on a Lot of Record, subject to the following conditions:
  - (1) Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200, relating to mobile homes.
  - (2) The dwelling shall be attached to a foundation for which a building permit has been obtained.
  - (3) The dwelling shall have a minimum floor area of 600 square feet.
- (B) Temporary uses when approved pursuant to MCC 35.0510 and 35.0515.
- (C) Wholesale or retail sales, limited to those products raised or grown on the premises, subject to the following condition:
 

The location and design of any building, stand or sign in conjunction with wholesale or retail sales shall be subject to approval of the Planning Director on a finding that the location and design are compatible with the character of the area; provided that the decision of the Director may be appealed to the Hearings Officer pursuant to MCC 35.0785 and 35.0790.
- (D) Signs, pursuant to the provisions of MCC 35.7400 through 35.7505.
- (E) Off-street parking and loading.
- (F) Property Line Adjustment pursuant to the provisions of MCC 35.3160.
- (G) Placement of Structures necessary for continued public safety, or the protection of essential public services or protection of private or public existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals for such structures shall be submitted within 12 months following an emergency/disaster event. Applicants are responsible for all other applicable local, state and federal permitting requirements.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### § 35.3130 Conditional Uses

The following uses may be permitted when found by the Hearings Officer to satisfy the applicable Ordinance standards:

- (A) Community Service Uses under the provisions of MCC 35.6000 through 35.6230;
- (B) The following Conditional Uses under the provisions of MCC 35.6300 through 35.6660:
  - (1) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral or subsurface resources;
  - (2) Commercial processing of agricultural products, primarily raised or grown in the region;
  - (3) Raising of any type of fowl, or processing the by-products thereof, for sale at wholesale or retail;
  - (4) Feed lots;

- (5) Raising of four or more swine more than four months of age;
  - (6) Raising of fur-bearing animals for sale at wholesale or retail;
  - (7) Commercial dog kennels;
  - (8) Planned Development for single family residences as provided in MCC 35.4300 through 35.44360 and the applicable current "planned unit developments" standards within the Oregon Administrative Rules Chapter 660, Division 004;
  - (9) Cottage industries, under the provisions of MCC 35.6300 through 35.6350.
  - (10) Limited rural service commercial uses, such as local stores, shops, offices, repair services and similar uses.
- (C) Type B home occupation as provided for in MCC 35.6650 through 35.6660.
  - (D) Large Fills as provided for in MCC 35.6700 through 35.6720.
  - (E) Lots of Exception pursuant to the provisions of MCC 35.3160.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### **RURAL CENTER (RC) (MCC § 35.3300)**

##### **§ 35.3320 Allowed Uses**

- (A) Farm use, as defined in ORS 215.203(2)(a), for the following purposes only:
  - (1) Raising and harvesting of crops;
  - (2) Raising of livestock and honeybees; or
  - (3) Any other agricultural or horticultural purpose or animal husbandry purpose or combination thereof, except as provided in MCC 35.3330. This subsection does not permit the raising of fowl or fur-bearing animals for sale, the keeping of swine, or a feed lot.
- (B) The propagation or harvesting of forest products.
- (C) Residential use consisting of a single family dwelling constructed on a Lot of Record.
- (D) Public and private conservation areas and structures for the protection of water, soil, open space, forest and wildlife resources.
- (E) Type A home occupations pursuant to the definition and restrictions of MCC 35.0005(H)(6)(a).
- (F) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district.
- (G) Family Day Care.
- (H) Actions taken in response to an emergency/disaster event as defined in MCC 35.0005 pursuant to the provisions of MCC 35.0535.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

§ 35.3325 Review Uses

- (A) Residential use, consisting of a single family dwelling constructed off-site, including a mobile or modular home placed on a Lot of Record, subject to the following conditions:
  - (1) Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200, relating to mobile homes.
  - (2) The dwelling shall be attached to a foundation for which a building permit has been obtained.
  - (3) The dwelling shall have a minimum floor area of 600 square feet.
- (B) Temporary uses when approved pursuant to MCC 35.0510 and 35.0515.
- (C) Wholesale or retails sales, limited to those products raised or grown on the premises, subject to the following condition:

The location and design of any building, stand, or sign in conjunction with wholesale or retail sales shall be subject to approval of the Planning Director on a finding that the location and design are compatible with the character of the area; provided that the decision of the Planning Director may be appealed to the approval authority pursuant to MCC 35.0785 and 35.0790.
- (D) Signs pursuant to the provisions of MCC 35.7400 through 35.7505;
- (E) Off-street parking and loading;
- (F) Property Line Adjustment pursuant to the provisions of MCC 35.3360.
- (G) Placement of Structures necessary for continued public safety, or the protection of essential public services or protection of private or public existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals for such structures shall be submitted within 12 months following an emergency/disaster event. Applicants are responsible for all other applicable local, state and federal permitting requirements.

(Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

§ 35.3330 Conditional Uses

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

- (A) Community Service Uses pursuant to the provisions of MCC 35.6000 through 35.6230.
- (B) The following Conditional Uses pursuant to the provisions of MCC 35.6300 through 35.6660:
  - (1) Limited rural service commercial uses such as local stores, shops, offices, repair shops, and similar uses;
  - (2) Tourist commercial uses such as restaurants, taverns, gas stations, motels, guest ranches, and similar uses;
  - (3) The following Light Manufacturing Uses conducted within an enclosed building which require the daily employment of twenty or fewer persons;

- (a) The manufacture, compounding, processing, packaging, treatment, storage or wholesale distribution of such products as bakery goods, fruits, vegetables, sea foods, dairy products, candy, confections, beverages including brewing and bottling, miscellaneous food products, ice and cold storage plant, drugs, pharmaceuticals, perfumes, toilet soaps, toiletries, barber and beauty supplies, and similar items, but not sauerkraut, vinegar or pickles manufacture;
- (b) The manufacture, compounding, assembling, treatment, storage or wholesale distribution of articles or merchandise from previously prepared materials such as bone, cellophane, canvas, cloth, cork, feathers, felt, fur, glass, hair, foam, lacquer, leather (but not tanning), paper or paperboard, plastics, precious or semi-precious metals or stones, shell, textiles, tobacco, wood (except as provided in the GM and HM districts), yarns and paints;
- (c) The manufacture, assembly, packaging, repair, storage or wholesale distribution of articles such as electrical appliances, lighting and communication equipment, electronic, radio or television equipment, parts or accessories, professional, scientific, optical, photographic or controlling instruments, amusement devices, small parts assembly, jewelry, musical instruments, toys, sporting goods, novelties, rubber or metal stamps;
- (d) The manufacture, finishing, refinishing, repair, storage or wholesale distribution of furniture, office or store fixtures, small boats, upholstery, cabinets, office, computing or accounting machines, electric and neon signs, billboards and other signs;
- (e) Business, professional, executive, administrative, wholesale, contractor or similar office, clinic, service or studio, trade, business or commercial school, research, experimental or testing laboratory;
- (f) Printing, publishing, bookbinding, graphic or photographic reproduction, blueprinting, or photo processing;
- (g) Building, building maintenance, plumbing, electrical, heating, roofing, glass, landscaping, painting or similar contractor's office, shop, warehouse, equipment sales or maintenance;
- (h) Retail or wholesale lumber, building materials, garden supplies sales and tools, or small equipment sales, rental, repair or servicing;
- (i) Laundry for carpets, uniforms, linens, rags, rugs and similar items, dyeing plant, dry cleaning not using explosive or inflammable materials;
- (j) Automobile, light truck, motorcycle and recreational vehicle repair or maintenance, body and fender work, painting, parts and glass replacement, upholstery, engine, radiator or battery rebuilding, tire recapping, commercial, industrial or fleet vehicle parking and auto detailing;
- (k) Metal or sheet metal shop, ornamental iron works, welding, blacksmithing, electroplating, tool and hardware manufacture, machine shop not using a drop hammer or large capacity punch press;
- (l) Warehouse, furniture and household goods storage, moving equipment rental, distribution plant, parcel delivery, wholesaling of durable and non-durable goods, light and heavy equipment sales, rental or repair, fuel and ice distribution;
- (m) Manufacture of non-structural clay products, ornamental clay, concrete, plaster or plastics casting, stone and purchased-glass products cutting, polishing or installation; and

- (n) Collection, recycling, sorting, baling or processing of previously used materials such as rags, paper, metals, glass or plastics;
  - (4) Commercial processing of agricultural or forestry products primarily grown in the vicinity.
  - (C) Planned Development pursuant to the provisions of MCC 35.4300 through 35.4360. If the property is outside of an “acknowledged unincorporated community”, then the applicable current “planned unit developments” standards within the Oregon Administrative Rules Chapter 660, Division 004 shall also be satisfied.
  - (D) Existing light industrial uses permitted by MCC 35.3330 (B) (3) may be expanded up to a daily total of 40 employees, based on findings that:
    - (1) The proposed expansion is a result of normal growth of the existing use and not required as a result of diversification of the business;
    - (2) The use provides a public benefit to the rural center by employing primarily persons who reside within the rural center or surrounding rural area, and this same employment pattern will continue with the proposed expansion;
    - (3) The proposed expansion satisfies the applicable elements of Comprehensive Framework Plan Policies:
      - (a) No. 20 – Arrangement of Land Uses;
      - (b) No.30 – Industrial Location (Isolated Light Industrial);
      - (c) No. 36 – Transportation System Development Requirements;
      - (d) No. 37 – Utilities; and
      - (e) No. 38 – Facilities.
    - (4) The proposed expansion satisfies the Design Review provisions of MCC 35.7000 through 35.7070.
  - (E) Type B home occupation as provided for in MCC 35.6650.
  - (F) Large Fills as provided for in MCC 35.6700. through 35.6720.
  - (G) Lots of Exception pursuant to the provisions of MCC 35.3360.
- (Ord. 982, Amended, 05/16/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

**§ 35.5700\*      PROTECTED AGGREGATE AND MINERAL SITES PAM**

**§ 35.5700-      Purposes**

The purposes of the Protected Aggregate and Mineral Resources Overlay Subdistrict are:

(A) To provide a mechanism to identify and, where appropriate, protect significant aggregate and mineral resource sites;

(B) To allow surface mining subject to uniform operating standards; and

(C) To regulate conflicts with surface mining activities.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

**§ 35.5705      Area Affected**

This subsection shall apply to those lands designated PAM on the Multnomah County Zoning Map. On the Zoning Map shall also be a reference to the relevant site-specific Comprehensive Plan documents.

Exemption activities as described in MCC 35.5710 (A) and (B) are allowed in all districts, not only those designated PAM.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

**§ 35.5710      Exemptions**

(A) The following activities are exempt from the requirements of MCC 35.5700 through 35.5745 and 35.6500 through 35.6535. Operators or land owners have the burden of qualifying for any exemption.

(1) Mining on forest lands auxiliary to forestry operations occurring in compliance with the Forest Practices Act as administered by the Oregon Department of Forestry.

(2) Lawful mining operating under a DOGAMI "Grant of Total Exemption" on December 3, 1994 on property owned or controlled by the operator. Abandonment, restoration, or alteration of this use shall be in compliance with the non-conforming use provisions of MCC 35.7200 through 35.7215.

(B) Mining less than 1,000 cubic yards of material in conjunction with mining an area of less than one acre is exempt from the requirements of MCC 35.5700 through 35.5745 and 35.6500 through 35.6535, but shall require the approval of a Hillside and Erosion Control Permit and any other permits as may be required in any overlay subdistrict.

(C) Mining a quantity in excess of (B), but mining less than 5,000 cubic yards of material or disturbing less than one acre of land within a period of 12 consecutive months until mining

affects five or more acres is exempt from the requirement in MCC 35.6520 and 35.6525 to obtain a DOGAMI operating permit. However, mining at this level of activity shall:

(1) Be on a "protected site" as determined by, and subject to restrictions warranted by, the Goal 5 process;

(2) Be approved as a mining conditional use pursuant to the provisions and requirements of MCC 35.6500 through 35.6535; and

(3) Obtain approval of a Hillside and Erosion Control Permit in conjunction with the mining conditional use approval. The Hillside and Erosion Control permit shall be required in place of all references in the plan and MCC Chapter 35 to obtaining a DOGAMI operating permit in recognition that this level of mining activity is exempted by DOGAMI rules for such a permit.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

### **§ 35.5715      Definitions**

As used in this subdistrict and MCC 35.6500 through 35.6535, unless otherwise noted, the following words and their derivations shall have the following meanings:

(A) *Conflicting Use* – A use authorized in the underlying zone which, if allowed, could adversely affect operations at a protected aggregate and mineral resource site. As used in this subsection, a *conflicting use* is also another inventoried significant Goal 5 resource located on or adjacent to a protected aggregate or mineral site if that resource could force a change in mining or processing at the site.

(B) *Dust Sensitive Use* – A *conflicting use* which is primarily used for habitation. Residential structures, churches, hospitals, schools, public libraries, and campgrounds are considered dust sensitive uses during their period of use. Forest uses and farm uses are not *dust sensitive uses* unless determined through the *Goal 5 process*.

(C) *ESEE Analysis* – The analysis of Economic, Social, Environmental and Energy consequences of allowing mining at a *significant site*, and allowing *conflicting uses* to displace mining at a *significant site*. The *ESEE analysis* is the basis for determining the level of protection to be given the resource.

(D) *Extraction Area* – The area of a *protected* aggregate and mineral resource site in which mining and associated processing is permitted.

(E) *Goal 5 Process* – The planning process required by Oregon Administrative Rules Chapter 660, Division 16. The *Goal 5 process* involves identifying resource sites, determining their significance, identifying conflicting uses, analyzing the economic, social, environmental and energy consequences of *conflicting uses*, determining the level of protection given to a resource site, and implementing a program to protect *significant sites*.

(F) *Impact Area* – The area where uses may occur that could adversely affect the resource site or be adversely affected by use of the resource site.



(G) *Mining* – The excavation of sand, aggregate (gravel), clay, rock, or other similar surface or subsurface resources. *Mining* does not include:

- (1) Excavations conducted by a landowner or tenant on the landowner or tenant's property for the primary purpose of reconstructing or maintaining access roads,
- (2) Excavation or grading conducted in the process of farm or cemetery operations,
- (3) Excavation or grading conducted within a road right-of-way or other easement for the primary purpose of road construction, reconstruction or maintenance, or
- (4) Removal, for compensation, of materials resulting from on-site construction for which a development permit and a construction time schedule have been approved by the county.

(H) *Noise Sensitive Use* – A *conflicting use* which is primarily used for habitation. Residential structures, churches, hospitals, schools, public libraries, and campgrounds are considered *noise sensitive uses* during their period of use. Forest uses and farm uses are not *noise sensitive uses* unless determined through the *Goal 5 process*.

(I) *PAM Overlay Subdistrict* – A special purpose zoning designation for the purposes of MCC 35.5700 that is placed on a zoning map over a base zoning district (ie. CFU). The provisions of the PAM subdistrict shall apply to land uses as specified, notwithstanding the provisions of the underlying zone district.

(J) *Processing* – The washing, crushing, screening, and handling of aggregate and mineral resources. Batching and blending of asphalt or portland cement concrete are included in the definition of processing.

(K) *Protected Site* – *Significant* resource sites which are identified through the *Goal 5 Process* as resources that the county will protect from *conflicting uses*. The special district designation Protected Aggregate and Mineral Resources (PAM) shall only be applied to *protected sites*.

(L) *Restrictive Covenant* – An enforceable promise, given by the owner of a parcel whose use and enjoyment of that parcel may be restricted in some fashion by mining occurring on another parcel, not to object to the terms of a permit issued by a local government, state agency or federal agency. The restrictive covenant shall be recorded in the real property records of the county, shall run with the land, and is binding upon the heirs and successors of the parties. The covenant shall state that obligations imposed by the covenant shall be released when the site has been mined and reclamation has been completed.

(M) *Significant Site* – A site containing either significant aggregate resources or significant mineral resources. The county will judge the significance of mineral and aggregate resources on a case by case basis, under the standards and procedures in LCD's Goal 5 interpretive rules.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

## **§ 35.5720 PAM Overlay Special Subdistricts**

The Protected Aggregate and Mineral Resource Subdistrict (PAM) comprises two areas, the *Extraction Area* (PAM-EA) and the *Impact Area* (PAM-IA).

(A) The *Extraction Area* shall be applied to the portion of *protected sites* where mining and associated processing is to occur. The *Extraction Area* may consist of one or more parcels or portions of parcels, and may be applied to contiguous properties under different ownership. The *Extraction Area* boundary may be modified through the *Goal 5 process* to reduce conflicts with *conflicting uses* existing when the overlay is applied. The *Extraction Area* shall be shown on the zoning map with the designation PAM-EA.

(B) The *Impact Area* shall be applied to parcels or portions of parcels adjacent to the *Extraction Area* and within the *Impact Area* deemed appropriate through the *Goal 5 process*. The *Impact Area* shall be shown on the zoning map with the designation PAM-IA.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

### **§ 35.5725 Procedure For Applying The PAM Subdistrict**

(A) A PAM subdistrict shall be established by amendment of the Comprehensive Framework Plan and Zoning Map. The relevant factors for the establishment of the subdistrict are within the Oregon Administrative Rules Chapter 660, Division 16; Comprehensive Plan Policy 16-B and the applicable provisions of MCC Chapter 37.

(B) Under the applicable provisions of OAR Chapter 660, Division 16 and Comprehensive Plan Policy 16-B and based upon the analysis of information about the location, quality, and quantity of the aggregate and mineral resource, the county shall make the following determinations regarding the inventory status of the resource site and, if appropriate, continuation of the *Goal 5 process*:

(1) If the information about the location, quality, and quantity of a resource site is not adequate to allow a determination of significance, the site shall be placed on a plan inventory of "potential sites" and shall remain on that inventory until information is available to determine whether or not the site is *significant*, or

(2) If the resource site does not meet the definition of a *significant site*, the site shall be placed on a plan inventory of "not significant sites", or

(3) If the resource site meets the definition of a *significant site*, the *Goal 5 process* shall be continued.

(C) Under the applicable provisions of OAR Chapter 660, Division 16 and Comprehensive Plan Policy 16-B and based upon the *ESEE analysis*, the county shall determine the amount of protection to be given each *significant site*. Each determination shall be incorporated into the comprehensive plan, and shall be reflected on the zoning maps. One of the following determinations shall be made:

(1) Protect the site fully and allow surface mining as a conditional use. The county shall place the site on the *Protected Sites* inventory, apply the Protected Aggregate and Mineral Resources Subdistrict, specify the planned use of the site following reclamation,

and prohibit the establishment of *conflicting uses* within the *Extraction Area* and the *Impact Area*. Conditional use approval of surface mining shall be pursuant to MCC 35.6500 through 35.6535 and shall not be subject to the conditional use provisions of MCC 35.6305 (C), 35.6315, and 35.6325.

(2) Balance protection of the site and conflicting uses, allow surface mining as a conditional use. The county shall place the site on the *Protected Sites* inventory, apply the Protected Aggregate and Mineral Resources Subdistrict, specify the planned use of the site following reclamation, and identify which uses in the underlying zone are allowed outright, allowed conditionally, or prohibited. Conditional use approval of surface mining shall be pursuant to any site-specific requirements developed through the *Goal 5 process* and MCC 35.6500 through 35.6535. Review criteria and conditions shall not include the conditional use provisions of MCC 35.6305 (C), 35.6315, and 35.6325. Site-specific requirements developed through the *Goal 5 process*, MCC 35.5730, and 35.5735 shall govern development of *conflicting uses*.

(3) Allow *conflicting uses* fully and do not allow surface mining except as exempted in MCC 35.5710. The county shall then place the site on the "Not Protected Sites" inventory in accordance with Framework Plan Policy 16-B, not apply the Protected Aggregate and Mineral Resource Subdistrict, and not protect the site from *conflicting uses*.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 992, Amended, 09/26/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### **§ 35.5730      Extraction Area (PAM-EA) -- Allowed Uses**

Notwithstanding the use provisions of the underlying district, the following use provisions shall apply in the PAM-EA Subdistrict:

(A) Primary Uses, Uses Permitted Outright, Uses Permitted Under Prescribed Conditions, and Conditional Uses allowed in the underlying district may be permitted subject to the underlying district provisions and criteria of approval, except as provided for in this subsection.

(1) Uses identified through the *Goal 5 process* to be prohibited within the *Extraction Area* shall not be permitted.

(2) *Noise* or *dust sensitive* uses not prohibited in (1) may be permitted under the conditional use procedural provisions of MCC 35.6300 through 35.6350 when found by the Hearing Authority to satisfy the approval criteria of MCC 35.5740 and the approval criteria of the underlying district.

(3) *Conflicting uses* required by the *Goal 5 process* to be conditionally approved may be permitted under the procedural provisions of MCC 35.6300 through 35.6350 when found by the Hearing Authority to satisfy the approval criteria of MCC 35.5740 and the approval criteria of the underlying district.

(B) The following uses may be permitted subject to a finding by the Hearing Authority that all standards adopted as part of the *Goal 5 process* and the provisions of MCC 35.6500 through 35.6535 are met. Review by the Hearing Authority shall be under the procedural provisions of MCC 35.6300; 35.6305 (A) and (B); and 35.6335.

(1) Mining;

(2) *Processing*, except the batching or blending of aggregate and mineral materials into asphalt concrete within two miles of a planted commercial vineyard existing on the date of conditional use approval;

(3) Stockpiling of aggregate and mineral materials;

(4) Sale of mineral products excavated and processed on-site;

(5) Storage of equipment or vehicles used in on-site mining or processing;

(6) Buildings, structures, and activities necessary and accessory to mining or reclaiming aggregate or mineral resources.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### **§ 35.5735      Impact Area (PAM-IA) -- Allowed Uses**

Notwithstanding the use provisions of the underlying district, the following use provisions shall apply in the PAM-IA Subdistrict. Primary Uses, Uses Permitted Outright, Uses Permitted Under Prescribed Conditions, and Conditional Uses allowed in the underlying district may be permitted subject to the underlying district provisions and criteria of approval, except as follows:

(A) Uses identified through the *Goal 5 process* to be prohibited within the *Impact Area* shall not be permitted;

(B) *Noise or dust sensitive* uses not prohibited in (A) may be permitted under the conditional use procedural provisions of MCC 35.6300 through 35.6350 when found by the Hearing Authority to satisfy the approval criteria of MCC 35.5740 and the approval criteria of the underlying district; and

(C) *Conflicting uses* required by the *Goal 5 process* to be conditionally approved may be permitted under the procedural provisions of MCC 35.6300 through 35.6350 when found by the Hearing Authority to satisfy the approval criteria of MCC 35.5740 and the approval criteria of the underlying district.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

#### **§ 35.5740      Use Approval Criteria**

(A) In acting to approve a Conditional Use subject to these provisions, the Hearing Authority shall find that:

(1) The proposed use will not interfere with or cause an adverse impact on lawfully established and lawfully operating mining operations;

(2) The proposed use will not cause or threaten to cause the mining operation to violate any applicable standards of this chapter, or the terms of a state agency permit. The

applicant for a new *noise sensitive use* shall submit an analysis prepared by an engineer or other qualified person, showing that applicable DEQ noise control standards are met or can be met by a specified date by the nearby mining operation; and

(3) Any setbacks or other requirements imposed through the *Goal 5 process* have been met, or can be met by a specified date.

(B) Approval Conditions.

(1) Compliance with the use approval criteria may be satisfied through the imposition of clear and objective conditions of approval.

(2) Approval of any *conflicting use* in the *extraction area* or *impact area* shall be conditioned upon execution of a *restrictive covenant* in favor of the mining operator. The *restrictive covenant* shall incorporate all approval conditions, and an agreement not to object to the conduct of lawful operations conducted at the nearby surface mine.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)

**§ 35.5745 Termination of the Protected Aggregate and Mineral Resources Subdistrict**

When the aggregate or mineral site has been reclaimed, the county may rezone land to remove the Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM) without revising the ESEE Analysis for the site. Rezoning shall not relieve requirements on the part of the owner or operator to reclaim the site in accordance with ORS 517.750 through 517.900 and the rules adopted thereunder.

(Ord. 997, Repealed and Replaced, 10/31/2002; Ord. 953 §2, Reorg&Renum, 11/30/2000)