

95-06218

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LEGAL COUNSEL

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

95 MAR -2 AM 9:16

MARY SUE PENNOLLO
COUNTY CLERK

An Ordinance Amending Chapters 18.04 and 18.16 of the Deschutes County Code, Amending Development Standards in the EFU Zones and Declaring an Emergency.

0138-0611

ORDINANCE NO. 95-007

WHEREAS, the Land Conservation and Development Commission filed new administrative rule OAR 660-033 on March 1, 1994, relative to requirements for Agricultural Lands; and

WHEREAS, the newly adopted rule was made effective upon filing; and

WHEREAS, the newly adopted rule supersedes county code provisions where there is a conflict between the rule and the code; and

WHEREAS, the Board finds it is in the public interest to make the county's land use regulations be consistent with state law; and

WHEREAS, public hearings have been held on the proposed amendments consistent with state and county law; and

WHEREAS, the Deschutes County Planning Commission recommended adoption of the amendments as proposed; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY ORDAINS as follows:

Section 1. Section 18.04.030 of the Deschutes County Code, as amended, is further amended to add the following new definition of "Golf Course":

"Golf Course. Means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green and often one or more natural or artificial hazards. A 'golf course' may be a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:

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

B. A regulation nine hole golf course is generally characterized by a site of 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards and a par of 31 to 36 strokes.

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'Golf course' does not include a stand-alone driving range. In EFU zones, 'golf course' includes only regulation golf courses and does not include a golf course or golf course-like development that does not meet this definition. Excluded from this definition is such non-regulation development as executive golf courses, Par 3 golf courses, pitch and putt golf courses and miniature golf courses."

Section 2. Section 18.04.030 of the Deschutes County Code, as amended, is further amended to add the following new definition of "Golf Course, Accessory Uses":

"Golf Course, Accessory Uses. An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public.

Accessory uses to a golf course may include: parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course. In an EFU Zone, accessory uses to a golf course do not include: sporting facilities unrelated to golfing such as tennis courts, swimming pools and weight rooms; wholesale or retail operations oriented to the non-golfing public; housing."

Section 3. Section 18.04.030 of the Deschutes County Code, as amended, is further amended to add the following new definition of "High-Value Farmland":

"High-Value Farmland. Means land in a tract composed predominantly of the following soils when they are irrigated: Agency loam (2A and 2B), Agency sandy loam (1A), Agency-Madras complex (3B), Buckbert sandy loam (23A), Clinefalls sandy loam (26A), Clovkamp loamy sand (27A and 28A), Deschutes sandy loam (31A, 31B and 32A), Deschutes-Houstake complex (33B), Deskamp loamy sand (36A and 36B), Deskamp sandy loam (37B), Era sandy loam (44B and 45A), Houstake sandy loam (66A and 67A), Iris silt loam (68A), Lafollette sandy loam (71A and 72B), Madras loam (87A and 87B), Madras sandy loam (86A and 86B), Plainview sandy loam (98A and 98B), Redmond sandy loam (104A), Tetherow sandy loam (150A and 150B) and Tumalo sandy loam (152A and 152B)."

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Section 4. Section 18.04.030 of the Deschutes County Code, as amended, is further amended to amend the definition of "Irrigated Acres" as follows:

"Irrigated [acres]. As used in Chapter 18.16, irrigated [acres] means [those lands to which a water right is appurtenant] watered by an artificial or controlled means, such as sprinklers, furrows, ditches or spreader dikes. An area or tract is 'irrigated' if it is currently watered, or has established rights to use water for irrigation from a water or irrigation district or other provider." (Ord. 92-065 § 2, 1992)

Section 5. Section 18.04.030 of the Deschutes County Code, as amended, is further amended to amend the definition of "Partition Land" as follows:

"Partition Land. To divide [an area or tract of] land into two or three parcels within a calendar year [when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year]. Partition land does not include divisions of land resulting from lien foreclosures, or recorded contracts for the sale of real property and divisions of land resulting from the creation of cemetery lots. Partition land does not include [the sale of a lot in a recorded subdivision, even though the lot may have been acquired prior to the sale with other contiguous lots or property by a single owner] a division of land resulting from the recording of a subdivision or condominium plat. Partition land does not include an adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance."

Section 6. Section 18.04.030 of the Deschutes County Code, as amended, is further amended to amend the definition of "Replat" as follows:

"Replat. [Includes a final map of the reconfiguration of lots and easements of a recorded subdivision or partition plat and other writings containing all the descriptions, locations, specifications, dedications and provisions and information concerning a recorded partition or subdivision plat.] Means the act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision." (Ord. 91-038 § 3, 1991)

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Section 7. Section 18.04.030 of the Deschutes County Code, as amended, is further amended to amend the definition of "Subdivision and Subdivide" as follows:

"[Subdivision and] Subdivide[d] Lands. Means to [Improved or unimproved area or tract of land] divide[d] land into four or more lots within a calendar year [when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year. This section does not apply to divisions of land resulting from lien foreclosures or foreclosures of recorded contracts for the sale of real property.]"

Section 8. Section 18.04.030 of the Deschutes County Code, as amended, is further amend to add a definition of "Subdivision" as follows:

"Subdivision. Means either an act of subdividing land or an area or a tract of land subdivided."

Section 9. Section 18.16.010 of the Deschutes County Code, as amended, is further amend to read as follows:

"18.16.010 Purpose

A. The purpose of the Exclusive Farm Use zones is to preserve and maintain agricultural lands and to serve as a sanctuary for farm uses.

B. The purposes of this zone are served by the land use restrictions set forth in the Comprehensive Plan and in this Chapter and by the restrictions on private civil actions and enforcement actions set forth in ORS 30.930 through 30.947."

Section 10. Section 18.16.020 of the Deschutes County Code, as amended, is further amended to read as follows:

"18.16.020 Uses Permitted Outright

The following uses and their accessory uses are permitted outright:

- A. Farm use as defined in this title.
- B. Propagation or harvesting of a forest product.
- C. Exploration for minerals as defined by ORS 517.750.
- D. Accessory buildings customarily provided in conjunction with farm use.
- E. Climbing and passing lanes within a right-of-way existing as of July 1, 1987.

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

G. Temporary public road or highway detour that will be abandoned and restored to original condition or use when no longer needed.

H. Minor betterment of existing public roads and highway-related facilities such as maintenance yards, weigh [with] stations and rest areas, within a right-of-way existing as of July 1, 1987, and contiguous publicly owned property utilized to support the operation and maintenance of public roads and highways.

[I. A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in the county inventory as an historic property as defined in ORS 358.480. (Ord. 91-038 § 2, 1991)]

I[J]. C[c]reation, restoration or enhancement of wetlands.

J. Alteration, restoration or replacement of a lawfully established dwelling that:

1. Has intact exterior walls and roof structure;
2. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
3. Has interior wiring for interior lights;
4. Has a heating system; and
5. In the case of replacement, is removed, demolished or converted to an allowable use within three months of completion of the replacement dwelling.

An accessory farm dwelling approved under subsection 18.16.050(C) may be replaced only by a manufactured home.

K. A replacement dwelling to be used in conjunction with farm use if the existing dwelling is listed on the National

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Register of Historic Places and on the county inventory as a historic property as defined in ORS 358.480."

(Ord. 91-038 § 1 and 2, 1992; Ord. 91-020 § 1, 1991; Ord. 91-005 § 4, 1991; Ord. 91-002 § 3, 1991; Ord. 86-007 § 1, 1986; Ord. 81-025 § 1, 1981; Ord. 81-001 § 1, 1981)

Section 11. Section 18.16.030 of the Deschutes County Code, as amended, is further amended to read as follows:

***18.16.030 Conditional Uses Permitted - High Value and Non-High Value Farmland**

The following uses may be allowed in the Exclusive Farm Use Zones on either high value farmland or non-high value farmland subject to applicable provisions of the Comprehensive Plan, Sections 18.16.040 and 18.16.050 and other applicable sections of this title.

A. Dwellings customarily provided in conjunction with farm use (farm-related dwellings).

[B. manufactured home as a secondary accessory farm dwelling.]

B. A relative farm-help dwelling.

[C. Preexisting dwellings as a ranch hand residence. (Ord. 91-020 § 1, 1991; Ord 83-020 § 1, 1983)]

C[D]. Non[-]farm dwelling and accessory uses thereto.

D. Lot of record dwelling.

E. Residential home[s] as defined in Section 18.04.030 of this title, in existing dwellings.

F. A hardship dwelling.

G[F]. Commercial activity[ies] that is [are] in conjunction with farm use. [The commercial activity shall be associated with a farm use occurring on the parcel where the commercial use is proposed. The commercial activity may use, process, store or market farm products produced in Deschutes County or an adjoining county.]

H[G]. Operations conducted for (1) exploration, mining and processing of geothermal resources as defined by ORS 522.005; (2) exploration and extraction of natural gas or oil; [and] or (3) surface mining of mineral and aggregate resources exclusively for on-site personal, farm or forest use or in conjunction with maintenance for irrigation canals.

I[H]. Homestead retention when the entire parcel has been under single ownership for at least the preceding ten consecutive years and the parcel occupies not less than 320 acres. This use will permit the owner to convey the parcel but retain a leasehold interest in the residence and the land underlying the residence up to a maximum of five acres. In no case shall another residence be constructed elsewhere on the parcel except in conformance with the terms of this chapter. The leasehold interest shall extend throughout the lifetimes of the seller and his or her spouse.

J[I]. Expansion of an existing p[P]rivate park[s], playground[s], hunting and fishing preserve[s] and campground[s].

K[J]. Expansion of an existing p[P]ark[s], playground[s] or community center[s] owned and operated by a governmental agency or a non-profit community organization.

[K. Golf courses.]

L. U[u]tility facility[ies] necessary for public service, [and] except commercial utility facility[ies] for the purpose of generating power for public use by sale and transmission towers over 200 feet in height.

M. Transmission tower over 200 feet in height.

N. Commercial utility facility, including a hydroelectric facility (in accordance with Sections 18.116.130 and 18.128.040(V)), for the purpose of generating power for public use by sale.

O[M]. Personal-use landing strip for airplanes and helicopter pad, including associated hangar, maintenance and service facilities. A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by invited guests and by commercial aviation activities in connection with agricultural operations. [No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal use airport lawfully existing as of September 1, 1975, shall continue to be permitted subject to any applicable regulations of the Oregon Aeronautics Division.]

P[N]. Home occupation[s] carried on by residents as an accessory use within their existing dwelling or other existing residential accessory building. Home occupations are not allowed in structures accessory to resource use.

Q[O]. A facility for the primary processing of forest products. [Such a facility may be approved for a one-year period which is renewable. The facility is intended to be 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 method 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.

[R. Hydroelectric facility, in accordance with Sections 18.116.130 and 18.128.040(V). (Ord. 94-008 § 9, 1994; Ord. 86-018 § 3, 1986)]

[Q. Dog kennels. (Ord. 94-008 § 9, 1994; Ord. 90-018 § 1, 1991)]

R. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete when such uses are in conjunction with the maintenance or construction of public roads or highways.

[S. A site for the disposal of solid waste approved by the governing body of a city or county and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality. (Ord. 94-008 § 9, 1994; Ord. 91-014 § 1, 1991)]

[T. One manufactured home 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. (Ord. 94-008 § 9, 1994; Ord. 91-038 § 2, 1991)]

S[U]. Expansion of an existing c[C]hurch or cemetery in conjunction with a church, provided such church or cemetery is not within three miles of an urban growth boundary.

T. Expansion of an existing church or cemetery in conjunction with a church within three miles of an urban growth boundary if an exception is first granted under state law.

U[V]. Expansion of an existing p[P]ublic or private school, including all buildings essential to the operation of such a school, provided such school is not within three miles of an urban growth boundary.

V. Expansion of an existing public or private school, including all buildings essential to the operation of such a

school, located within three miles of an urban growth boundary, if an exception is first granted under state law.

W. Construction of additional passing and travel lanes requiring the acquisition of right-of-way, but not resulting in the creation of new land parcels.

X. 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.

Y. 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.

Z. The propagation, cultivation, maintenance and harvesting of aquatic species.

AA. Bed and breakfast inn[s].

BB. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland.

[CC. Cemeteries in conjunction with churches. (Ord. 94-008 § 9, 1994; Ord. 91-038 § 2, 1991)]

[DD. Living history museums. (Ord. 94-008 § 9, 1994)]

CC. Rural fire station."

(Ord. 94-008 § 9, 1994; Ord. 91-038 § 1 and 2, 1991; Ord. 91-020 § 1, 1991, Ord. 90-014 § 23, 1991; Ord. 90-014 § 31, 1990; Ord. 91-005 § 5, 1991; Ord. 87-013 § 1, 1987)

Section 12. A new Section 18.16.031, "Conditional Uses Located on Non-High Value Farmland," is added to and made a part of Chapter 18.16, as follows:

"18.16.031 Non-Residential Conditional Uses on Non-High Value Farmland Only

The following uses may be allowed only on tracts in the Exclusive Farm Use Zones that constitute non-high value farmland subject to applicable provisions of the Comprehensive Plan and Section 18.16.040 and other applicable sections of this title.

A. Dog kennel.

B. A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department

of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

C. Golf course and accessory golf course uses as defined in this title."

Section 13. A new Section 18.16.033, "Conditional Uses Located on High Value Farmland," is added to and made a part of Chapter 18.16, as follows:

"18.16.033 Non-Residential Conditional Uses on High Value Farmland Only

In addition to those uses listed in Section 18.16.030 above, the following uses may be allowed on tracts in the Exclusive Farm Use Zones that constitute high value farmland subject to applicable provisions of the Comprehensive Plan and Section 18.16.040 and other applicable sections of this title.

A. Maintenance, enhancement or expansion of dog kennels existing as of March 1, 1994, subject to other requirements of law. New dog kennels are prohibited.

B. Maintenance, enhancement or expansion of a site described in 18.16.031(B) existing as of March 1, 1994, subject to other requirements of law. New such sites are prohibited.

C. Maintenance, enhancement or expansion of golf course and accessory golf course uses as defined in this title existing as of March 1, 1994, subject to other requirements of law. New such uses are prohibited. Expanded courses may not exceed 36 holes total."

Section 14. Section 18.16.040 of the Deschutes County Code, as amended, is further amended to read as follows:

"18.16.040 Limitations on Conditional Uses

A. Conditional uses permitted by 18.16.030[(F)](G) through (CC[DD]) may be established subject to applicable provisions in Chapter 18.128 and upon a finding by the Planning Director or Hearings Body that the proposed use: (Ord. 91-020 § 1, 1991)

1[a]. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm or forest uses; and [or]

2[b]. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

3[c]. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.

B. A commercial activity allowed under Section 18.16.030(G) above shall be associated with a farm use occurring on the parcel where the commercial use is proposed. The commercial activity may use, process, store or market farm products produced in Deschutes County or an adjoining county.

C. A utility facility necessary for public use allowed under Section 18.16.030(L) above shall be one that is necessary to be situated in an agricultural zone in order for the service to be provided.

D. A power generation facility that is part of a commercial utility facility for purpose of generating power for public use by sale identified in Section 18.16.030(N) above and:

1. That is located on high-value farmland shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR 660, Division 4.

2. That is not located on high-value farmland shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR 660, Division 4.

E. No aircraft may be based on a personal-use airport identified in Section 18.16.030(O) above other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal use airport lawfully existing as of September 1, 1975, shall continue to be permitted subject to any applicable regulations of the Oregon Aeronautics Division.

F. The facility for the primary processing of forest products identified under Section 18.16.030(Q) above is intended to be portable or temporary in nature. Such a facility may be approved for a one-year period which is renewable.

G. Batching and blending mineral and aggregate into asphaltic cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totalling 40 acres or more that are planted as of the date of the application for batching and blending is filed.

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

I. An expansion of an existing golf course as allowed under Section 18.16.033(C) shall comply with the definition of "golf course" set forth in this title and the provisions of subsection A of this section.

J[B]. An applicant for a non-farm conditional use may demonstrate that the standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective."

(Ord. 91-038 § 1 and 2, 1991)

Section 15. Section 18.16.050 of the Deschutes County Code, as amended, is amended to read as follows (without setting out changes in bold and brackets):

"18.16.050 Standards for Dwellings in the EFU Zones

Dwellings listed in Section 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling:

A. Farm-Related Dwellings on Non-High Value Farmland

A dwelling customarily provided in conjunction with farm use, as listed at 18.16.030(A) of this chapter, may be approved if it satisfies any of the alternative tests set forth below:

1. Acreage Test.

a. On land not identified as high-value farmland, a dwelling, including a manufactured home in accordance with Section 18.116.070, is considered to be customarily provided in conjunction with farm use if:

i. The parcel on which the dwelling will be located is at least:

(a). 160 acres and not in the Horse Ridge East subzone; or

(b). 320 acres in the Horse Ridge East subzone;

ii. The subject tract is currently employed for farm use, as evidenced by a farm management plan;

iii. 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;

iv. There is no other dwelling on the subject tract; and

v. The dwelling will be located on the least productive part of the parcel.

2. Median Acreage/Gross Sales Test.

a. On land not identified as high-value farmland, a dwelling, including a manufactured home in accordance with Section 18.116.070, is considered to be customarily provided in conjunction with farm use if:

i. 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 that includes all tracts wholly or partially within one mile of the perimeter of the subject tract;

ii. 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 (i) of this section;

iii. The subject tract is currently employed for farm use, as evidenced by a farm management plan, at a level capable of producing the annual gross sales required in subsection (ii) of this section;

iv. The subject lot or parcel on which the dwelling is proposed is at least 20 acres in size;

v. There is no other dwelling on the subject tract; and

vi. The dwelling will be located on the least productive part of the parcel.

b. For the purpose of calculating appropriate tract sizes and gross incomes to satisfy (i) and (ii) of this section, the county will utilize the methodology contained in OAR 660-33-135(3) using data on gross sales per acre tabulated by LCDC pursuant to OAR 660-33-135(4).

3. Gross Annual Income Test.

a. On land not identified as high-value farmland, a dwelling, including a manufactured home in accordance with Section 18.116.070, is considered to be customarily provided

in conjunction with farm use if:

i. The subject tract is currently employed for a farm use that produced \$32,500 in gross annual income in the last two years or three of the last five years.

ii. There is no other dwelling on the subject tract;

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

iv. The dwelling will be located on the least productive part of the parcel.

b. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

B. Farm Related Dwellings on High Value Farmland.

On land identified as high-value farmland, a dwelling, including a manufactured home in accordance with Section 18.116.070, is considered to be customarily provided in conjunction with farm use if:

1. The subject tract is currently employed for the farm use 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. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;

2. There is no other dwelling on the subject tract;

3. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (1) of this section; and

4. The dwelling will be located on the least productive part of the parcel.

C. Accessory Dwelling.

A dwelling, including a manufactured home in accordance with Section 18.116.070, is considered to be an accessory farm dwelling customarily provided in conjunction with farm use when:

1. The accessory dwelling meets the following criteria:

a. The accessory farm 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

- b. The accessory farm dwelling will be located:
 - i. On the same lot or parcel as the principal farm dwelling; or
 - ii. 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
 - iii. On a lot or parcel on which the principal farm dwelling is not located, when the accessory farm dwelling is a manufactured home and a deed restriction substantially in compliance with the form set forth in Exhibit A to this chapter 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. An accessory farm dwelling approved pursuant to this section 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 home may remain if it is reapproved under this section; and

c. There is no other dwelling on land zoned EFU 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

2. 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 in farm use and produced \$32,500 in gross annual sales in the last two years or three of the last five years. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; 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, 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. Gross income shall be calculated by deducting the cost of purchased livestock from the total gross income attributed to the tract; and

3. A lot or parcel approved for an accessory farm dwelling under this section shall not be approved for a division of land except as provided for in Section 18.16.055(B).

D. Relative Farm Help Dwelling

1. A dwelling listed in DCC 18.16.030B is allowed when:

a. The subject tract is at least 40 acres in size, unless it is demonstrated to the Planning Director or Hearings Body that a smaller unit of land is a commercial agricultural enterprise.

b. The subject tract is used for farm use;

c. The dwelling is a manufactured home and is sited in accordance with Section 18.116.070;

d. The dwelling is located on the same lot or parcel as the dwelling of the farm operator, and is occupied by a grandparent, grandchild, parent, child, brother, or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the commercial farm use is or will be required by the farm operator.

e. The farm operator plays the predominant role in the management and farm use of the farm and will continue to do so after the relative farm help dwelling is approved.

2. The manufactured home shall be considered a temporary installation and permits for such home shall be renewable on an annual basis. The manufactured home shall be removed from the property if it is no longer needed for the operation of the farm.

3. For the purposes of this subsection, a farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

E. Lot of Record Dwelling on Non-High Value Farmland

1. A lot of record dwelling will be approved on non-high value farmland when all of the following requirements are met:

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

i. Prior to January 1, 1985; or

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

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

c. For lots or parcels located within a wildlife area (WA) combining zone, siting of the proposed dwelling would be consistent with the limitations on density as applied under the applicable density restrictions of Chapter 18.88 of this title.

d. If 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 lot or parcel when the dwelling is allowed.

e. The County Assessor shall be notified of any approval of a dwelling under this section.

2. For purposes of this subsection, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

F. Lot of Record Dwelling on High-Value Farmland

1. A lot of record dwelling will be approved on non-high value farmland when all of the following requirements are met:

a. The requirements set forth in Section 18.16.050(E)(1)(a) through (e), as determined by the County; and

b. The requirements of OAR 660-33-130(3)(c)(C), as determined by a hearings officer of the State Department of Agriculture.

2. Applicants under this section shall make their application to the County. The County shall give its conditional approval under subsection 1(a) of this section before forwarding an application made under this section to

the State Department of Agriculture for hearing under subsection 1(b).

3. Applicants under this section shall be subject to such other procedural requirements as are imposed by the Oregon Department of Agriculture.

G. Nonfarm Dwelling.

1. One single-family dwelling, including a manufactured home in accordance with Section 8.116.070, not provided in conjunction with farm use may be permitted on an existing lot or parcel subject to the following criteria:

a. The Planning Director or Hearings Body shall make findings that:

i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

ii. The proposed nonfarm dwelling does not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.

iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot, sales yard, slaughterhouse or poultry, hog or mink farm, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the non-farm

dwelling or the agriculture of the area. (Ord. 91-020 § 1, 1991)

v. Road access, fire and police services and utility systems (i.e., electrical and telephone) are adequate for the use.

2. For the purposes of this subsection only, "unsuitability" shall be determined with reference to the following:

a. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.

b. A lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable". A lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.

c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.

3. Loss of Tax Deferral

a. Pursuant to ORS 215.236, a non-farm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued the applicant must produce evidence from the County Assessor's Office that the parcel upon which the dwelling is proposed

has been disqualified for special assessment at value for farm use under ORS 308.370 or other special assessment under ORS 308.765, 321.352, 321.730 or 321.815 and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

b. A parcel that has been disqualified for special assessment at value for farm use pursuant to ORS 215.236(4) shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.

H. Temporary Hardship Dwelling.

1. A dwelling listed in Section 18.16.030(F) is allowed under the following conditions:

a. The dwelling is a manufactured home and is used in conjunction with an existing dwelling on the lot or parcel;

b. The manufactured home would be temporarily sited on the lot or parcel only for the term of a hardship suffered by the existing resident or relative of the resident;

c. The existence of a medical hardship is verified by a written doctor's statement, which shall accompany the permit application; and

d. The temporary manufactured home uses the same subsurface sewage disposal system used by the existing dwelling, provided that the existing disposal system is adequate to accommodate the additional dwelling.

2. Permits granted under this subsection shall be subject to the provisions of Section 18.116.090(B) and (C) and shall be required to meet any applicable DEQ review and removal requirements as a condition of approval.

3. As used in this subsection, the term "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons. As used in this subsection, the term "relative" means grandparent, grandchild, parent, child, brother or sister of the existing resident."

Section 16. Section 18.16.055 of the Deschutes County Code, as amended, is further amended to read as follows:

"18.16.055 Land Divisions

A. General. A d[D]ivision[s] of land in the farm zone shall be identified on the land division application as either a farm division, nonfarm dwelling division[,] or a nonfarm division.

B. Farm Divisions. A f[F]arm division[s] shall be subject to the minimum lot size requirements of Section 18.16.060(A) and all applicable requirements of Title 17. Notwithstanding the provisions of Section 18.16.060(B), partitions establishing parcels less than the EFU minimum lot size in EFU areas may be permitted to create one new parcel for a nonfarm dwelling that has been approved under subsection 18.16.050(D), provided that the remaining farm parcel meets the minimum established by the EFU subzones.

The minimum size for new parcels for farm use does not mean that dwellings may be approved on the new parcels. New dwellings in conjunction with farm use must satisfy the criteria in Section 18.16.050.

C. Nonfarm Dwelling Division[s].

1[a]. A n[N]onfarm dwelling land division[s] shall be subject to the minimum lot size requirements of Section 18.16.060(B) and all applicable requirements of the partition ordinance, including the general partition standards set forth in Chapter 17.22 and the Section 18.16.050(D) standards for nonfarm dwellings. Each nonfarm dwelling land division application shall be accompanied by an application for a dwelling on each parcel to be created.

2[b]. Nonfarm subdivisions are prohibited. No more than three nonfarm parcels may be created from any one parent parcel[,] existing as of the effective date of Ordinance 92-065.

D. Nonfarm Division[s] other than Nonfarm Dwelling[s]. Such divisions shall be subject to the minimum lot size requirements of Section 18.16.060(C) of this Chapter and the applicable partitioning standards, including the general partition standards set forth in Chapter 17.22, the Subdivision and Partition Ordinance."

Section 17. Section 18.16.060 of the Deschutes County Code, as amended, is further amended to read as follows:

"18.16.060 Dimensional standards.

A. The minimum parcel size for farm parcels created subject to Title 17 of the Deschutes County Code shall be as specified under Section 18.16.065, "Subzones."

B. The minimum lot size for non-farm land divisions is 20 acres.

C. The minimum lot area for all non-farm uses permitted by Section 18.16.030[(E)](G) through [(DD)] (CC) shall be that determined by the Planning Directory or

Hearings Body to carry out the intent and purposes of ORS Chapter 215, this title and the Comprehensive Plan. In no case shall lot areas be less than one acre.

D. Each lot shall have a minimum street frontage of 50 feet.

E. Building Height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under Section 18.120.040."

(Ord. 93-043 § 3, 1993; Ord. 93-004 § 1, 1993; Ord. 92-065 § 3, 1992; Ord. 92-055 § 1, 1992; Ord. 91-038 §§ 1 and 2, 1991; Ord. 91-020 § 1, 1991)

Section 18. Section 18.16.065 of the Deschutes County Code, as amended, is further amended to read as follows:

***18.16.065 Subzones**

A. Lower Bridge

[a]. A p[P]roposed farm division[s] must result in parcels which demonstrate the following characteristics or capabilities:

[1.] 130 acres of irrigated land or 1991 assessed farm use value of \$31,850.[; or]

[2. Median irrigated acres or the equivalent assessed farm use value (i.e., irrigated acres x \$245/acre) for commercial farms within a 2-mile radius as measured from parcel perimeter. To qualify under this criterion parcels must contain at least 48 irrigated acres.]

[b. Applications for farm dwellings on existing parcels must meet one of the following:

1. The subject property contains at least 130 irrigated acres or has a 1991 assessed farm use value of \$31,850; or

2. The subject property contains the median irrigated acres or has the equivalent assessed farm use value (i.e., irrigated acres x \$245/acre) of commercial farms within a 2-mile radius as measured from parcel perimeter; or

3. The applicant demonstrates through a farm management plan the ability of the parcel to produce annual gross sales of \$52,650 or provides evidence that the parcel is part of a farm operation made up of non-contiguous tracts that together can meet the criteria in (b)(1), above.]

B. Sisters/Cloverdale

[a.] A p[P]roposed farm division[s] must result in parcels which demonstrate the following characteristics or capabilities:

[1.] 63 acres of irrigated land or 1991 assessed farm use value of \$14,931.[; or]

[2. Median irrigated acres or the equivalent assessed farm use value (i.e., irrigated acres x \$237/acre) of commercial farms within a half-mile radius as measured from parcel perimeter. To qualify under this criterion parcels must contain at least 23 irrigated acres.]

[b. Applications for farm dwellings on existing parcels must meet one of the following:

1. The subject property contains at least 63 irrigated acres or has a 1991 assessed farm use value of \$14,931; or

2. The subject property contains the median irrigated acres or has the equivalent assessed farm use value (i.e., irrigated acres x \$237/acre) of commercial farms within a half-mile radius as measured from parcel perimeter; or

3. The applicant demonstrates through a farm management plan the ability of the parcel to produce annual gross sales of \$22,680 or provides evidence that the parcel is part of a farm operation made up of non-contiguous tracts that together can meet the criteria in (b)(1), above.]

C. Terrebonne

[a.] A p[P]roposed farm division[s] must result in parcels which demonstrate the following characteristics or capabilities:

[1.] 35 acres of irrigated land or 1991 assessed farm use value of \$8,365.[; or]

[2. Median irrigated acres or the equivalent assessed farm use value (i.e., irrigated acres x \$239/acre) of commercial farms within a half-mile radius as measured from parcel perimeter. Parcels which qualify under this criterion must contain at least 23 irrigated acres.]

[b. Applications for farm dwellings on existing parcels must meet one of the following:

1. The subject property contains at least 35 irrigated acres or has a 1991 assessed farm use value of \$8,365; or

2. The subject property contains the median irrigated acres or has the equivalent assessed farm use value (i.e.,

irrigated acres x \$239/acre) of commercial farms within a half-mile radius as measured from parcel perimeter; or

3. The applicant demonstrates through a farm management plan the ability of the parcel to produce annual gross sales of \$12,600 or provides evidence that the parcel is part of a farm operation made up of non-contiguous tracts that together can meet the criteria in (b)(1), above.]

D. Tumalo/Redmond/Bend

[a.] A p[P]roposed farm division[s] must result in parcels which demonstrate the following characteristics or capabilities:

[1.] 23 acres of irrigated land or 1991 assessed farm use value of \$5,451.[; or]

[2. Median irrigated acres or the equivalent assessed farm use value (i.e., irrigated acres x \$237/acre) for commercial farms within a half-mile radius as measured from parcel perimeter. To qualify under this criterion parcels must contain at least 18 irrigated acres.]

[b. Applications for farm dwellings on existing parcels must meet one of the following:

1. The subject property contains at least 23 irrigated acres or has a 1991 assessed farm use value of \$5,451; or

2. The subject property contains the median irrigated acres or has the equivalent assessed farm use value (i.e., irrigated acres x \$237/acre) of commercial farms within a half-mile radius as measured from parcel perimeter; or

3. The applicant demonstrates through a farm management plan the ability of the parcel to produce annual gross sales of \$8,280 or provides evidence that the parcel is part of a farm operation made up of non-contiguous tracts that together can meet the criteria in (b)(1), above.]

E. Alfalfa

[a.] A p[P]roposed farm division[s] must result in parcels which demonstrate the following characteristics or capabilities:

[1.] 36 irrigated acres or 1991 assessed farm use value of \$8,640.[; or]

[2. Median irrigated acres or the equivalent assessed farm use value (i.e., irrigated acres x \$240/acre) of commercial farms within a half-mile radius as measured from parcel

perimeter. To qualify under this criterion parcels must contain at least 19 irrigated acres.]

[b. Applications for farm dwellings on existing parcels must meet one of the following:

1. The subject property contains at least 36 irrigated acres or has a 1991 assessed farm use value of \$8,640; or

2. The subject property contains the median irrigated acres or the equivalent assessed farm use value (i.e., irrigated acres x \$240/acre) of commercial farms within a half-mile radius as measured from parcel perimeter; or

3. The applicant demonstrates through a farm management plan the ability of the parcel to produce annual gross sales of \$12,960 or provides evidence that the parcel is part of a farm operation made up of non-contiguous tracts which together can meet the criteria in (b)(1), above.]

F. LaPine

[a.] A p[P]roposed farm division[s] must result in parcels which demonstrate the following characteristics or capabilities:

[1.] 37 acres of irrigated land or 1991 assessed farm use value of \$11,570.

[b. Applications for farm dwellings on existing parcels must meet one of the following:

1. The subject property contains at least 37 irrigated acres or has a 1991 assessed farm use value of \$11,570; or

2. The applicant demonstrates through a farm management plan the ability of the parcel to produce annual gross sales of \$10,710 or provides evidence that the parcel is part of a farm operation made up of non-contiguous tracts that together can meet the criteria in (b)(1), above.]

G. Horse Ridge East

Minimum parcel size[s] for a farm division[s] or for farm-related dwellings on existing parcels is 320 acres."

(Ord. 92-065, Sec. , 1992)

Section 19. Section 18.16.065 of the Deschutes County Code, as amended, is further amended to read as follows:

"18.16.067 Farm Management Plans

A. Contents. A farm management plan shall consist of the following components:

[(1)] A written description of existing and/or proposed farm uses, including type of crops or livestock, size and location of areas for each use, and land or soil preparation required.

[(2)] An assessment of the soils, climate and irrigation on the parcel demonstrating that the parcel is suitable for the current or proposed use outlined in Section A(1).

[(3)] A business plan, including a demonstration that markets exist for the product; estimates of gross sales or actual gross sales figures; estimated or actual figures concerning necessary expenditures; and a list of capital expenditures incurred or projected to be incurred in establishing the farm use on the parcel.

[(4)] A written description of the farm uses in the area, including acreage, size and type of crop or livestock raised showing that the proposed plan is representative of similar farm uses, if any, in the area and will not conflict with the existing agriculture types.

[(5)] For farm uses not currently practiced in the area, an analysis showing that the plan is representative of the type of agriculture proposed.

B. Conditional Approvals.

[(1)] For purposes of land use approval, in instances where at the time of application the subject land is not currently in farm use, a farm management plan will be deemed to demonstrate current employment of the land for farm use if: (1) the farm management plan establishes a level of farming that constitutes a farm use; (2) the farm management plan sets forth specific timelines for the completion of capital improvements (barns, fencing, irrigation, etc.) and for the establishment of the proposed farm use on the parcel; and (3) land use approval is subject to a condition that no building permit for the farm dwelling can be issued prior to a determination that pursuant to the farm management plan a farm use has been established on the subject land.

[(2)] For purposes of determining under this section that a farm use has been established on the land, the County shall determine that the farm management plan has been implemented to the extent that the farm use has [may reasonably be expected to] achieved the [a] gross farm sales figure required under Section 18.16.050 [equal to the median gross sales figure for the subzone].

[C. Tier 3 Review. For purposes of Tier 3 approvals, the management plan shall be reviewed by an independent expert.]
(Ord. 93-004 § 2, 1993; Ord. 92-065 § , 1992)

Section 20. The Covenants, Conditions and Restrictions form set forth in Exhibit A hereto and incorporated herein by reference is adopted as Exhibit A to Chapter 18.16.

Section 21. ADDITIONS AND DELETIONS. Unless otherwise noted, additions to the existing code are set forth in bold-faced type; deletions are enclosed in brackets.

Section 22. SEVERABILITY. The provisions of this ordinance are severable. If any sentence, clause, or phrase of this ordinance is found to be invalid by a court of competent jurisdiction that decision shall not affect the validity of the remaining portions of this ordinance.

Section 23. CORRECTIONS. This ordinance may be corrected by order of the Board of County Commissioners to cure editorial and clerical errors and to insert appropriate legislative history references.

Section 24. CODIFICATION. County Legal Counsel shall have the authority to format the provisions contained herein in a manner that will integrate them into the County Code consistent with the County Legal Counsel form and style for ordinance codification. Such codification shall include the authority to make format changes, to make changes in numbering systems and to make such numbering changes consistent with interrelated code sections. In addition, as part of codification of these ordinances, County Legal Counsel may insert appropriate legislative history reference. Any legislative history references included herein are not adopted as part of the substance of this ordinance, but are included for administrative convenience and as a reference. They may be changed to correct errors and to conform to proper style without action of the Board of County Commissioners.

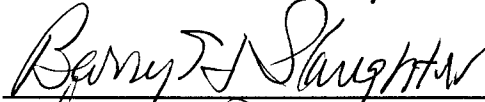
Section 25. REPEAL OF ORDINANCES AS AFFECTING EXISTING LIABILITIES. The repeal, express or implied, of any ordinance, ordinance provision, code section, or any map or any line on a map incorporated therein by reference, by this amending ordinance shall not release or extinguish any duty, condition, penalty, forfeiture, or liability previously incurred or that may hereafter be incurred under such ordinance, unless a provision of this amending ordinance shall so expressly provide, and such ordinance repealed shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such duty, condition, penalty, forfeiture, or liability, and for the purpose of authorizing the prosecution, conviction and punishment of the person or persons who previously violated the repealed ordinance.

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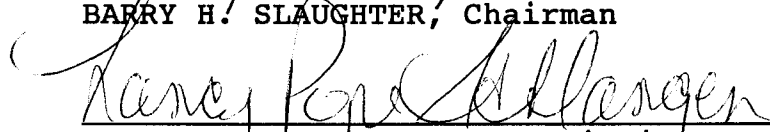
Section 26. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 1st day of March, 1995.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

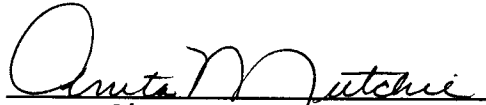


BARRY H. SLAUGHTER, Chairman

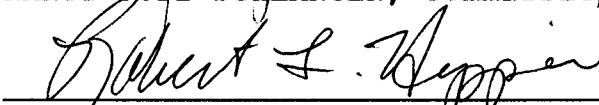


NANCY POPE SCHLANGEN, Commissioner

ATTEST:



Recording Secretary



ROBERT L. NIPPER, Commissioner

Exhibit A

Declaration of Covenants, Conditions and Restrictions

Whereas the undersigned _____ hereinafter referred to as "Declarant", is owner in fee simple of the property described in Exhibit A attached hereto and by this reference incorporated herein (the property); and

Whereas, Declarant has received approval to site a manufactured home on the property described herein pursuant to land use permit No. _____ for an accessory farm dwelling, issued by Deschutes County pursuant to Section 18.16.050(C) of the Deschutes County Code;

Whereas Section 18.16.050(C)(1)(b)(iii) requires as a condition of approval the recording of a deed restriction in favor of Deschutes County requiring that any manufactured home sited under said permit be removed prior to any further conveyance of this property; and

Whereas the Declarant desires to declare his/her intention to create covenants, conditions and restrictions necessary to effectuate and comply with the requirements of OAR 660-33-130(24)(a)(B)(iii) and Section 18.16.050(C) of the Deschutes County Code;

Declarant hereby declares that all of the property described in Exhibit A shall be held, sold and conveyed subject to the following covenants, conditions and restrictions in favor of Deschutes County:

1. Declarant shall cause to be removed any manufactured home sited on the property described herein pursuant to Deschutes County land use permit No. _____ for an accessory dwelling prior to any further conveyance of the property.
2. Declarant's obligations under this covenant shall not be extinguished by any subsequent conveyance made in disregard of these covenants, conditions and restrictions.
3. These covenants, conditions and restrictions shall in addition run with the land and be binding upon any of the Declarant's successors in interest should the property be transferred in disregard of this covenant.
4. It is intended that this covenant shall have the same effect as a regulation designed to implement the comprehensive plan. This covenant may be enforced by Deschutes County by a suit in equity, or if Deschutes County fails to take such action, by any person described in ORS 215.188.

5. These covenants, conditions and restrictions shall be released by the County upon proof that the requirements set forth herein have been met.

Dated this ___ day of _____.

(Signature)

(notary seal)