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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code \*  
Title 18 to be Consistent With State Law in the \*  
Exclusive Farm Use and Forest Use Zones, to Add a \* ORDINANCE NO. 2012-007  
Definition of "Room and Board Arrangement," \*  
Amend the Definitions of "Residential Facility" and \*  
"Residential Home," and to Amend the Provisions \*  
for Medical Hardship Dwellings and Solar Access \*  
Setbacks, and Declaring an Emergency \*

WHEREAS, the Deschutes County Community Development Department initiated the amendments (Planning Division File No. TA-12-2) to the Deschutes County Code ("DCC") Title 18, Chapter 18.16, Exclusive Farm Use Zone, and Chapters 18.36 and 18.40, Forest Use Zones, to incorporate the changes to State Law under Oregon Administrative Rule changes and House Bill 2753; and

WHEREAS, the proposed text amendment also includes amending DCC Chapter 18.04 to add a definition of "Room and Board Arrangement," and amending the definitions of "Residential Facility" and "Residential Home;" and

WHEREAS, the proposed text amendment also includes amendments to DCC 18.116.090 for medical hardship dwellings to clarify who constitutes a family member, and DCC 18.116.180, Building Setbacks for the Protection of Solar Access, to establish a provision for a solar setback variance; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on March 9, 2012 and forwarded to the Deschutes County Board of Commissioners ("Board") a recommendation of approval; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on April 23, 2012 and concluded that the public will benefit from the proposed changes to DCC Title 18; now, therefore,

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

Section 1. AMENDMENT. DCC Chapter 18.04 is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 2. AMENDMENT. DCC Chapter 18.16 is amended to read as described in Exhibit "B," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 3. AMENDMENT. DCC Chapter 18.36 is amended to read as described in Exhibit "C," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 4. AMENDMENT. DCC Chapter 18.40 is amended to read as described in Exhibit "D," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 5. AMENDMENT. DCC Chapter 18.116 is amended to read as described in Exhibit "E," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 6. FINDINGS. The Board adopts as its findings Exhibit "F," attached and incorporated by reference herein.

Section 3. 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.

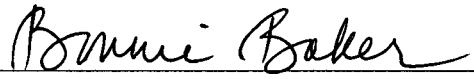
Dated this 2nd of May, 2012


BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
ANTHONY DeBONE, Chair

  
ALAN UNGER, Vice Chair

ATTEST:

  
Recording Secretary

  
TAMMY BANEY, Commissioner

Date of 1<sup>st</sup> Reading: 2nd day of May, 2012.

Date of 2<sup>nd</sup> Reading: 2nd day of May, 2012.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBONE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alan Unger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 2nd day of May, 2012.

“\*\*\*\*” Denotes Deschutes County Code sections not amended by Ordinance 2012-007.

## Chapter 18.04. TITLE, PURPOSE AND DEFINITIONS

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“Residential facility” means a facility licensed by or under the authority of the State of Oregon Department of Human Resources which provides residential care alone or in conjunction with treatment or training or a combination thereof for six (6) to fifteen (15) individuals who need not be related. Staff persons required to meet State of Oregon Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

“Residential home” means a home licensed by or under the authority of the State of Oregon Department of Human Resources which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet State of Oregon Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

“Room and board arrangement” means an owner occupied single-family dwelling unit where lodging and meals are provided, in which no more than four guest rooms are provided for no more than five unrelated guests.

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(Ord. 2012-007 §1, 2012; Ord. 2012-004 §1, 2012; Ord. 2011-009 §1, 2011; Ord. 2010-022 §1, 2010; Ord. 2010-018 §3, 2010; Ord. 2008-007 §1, 2008; Ord. 2008-015 §1, 2008; Ord. 2007-005 §1, 2007; Ord. 2007-020 §1, 2007; Ord. 2007-019 §1, 2007; Ord. 2006-008 §1, 2006; Ord. 2005-041 §1, 2005; Ord. 2004-024 §1, 2004; Ord. 2004-001 §1, 2004; Ord. 2003-028 §1, 2003; Ord. 2001-048 §1, 2001; Ord. 2001-044 §2, 2001; Ord. 2001-037 §1, 2001; Ord. 2001-033 §2, 2001; Ord. 97-078 §5, 1997; Ord. 97-017 §1, 1997; Ord. 97-003 §1, 1997; Ord. 96-082 §1, 1996; Ord. 96-003 §2, 1996; Ord. 95-077 §2, 1995; Ord. 95-075 §1, 1975; Ord. 95-007 §1, 1995; Ord. 95-001 §1, 1995; Ord. 94-053 §1, 1994; Ord. 94-041 §§2 and 3, 1994; Ord. 94-038 §3, 1994; Ord. 94-008 §§1, 2, 3, 4, 5, 6, 7 and 8, 1994; Ord. 94-001 §§1, 2, and 3, 1994; Ord. 93-043 §§1, 1A and 1B, 1993; Ord. 93-038 §1, 1993; Ord. 93-005 §§1 and 2, 1993; Ord. 93-002 §§1, 2 and 3, 1993; Ord. 92-066 §1, 1992; Ord. 92-065 §§1 and 2, 1992; Ord. 92-034 §1, 1992; Ord. 92-025 §1, 1992; Ord. 92-004 §§1 and 2, 1992; Ord. 91-038 §§3 and 4, 1991; Ord. 91-020 §1, 1991; Ord. 91-005 §1, 1991; Ord. 91-002 §11, 1991; Ord. 90-014 §2, 1990; Ord. 89-009 §2, 1989; Ord. 89-004 §1, 1989; Ord. 88-050 §3, 1988; Ord. 88-030 §3, 1988; Ord. 88-009 §1, 1988; Ord. 87-015 §1, 1987; Ord. 86-056 §2, 1986; Ord. 86-054 §1, 1986; Ord. 86-032 §1, 1986; Ord. 86-018 §1, 1986; Ord. 85-002 §2, 1985; Ord. 84-023 §1, 1984; Ord. 83-037 §2, 1983; Ord. 83-033 §1, 1983; Ord. 82-013 §1, 1982)

**Chapter 18.16. EXCLUSIVE FARM USE ZONES**

- 18.16.010. Purpose.**
- 18.16.020. Uses Permitted Outright.**
- 18.16.025. Uses Permitted Subject to the Special Provisions Under DCC Section 18.16.038 or DCC Section 18.16.042 and a Review Under DCC Chapter 18.124 Where Applicable.**
- 18.16.030. Conditional Uses Permitted - High Value and Nonhigh Value Farmland.**
- 18.16.031. Conditional Uses on Nonhigh Value Farmland Only.**
- 18.16.033. Conditional Uses on High Value Farmland Only.**
- 18.16.035. Destination Resorts.**
- 18.16.037. Guest Ranch.**
- 18.16.038. Special Conditions for Certain Uses Listed Under DCC 18.16.025.**
- 18.16.040. Limitations on Conditional Uses.**
- 18.16.042. Agri-Tourism and Other Commercial Events or Activities Limited Use Permit**
- 18.16.043. Single Permit**
- 18.16.050. Standards for Dwellings in the EFU Zones.**
- 18.16.055. Land Divisions.**
- 18.16.060. Dimensional Standards.**
- 18.16.065. Subzones.**
- 18.16.067. Farm Management Plans.**
- 18.16.070. Yards.**
- 18.16.080. Stream Setbacks.**
- 18.16.090. Rimrock Setback.**

“\*\*\*\*” Denotes sections of the Deschutes County Code not amended by Ordinance 2012-007.

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**18.16.020. Uses Permitted Outright.**

The following uses and their accessory uses are permitted outright:

- A. Farm use as defined in DCC Title 18.
- B. Propagation or harvesting of a forest product.
- C. Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(2)(a) or (b).
- D. Accessory buildings customarily provided in conjunction with farm use.
- E. Climbing and passing lanes within the right of way existing as of July 1, 1987.
- F. Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
- G. Temporary public road and highway detours that will be abandoned and restored to original condition or use when no longer needed.
- H. Minor betterment of existing public road 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.
- I. Creation, 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 nonresidential use within three months of completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel, and shall comply with all applicable siting standards. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of the statute and county code have changed to allow the siting of another dwelling; and
6. The replacement dwelling is subject to OAR 660-033-0130(30) and the County shall require as a condition of approval of a single-family replacement dwelling that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937.
7. An applicant for a replacement dwelling may request a deferred replacement dwelling permit.
  - a. The dwelling to be replaced shall be removed or demolished within three months after the deferred replacement permit is issued.
  - b. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the replacement permit becomes void.
  - c. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.
  - d. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or child of the applicant.
- K. A replacement dwelling to be used in conjunction with farm use if the existing dwelling is listed on the National Register of Historic Places and on the County inventory as a historic property as defined in ORS 358.480, and subject to 18.16.020(J)(6) above.
- L. Wildlife habitat conservation and management plan approved under ORS 215.800 to 215.808.
- M. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- N. Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:
  1. A public right of way;
  2. Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or
  3. The property to be served by the utility.
- O. The land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone, subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246 to 215.251.
- P. Fire service facilities providing rural fire protection services.

- Q. 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(2)(a) or (b).
- R. Outdoor mass gathering described in ORS 197.015(10)(d), and subject to DCC Chapter 8.16.
- S. Composting operations that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract as allowed under OAR 660-033-0130(29).  
(Ord. 2012-007 §2, 2012; Ord. 2010-022 §2, 2010; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-001 §2, 2004; Ord. 2001-039 §1, 2001; Ord. 2001-016 §2, 2001; Ord. 98-030 §1, 1998; Ord. 95-007 §10, 1995; Ord. 92-065 §3, 1992; Ord. 91-038 §§1 and 2, 1991; Ord. 91-024 §1, 1991; 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)

**18.16.025. Uses Permitted Subject to the Special Provisions Under DCC Section 18.16.038 or DCC Section 18.16.042 and a Review Under DCC Chapter 18.124 where applicable.**

- A. Dwellings customarily provided in conjunction with farm use (farm-related dwellings), subject to DCC 18.16.050.
- B. A relative farm assistance dwelling, subject to DCC 18.16.050.
- C. Churches and cemeteries in conjunction with churches consistent with ORS 215.441, that are not within 3 miles of an acknowledged urban growth boundary, on nonhigh value farmland.
- D. Churches and cemeteries in conjunction with churches consistent with ORS 215.441, that are within 3 miles of an acknowledged urban growth boundary, subject to Oregon Administrative Rules 660-033-0130 ~~the approval of an exception pursuant to ORS 197.732 and OAR chapter 660, division 004,~~ on nonhigh value farmland.
- E. Expansion of an existing church or cemetery in conjunction with a church on the same tract as the existing use, subject to Oregon Administrative Rules 660-033-0130.
- F. Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale and transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in DCC 18.16.038(A).
- G. Winery, as described in ORS 215.452.
- H. Farm stands, subject to DCC 18.16.038.
- I. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may be reasonably necessary.
- J. A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility.
  - a. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses.
  - b. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.
  - c. The County shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.
- K. Agri-tourism and other commercial events and activities subject to DCC 18.16.042.  
(Ord. 2012-007 §2, 2012; Ord. 2012-004 §2, 2012; Ord. 2010-022 §2, 2010; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-001 §2, 2004)

**18.16.030. Conditional Uses Permitted -High Value and Nonhigh Value Farmland.**

The following uses may be allowed in the Exclusive Farm Use zones on either high value farmland or nonhigh value farmland subject to applicable provisions of the Comprehensive Plan, DCC 18.16.040 and 18.16.050, and other applicable sections of DCC Title 18.

- A. Nonfarm dwelling.
- B. Lot of record dwelling.
- C. Residential home or facility, as defined in DCC 18.04.030, in existing dwellings.
- D. A hardship dwelling, which can include one manufactured dwelling or recreational vehicle, 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.
- E. A dwelling in conjunction with a wildlife habitat conservation and management plan.
- F. Commercial activities that are in conjunction with farm use, but not including the processing of farm crops as described in DCC 18.16.025.
- G. Operations conducted for:
  - Mining and processing of geothermal resources as defined by ORS 522.005, and
  - Mining and processing of natural gas or oil as defined by ORS 520.005, not otherwise permitted under DCC 18.16.020.
- H. Expansion of an existing private park, playground, hunting and fishing preserve and campground on the same tract as the existing use.
- I. Public park and playground consistent with the provisions of ORS 195.120, and including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.
- J. Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
  - 1. A community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006.
  - 2. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.
- K. Transmission towers over 200 feet in height.
- L. Commercial utility facility, including a hydroelectric facility (in accordance with DCC 18.116.130 and 18.128.260, and OAR 660-033-0130), for the purpose of generating power for public use by sale, not including wind power generation facilities.
- M. Personal use airport for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal use airport as used in DCC 18.16.030 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.
- N. Home Occupation, subject to DCC 18.116.280.
  - 1. The home occupation shall:
    - a. be operated substantially in the dwelling or other buildings normally associated with uses permitted in the EFU zone;
    - b. be operated by a resident or employee of a resident of the property on which the business is located; and
    - c. employ on the site no more than five full-time or part-time persons.
  - 2. The home occupation shall not unreasonably interfere with other uses permitted in the EFU zone.
- O. A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 213.203(2). The primary processing of a forest product, as used in DCC 18.16.030, 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 DCC 18.16.030, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

- P. Construction of additional passing and travel lanes requiring the acquisition of right of way, but not resulting in the creation of new land parcels.
  - Q. 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.
  - R. 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.
  - S. The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species.
    - 1. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture.
    - 2. The county shall provide notice of all applications under this section to the State Department of Agriculture.
    - 3. Notice shall be provided in accordance with DCC Title 22, but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.
  - T. Room and board arrangements for a maximum of five unrelated persons in an existing residence. If approved, this use is subject to the recording of the statement listed in DCC 18.16.020(J)(6).
  - U. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland.
  - V. Roads, highways and other transportation facilities, and improvements not otherwise allowed under DCC 18.16, if an exception to Goal 3, Agricultural Lands, and to any other applicable goal is first granted under state law. Transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.
  - W. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.
  - X. A living history museum.
  - Y. Operations for the extraction and bottling of water.
  - Z. Transportation improvements on rural lands allowed by OAR 660-012-0065.
  - AA. Expansion of existing county fairgrounds and activities relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
  - BB. Extended outdoor mass gatherings, subject to DCC 8.16.
  - CC. A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
  - DD. Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130.
  - EE. Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130.
- (Ord. 2012-007 §2, 2012; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-001 §2, 2004; Ord. 2001-039 §1, 2001; Ord. 2001-016 §2, 2001; Ord. 98-030 §1, 1998; Ord. 95-025 §1, 1995; Ord. 95-007 §11, 1995; Ord. 94-008 §9, 1994; Ord. 92-065 §3, 1992; Ord. 91-038 §2, 1991; Ord. 91-020 §1, 1991; Ord. 91-014 §1, 1991; Ord. 91-005 §5, 1991; Ord. 90-018 §1, 1990; Ord. 90-014 §§23 and 31, 1991; Ord. 87-013 §1, 1987; Ord. 86-018 §3, 1986; Ord. 83-028 §1, 1983)

**18.16.031. Conditional Uses on Nonhigh Value Farmland Only.**

The following uses may be allowed only on tracts in the Exclusive Farm Use Zones that constitute nonhigh value farmland subject to applicable provisions of the Comprehensive Plan and DCC 18.16.040 and other applicable sections of DCC Title 18.

- 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 DCC Title 18 on land determined not to be high value farmland, as defined in ORS 195.300.
- D. Except for those composting facilities that are a farm use as allowed under DCC 18.16.020 defined in OAR 660-033-0020(7), composting operations and facilities for which a permit has been granted by the Oregon Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060 ORS 459.245 and OAR 340-96-020. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.
- E. Private parks, playgrounds, hunting and fishing preserves and campgrounds.
- F. Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located, subject to the applicable Oregon Administrative Rules.

(Ord. 2012-007 §2, 2012; Ord. 2010-022 §2, 2010; Ord. 2009-014 §1, 2009; Ord. 2004-001 §2, 2004; Ord. 95-007 §12, 1995)

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**18.16.037. Guest Ranch.**

- A. A guest ranch may be established in conjunction with an existing and continuing livestock operation, using accepted livestock practices that qualifies as a farm use under DCC 18.04.030, subject to the applicable provisions set forth in DCC 18.16.040(A)(1), (2) and (3), the applicable provisions of DCC 18.128, and the provisions of the applicable Oregon Revised Statutes. A guest ranch shall not be located within the boundaries of or surrounded by:
  - (1) A federally designated wilderness area or a wilderness study area;
  - (2) A federally designated wildlife refuge;
  - (3) A federally designated area of critical environmental concern; or
  - (4) An area established by an Act of Congress for the protection of scenic or ecological resources.
- B. "Guest ranch" means a facility for overnight guest lodging units, including passive recreational activities and food services, as set forth in ORS 215 that are incidental and accessory to an existing livestock operation that qualifies as a farm use under DCC 18.04.030.
- C. A guest lodging unit means a guest room in a lodge, bunkhouse, cottage or cabin used only for transient overnight lodging and not for a permanent residence accommodations.
- D. For the purposes of DCC 18.16.037, "livestock" means cattle, sheep, horses, and bison.
- E. A proposed division of land in an exclusive farm use zone for a guest ranch or a division of a lot or parcel that separates a guest ranch from the dwelling of the person conducting the livestock operation shall not be allowed.
- F. Notwithstanding DCC 18.16.055, a proposed division of land in an exclusive farm use zone for a guest ranch shall not be allowed.

(Ord. 2012-007 §2, 2012; Ord. 2010-022 §2, 2010; Ord. 2009-014 §1, 2009; Ord. 2001-043 §1, 2001; Ord. 98-056 §1, 1998)

**Note:** DCC 18.16.037 will be repealed January 2, 2018~~2~~ (Ord. 2012-007 §2, 2012; Ord. 2010-017 §1, 2010).

**18.16.038. Special Conditions for Certain Uses Listed Under DCC 18.16.025.**

- A. A utility facility necessary for public use allowed under DCC 18.16.025 shall be one that is necessary to be situated in an agricultural zone in order for service to be provided. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:
1. Technical and engineering feasibility;
  2. The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
  3. Lack of available urban and nonresource lands;
  4. Availability of existing rights of way;
  5. Public health and safety; and
  6. Other requirements of state and federal agencies.
  7. Costs associated with any of the factors listed in 1-6 above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities that are not substantially similar.
  8. The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
  9. In addition to the provisions of 1-6 above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.
  10. The provisions above do not apply to interstate gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.
  11. The County shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use, in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.
  12. Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this provision are subject to OAR 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.
- B. Wineries are subject to the following:
1. A winery, authorized under DCC 18.16.025 is a facility that produces wine with a maximum annual production of:
    - a. Less than 50,000 gallons and:
      - i. Owns an on-site vineyard of at least 15 acres;
      - ii. Owns a contiguous vineyard of at least 15 acres;
      - iii. Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
      - iv. Obtains grapes from any combination of i, ii or iii of this subsection; or
    - b. At least 50,000 gallons and the winery:

- i. Owns an on-site vineyard of at least 40 acres;
  - ii. Owns a contiguous vineyard of at least 40 acres;
  - iii. Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
  - iv. Obtains grapes from any combination of i., ii., or iii. of this sub-section.
2. A winery may:
  - a. Market and sell wine produced in conjunction with the winery, including the following activities:
    - i. Wine tours;
    - ii. Wine tastings in a tasting room or other location at the winery;
    - iii. Wine clubs; and
    - iv. Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;
  - b. Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010; and
  - c. Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
    - i. Are directly related to the sale or promotion of wine produced in conjunction with the winery;
    - ii. Are incidental to the retail sale of wine on-site; and
    - iii. Are limited to 25 days or fewer in a calendar year.
3. Gross Income.
  - a. The gross income of the winery from the sale of incidental items pursuant to subsection (2)(b) of this section and services provided pursuant to subsection (2)(c) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.
  - b. The winery shall submit to the Deschutes County Community Development Department a written statement, prepared by a certified public accountant, that certifies compliance with this section for the previous tax year by April 15 of each year in which private events are held.
4. A winery operating under this section shall provide parking for all activities or uses on the lot, parcel or tract on which the winery is established.
5. Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsections (B)(1) of this section have been planted or that the contract for the purchase of grapes has been executed, as applicable.
6. The siting of a winery shall be subject to the following standards:
  - a. Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places.
  - b. Shall comply with DCC Chapter 18.80, Airport Safety Combining Zone, and DCC 18.116.180, Building Setbacks for the Protection of Solar Access.
7. As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.
8. The winery shall have direct road access and internal circulation.
9. A winery is subject to the following public health and safety standards:
  - a. Sanitation facilities shall include, at a minimum, portable restroom facilities and stand-alone hand washing stations.
  - b. No event, gathering or activity may begin before 7:00 a.m. or end after 10:00 p.m., including set-up and take-down of temporary structures.
  - c. Noise control.

- i. All noise, including the use of a sound producing device such as, but not limited to, loud speakers and public address systems, musical instruments that are amplified or unamplified, shall be in compliance with applicable state regulations.
- ii. A standard sound level meter or equivalent, in good condition, that provides a weighted sound pressure level measured by use of a metering characteristic with an "A" frequency weighting network and reported as dBA shall be available on-site at all times during private events.
- d. Adequate traffic control must be provided by the property owner to address the following:
  - i. There shall be one traffic control person for each 250 persons expected or reasonably expected to be in attendance at any time.
  - ii. All traffic control personnel shall be certified by the State of Oregon and shall comply with the current edition of the Manual of Uniform Traffic Control Devices.
- e. Structures.
  - i. All permanent and temporary structures and facilities are subject to fire, health and life safety requirements, and shall comply with all requirements of the Deschutes County Building Safety Division and the Environmental Soils Division and any other applicable federal, state and local laws.
  - ii. Compliance with the requirements of the Deschutes County Building Safety Division shall include meeting all building occupancy classification requirements of the State of Oregon adopted building code.
- f. Inspection of event premises authorization. The applicant shall provide in writing a consent to allow law enforcement, public health, and fire control officers to come upon the premises for which the Limited Use Permit has been granted for the purposes of inspection and enforcement of the terms and conditions of the permit and DCC Chapter 18.16 Exclusive Farm Use Zone and DCC Chapter 8.08 Noise Control, and any other applicable laws or ordinances.

10. DCC Chapter 18.16.038(B), Sections (2c),(3), (7) and (9) sunset on January 1, 2014.

(Ord. 2012-007 §2, 2012; Ord. 2012-004 §2, 2012; Ord. 2010-022 §2, 2010; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-001 §2, 2004)

**18.16.040. Limitations on Conditional Uses.**

- A. Conditional uses permitted by DCC 18.16.030 may be established subject to ORS 215.296 and applicable provisions in DCC 18.128 and upon a finding by the Planning Director or Hearings Body that the proposed use:
  - 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding adjacent lands devoted to farm or forest uses; and
  - 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
  - 3. 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 DCC 18.16.030(F) 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 outside of Deschutes County.
- C. A power generation facility that is part of a commercial utility facility for the purpose of generating power for public use by sale identified in DCC 18.16.030(L) and:
  - 1. That is located on high-value farmland, the permanent features of which shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and Oregon Administrative Rules 660, Division 004.

2. That is located on nonhigh-value farmland, the permanent features of which shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and Oregon Administrative Rules 660, Division 4.
  3. A power generation facility may include on-site and off-site facilities for temporary workforce housing as allowed under OAR 660-033-0130(17) and (22)
- D. A wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a wind power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power generation facility shall be subject to the following provisions:
1. For high value farmland soils described in ORS 195.300(10), that all of the following are satisfied:
    - a. Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:
      - i. Technical and engineering feasibility;
      - ii. Availability of existing rights of way; and
      - iii. The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B);
    - b. The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any component thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils;
    - c. Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary;
    - d. The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and
    - e. The criteria of OAR 660-033-0130(37)(b) are satisfied.
  2. For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designated must find that:
    - a. The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;

- b. The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;
  - c. Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, show unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;
  - d. Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.
  - 3. For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.
  - 4. In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.
- ED. No aircraft may be based on a personal-use airport identified in DCC 18.16.030(M) other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.
- FE. The facility for the primary processing of forest products identified in DCC 18.16.030 is intended to be portable or temporary in nature. Such a facility may be approved for a one-year period which is renewable.
- GF. 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 totaling 40 acres or more that are planted as of the date of the application for bat
- HG. 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., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings. Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to service only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.
- IH. An expansion of an existing golf course as allowed under DCC 18.16.033(C) shall comply with the definition of "golf course" set forth in DCC Title 18 and the provisions of DCC 18.16.040(A).
- IJ. An applicant for a nonfarm 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.
- KJ. For purposes of approving a conditional use permit for a lot of record dwelling under DCC 18.16.030, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner:

1. Submits a statement of agreement from the Natural Resources Conservation Service of the United States Department of Agriculture that the soil class, soil rating or other soil designation should be adjusted based on new information; or
  2. Submits a report from a soils scientist whose credentials are acceptable to the State Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and
  3. Submits a statement from the State Oregon Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in 2 above and finds the analysis in the report to be soundly and scientifically based.
  4. The soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS in its most recent publication for that class, rating or designation before November 4, 1993, except for changes made pursuant to subsections 1-3 above.
  5. For the purposes of approving a land use application under OAR 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS in its most recent publication for that class, rating or designation.
- LK. Except on a lot or parcel contiguous to a lake or reservoir, a private campground shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 004.
- a. A private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt.
  - b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.
  - c. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.
  - d. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.
- ML. living history museum shall be related to resource based activities and be owned and operated by a governmental agency or a local historical society.
- a. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities, or if the museum administration buildings and parking lot are located within one-quarter mile of an urban growth boundary.
  - b. As used in this paragraph, a "living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and "local historical society" means the local historic society recognized by the County and organized under ORS Chapter 65.
- (Ord. 2012-007 §2, 2012; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2006-008 §3, 2006; Ord. 2004-001 §2, 2004; Ord. 98-030 §1, 1998; Ord. 95-075 §1, 1995; Ord. 95-007 §14, 1995; Ord. 92-065 §3, 1992; Ord. 91-038 §1 and 2, 1991; Ord. 91-020 §1, 1991; Ord. 91-011 §1, 1991)

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#### **18.16.050. Standards for Dwellings in the EFU Zones.**

Dwellings listed in DCC 18.16.025 and 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling, and all dwellings are subject to the landowner for the property upon which the dwelling is placed, signing and recording in the deed records for the County, a document binding the

landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

A. Farm-related dwellings on nonhigh value farmland. A dwelling customarily provided in conjunction with farm use, as listed in DCC 18.16.030(A), 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 DCC 18.116.070, may be considered customarily provided in conjunction with farm use if:

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

(a) One hundred sixty acres and not in the Horse Ridge East subzone; or

(b) Three hundred twenty acres in the Horse Ridge East subzone;

ii. The subject tract is currently employed for farm use, as defined in DCC 18.04.030, and which is 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, except as allowed under DCC 18.16.020(K);  
and

2. Median acreage/gross sales test.

a. On land not identified as high-value farmland, a dwelling, including a manufactured home in accordance with DCC 18.116.070, may be considered 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 DCC 18.16.050(A)(2)(a)(i);

iii. The subject tract is currently employed for farm use, as defined in DCC 18.04.030, and which is evidenced by a farm management plan, at a level capable of producing the annual gross sales required in DCC 18.16.050(A)(2)(a)(ii). 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 establishment of the farm use capable of meeting the median income test.

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, except as allowed under DCC 18.16.020(K);  
and

vi. 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.

b. For the purpose of calculating appropriate tract sizes and gross incomes to satisfy DCC 18.16.050(A)(2)(a)(i) and (ii), the County will utilize the methodology contained in Oregon Administrative Rules 660-33-135(3) using data on gross sales per acre tabulated by LCDC pursuant to Oregon Administrative Rules 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 DCC 18.116.070, may be considered customarily provided in conjunction with farm use if:
    - i. The subject tract is currently employed for a farm use, and that the farm operator earned that produced \$32,500 in gross annual revenue income in the last two years, or three of the last five years, or based on the average farm revenue earned on the tract in the highest three of the last five years.
    - ii. There is no other dwelling on the subject tract, except as allowed under 18.16.020(K);
    - iii. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in DCC 18.16.050(A)(3)(a)(i); and
  - b. In determining gross revenue income, the cost of purchased livestock shall be deducted from the total gross revenue income attributed to the tract.
  - c. Noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross revenue income requirements.
  - d. Only gross revenue income from land owned, not leased or rented, shall be counted; and gross farm revenue income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
  - e. Prior to a dwelling being approved under this section that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross farm revenue income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form attached to Chapter 18.16, has been recorded with the county clerk or counties where the property subject to the covenants, conditions and restrictions is located.
    1. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for primary farm dwelling and shall preclude:
      - a. All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed under ORS Chapter 215; and
      - b. The use of any gross farm revenue income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling;
      - c. The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;
      - d. The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section.
- B. Farm related dwellings on high value farmland. On land identified as high-value farmland, a dwelling, including a manufactured home in accordance with DCC 18.116.070, may be considered customarily provided in conjunction with farm use if:
1. The subject lot or parcel is currently employed for the farm use as defined in DCC 18.04.030, and that the farm operator earned produced at least \$80,000 in gross annual revenue income from the sale of farm products in the last two years, or three of the last five years, or based on the average farm revenue earned by the farm operator in the best three of the last five years, and the lot or parcel on which the dwelling is proposed is at least the size of the minimum lot or parcel size in the subzone. In determining gross revenue income, the cost of purchased livestock shall be deducted from the total gross revenue income attributed to the tract;
  2. There is no other dwelling on the subject tract, except as allowed under 18.16.020(K);
  3. The dwelling will be occupied by a person or persons who produced the commodities which grossed the revenue income under DCC 18.16.050(B)(1); and
  4. Noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross revenue income requirements;

5. Only gross revenue ~~income~~ from land owned, not leased or rented, shall be counted; and gross farm revenue ~~income~~ earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
  6. Prior to a dwelling being approved under this section that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross farm revenue ~~income~~ requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form attached to Chapter 18.16, has been recorded with the county clerk. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for primary farm dwelling and shall preclude:
    - a. All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and
    - b. The use of any gross farm revenue ~~income~~ earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.
- C. Accessory dwelling. A dwelling, including a manufactured home in accordance with DCC 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 seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and
    - b. The accessory farm dwelling will be located:
      - i. On the same lot or parcel as the primary farm dwelling; or
      - ii. On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm 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 primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured home and a deed restriction substantially in compliance with the form set forth in Exhibit A to DCC 18.16 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. The manufactured home may remain if it is reapproved under DCC 18.16.050; or
      - iv. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under DCC 18.16.065 and the lot or parcel complies with the gross farm income requirements in DCC 18.16.050(A)(3) or (B)(1), whichever is applicable; 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 primary farm dwelling to which the proposed dwelling would be accessory meets one of the following:
    - a. On land not identified as high-value farmland, the primary 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,~~ or based on the average farm revenue earned on the tract in the highest three of the last five years. In determining gross revenue ~~income~~, the cost of purchased livestock shall be deducted from the total gross revenue ~~income~~ attributed to the tract; or
    - b. On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, and produced at least \$80,000 in gross annual revenue ~~income~~ from the sale of farm products in the last two years, ~~or three of the last~~

- five years, or based on the average farm revenue earned on the tract in the highest three of the last five years. Gross revenue income shall be calculated by deducting the cost of purchased livestock from the total gross revenue income attributed to the tract; and
3. A lot or parcel approved for an accessory farm dwelling under DCC 18.16.050 shall not be approved for a division of land except as provided for in DCC 18.16.055(B).
  4. An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a nonfarm dwelling pursuant to DCC 18.16.050(G).
- D. Relative farm assistance dwelling.
1. A dwelling listed in DCC 18.16.02530(B) 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 DCC 18.116.070, or is a pre-existing site-built home that: (1) was established at least 30 years prior to the date the land use permit was submitted and (2) is located on a parcel of at least 40 acres in size and that meets the minimum irrigated acres standard for the subzone within which it is located;
    - d. The dwelling is located on the same lot or parcel as the dwelling of the farm operator, and is occupied by a relative of the farm operator or farm operator's spouse, including a grandparent, step-grandparent, grandchild, parent, step-parent, child, brother, sister, sibling, step-sibling, niece, nephew, or first cousin of either, if the farm operator does, or will, require the assistance of the relative in the management of the farm use.
      1. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this subsection obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.
      2. Prior conditions of approval for the subject land and dwelling remain in effect.
      3. For purposes of this subsection, "Foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).
    - 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.
    - f. Any approval granted under DCC 18.16.050 shall be conditioned with a requirement that the farm operator annually submit a report to the Planning Division identifying the resident(s) of the dwelling, their relationship to the farm operator, the assistance the resident provides to the farm operator, and verifying the farm operator's continued residence on the property and the predominant role the farm operator continues to play in the management and farm use of the farm.
  2. A manufactured home permitted under DCC 18.16.050 shall be considered to be a temporary installation, and permits for such home shall be renewable and renewed on an annual basis. The manufactured home shall be removed from the property if it no longer meets the criteria of DCC 18.16.050 and the approval shall be so conditioned.
  3. A pre-existing dwelling approved under DCC 18.16.050 shall be removed or converted to an allowable use within one year of the date the relative farm help dwelling no longer meets the criteria of DCC 18.16.050 and the approval shall be so conditioned.
  4. Upon approval of a dwelling under DCC 18.16.050, a Conditions of Approval Agreement shall be recorded with the Deschutes County Clerk prior to issuance of any building or placement permit for the new dwelling on the property.
  5. For the purposes of DCC 18.16.050(D), 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 nonhigh value farmland.

1. A lot of record dwelling may be approved on a pre-existing lot or parcel on nonhigh 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 and owned continuously by the present owner:
    - i. Prior to January 1, 1985; or
    - ii. By devise or by intestate succession from a person who acquired and owned continuously 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 DCC 18.88.
  - 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 DCC 18.16.050.
  - f. If the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of the tract;
2. For purposes of DCC 18.16.050(E), "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 a combination of these family members.
3. For purposes of DCC 18.16.050(E), the date of creation and existence means that, 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 lot of record dwelling, the date of the reconfiguration is the date of creation and existence. Reconfigured means any change in the boundary of the lot, parcel or tract.

F. Lot of record dwelling on high-value farmland.

1. A lot of record dwelling on a pre-existing lot or parcel will be approved on high value farmland when all of the following requirements are met:
  - a. The requirements set forth in DCC 18.16.050(E)(1)(a) through (f), as determined by the County; and
  - b. The requirements of Oregon Administrative Rules 660-33-130(3)(c)(C), as determined by the County hearings officer.
2. Applicants under DCC 18.16.050(F) shall make their application to the County. The County shall notify the State Department of Agriculture at least 20 calendar days prior to the public hearing under DCC 18.16.050(F)(1)(b).
3. Applicants under DCC 18.16.050(F) shall be subject to such other procedural requirements as are imposed by the Oregon Department of Agriculture.
4. For purposes of DCC 18.16.050(F), the date of creation and existence means that, 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 lot of record dwelling, the date of the reconfiguration is the date of creation and existence. Reconfigured means any change in the boundary of the lot, parcel or tract.

G. Nonfarm dwelling.

1. One single-family dwelling, including a manufactured home in accordance with DCC 18.116.070, 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 will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the County shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated, by applying the standards under OAR 660-033-0130(4)(a)(D), 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 or sales yard, 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 nonfarm-dwelling or the agriculture of the area.  
Road access, fire and police services and utility systems (i.e., electrical and telephone) are adequate for the use.
  - v. The nonfarm dwelling shall be located on a lot or parcel created prior to January 1, 1993, or was created or is being created as a nonfarm parcel under the land division standards in DCC 18.16.055(B) or (C).
2. For the purposes of DCC 18.16.050(G) only, "unsuitability" shall be determined with reference to the following:
- a. A lot or parcel or a portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. 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 or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of 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 or portion of 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 or portion of 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. Except as provided in DCC 18.16.050(I)(2), pursuant to ORS 215.236, a nonfarm 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 under ORS 308A.113 or ORS 308A.116 for special assessment at value for farm use under ORS 308A.062 or other special assessment under ORS

308A.068, 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.

H. Temporary hardship dwelling.

1. A temporary hardship dwelling listed in DCC 18.16.030 is allowed under the following conditions:
  - a. The dwelling is a manufactured home or recreational vehicle, and is used in conjunction with an existing dwelling on the lot or parcel;
  - b. The manufactured home or recreational vehicle 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. The manufactured dwelling shall be removed or demolished within three months of the date the hardship no longer exists. The recreational vehicle shall not be occupied once the term of the medical hardship is completed, except as allowed under DCC 18.116.095. A temporary residence approved under this section is not eligible for replacement under DCC 18.16.020(J);
  - 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. If the manufactured home will use a public sanitary sewer system, such condition will not be required.
  - e. If a recreational vehicle is used as a medical hardship dwelling, it shall be required to have a bathroom, and shall meet the minimum setbacks established under DCC 18.16.070.
2. Permits granted under DCC 18.16.050(H) shall be subject to the provisions of DCC 18.116.090 and shall be required to meet any applicable DEQ review and removal requirements as a condition of approval.
3. As used in DCC 18.16.050(H), the term "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
4. As used in DCC 18.16.050(H), the term "relative" means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, sibling, step-sibling, niece, nephew, uncle, aunt, or first cousin of the existing resident.
5. The proposed hardship dwelling or recreational vehicle shall meet the criteria under DCC 18.16.040(A)(1-2) and DCC 18.16.020(J)(6).

I. Wildlife conservation plan dwelling.

1. A dwelling listed in DCC 18.16.030(G) is allowed when the Planning Director or the Hearings Body finds that the proposed dwelling:
  - a. Is situated on a lot or parcel existing on November 4, 1993, that qualifies for a farm dwelling, as listed in DCC 18.16.030(A), or a nonfarm dwelling, as listed in DCC 18.16.030(C);
  - b. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - c. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - d. Will not be established on a lot or parcel that is predominantly composed of soils rated Class I or II, when not irrigated, or rated Prime or Unique by the United States Natural Resources Conservation Service or any combination of such soils; and
  - e. Is the only dwelling situated on the affected lot or parcel.
2. For a wildlife conservation plan dwelling approval based upon nonfarm dwelling criteria, DCC 18.16.050(I) shall also apply. Unless prior to approval of a conditional use permit for a wildlife conservation plan dwelling the applicant submits to the assessor certification demonstrating approval by Oregon Department of Fish and Wildlife of a wildlife conservation and management plan and its implementation, the conditional use permit shall contain a condition requiring that the applicant, prior to issuance of a building permit for such dwelling, either 1) submit certification to the assessor from ODFW demonstrating approval and implementation of a wildlife conservation

and management plan qualifying under ORS 215.808 or 2) pay the tax penalties required by DCC 18.16.050(G)(3).

(Ord. 2012-007 §2, 2012; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-0020 §1, 2004; Ord. 2004-013 §2, 2004; Ord. 2004-001 §2, 2004; Ord. 98-033 §1, 1998; Ord. 98-030 §1, 1998; Ord. 95-007 §15, 1995; Ord. 94-026 §1, 1994; Ord. 92-065 §3, 1992; Ord. 91-038 §§2 and 3, 1991; Ord. 91-020 §1, 1991)

#### **18.16.055. Land Divisions.**

A. General. A division of land in the exclusive farm use zone shall be identified on the land division application as either an irrigated land division, nonirrigated land division, or a division of land for a use permitted by Oregon Revised Statutes 215.263 ~~DCC 18.16.030~~ other than a dwelling. An irrigated land division is subject to subsection B below; a nonirrigated land division is subject to subsection C below; and a land division for a use other than a dwelling is subject to subsection E below, as well as ORS 215.263.

#### **B. Irrigated land division.**

1. An irrigated land division shall be subject to the minimum lot or parcel size requirements of DCC 18.16.065, Subzones, and all applicable requirements of DCC Title 17.
2. Partitions establishing parcels less than the EFU minimum parcel size established under DCC 18.16.065, may be permitted to create new parcels for nonfarm dwellings as follows:
  - a. If the parent parcel is equal to or greater than the minimum parcel size established under 18.16.065, and is less than 80 acres in size, one new nonfarm parcel may be created subject to the following:
    - i. Parent parcel was lawfully created prior to July 1, 2001;
    - ii. Remainder parcel shall meet the minimum lot size established under 18.16.065;
    - iii. All standards established under 18.16.050(G) for the dwelling shall be met;
    - iv. No minimum lot size shall be required for the nonfarm parcel.
    - v. The parcel for the nonfarm dwelling 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. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.
  - b. If the parent parcel is equal to or greater than the minimum lot size established under 18.16.065, and is greater than or equal to 80 acres in size, two new nonfarm parcels may be created subject to the following:
    - i. Parent parcel was lawfully created prior to July 1, 2001;
    - ii. Remainder parcel shall meet the minimum lot size established under 18.16.065;
    - iii. All standards established under 18.16.050(G) for the dwellings shall be met;
    - iv. No minimum parcel size shall be required for the nonfarm parcel.
    - v. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.
3. The minimum size for new parcels does not mean that farm dwellings may be approved on the new parcels.
4. New dwellings in conjunction with farm use must satisfy the criteria in DCC 18.16.050.

#### **C. Nonirrigated land division.**

1. The minimum lot or parcel size for a nonirrigated land division is 80 acres.
2. Notwithstanding 1 above, land divisions creating nonfarm parcels less than the minimum lot size may be allowed as follows:

- a. If the parent parcel is greater than 80 acres in size, up to two new nonfarm parcels may be allowed subject to the following:
  - i. Parent parcel was lawfully created prior to July 1, 2001;
  - ii. Remainder parcel shall be at least 80 acres in size;
  - iii. All standards established under 18.16.050(G) for the dwellings shall be met;
  - iv. The minimum size for the nonfarm parcels is 5 acres.
  - v. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.
  - vi. Be located outside of the Horse Ridge East subzone.
- b. If the parent parcel is greater than or equal to 40 acres and less than or equal to 80 acres, one new nonfarm parcel is allowed subject to the following:
  - i. Parent parcel was lawfully created prior to July 1, 2001;
  - ii. Parcels are not capable of producing more than 20 cubic feet per acre per year of wood fiber;
  - iii. Parcels are composed of at least 90 percent Class VII and VIII soils, or are composed of at least 90 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock;
  - iv. Parcels shall not have established water rights for irrigation;
  - v. All standards established under 18.16.050(G) for the dwellings shall be met;
  - vi. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land
  - vii. The minimum parcel size is 5 acres;
  - viii. Be located outside of the Horse Ridge East subzone.
- D. Partitions in the Wildlife Area Combining Zones must meet the minimum parcel sizes established under DCC 18.88.050.
- E. A division of land for a use listed under ORS 215.263 ~~18.16.030~~ other than a dwelling. Such divisions shall be subject to the minimum parcel size requirements of DCC 18.16.060(C), ORS 215.263, and the applicable partitioning standards, including the general partition standards set forth in DCC 17.22, the Subdivision and Partition Ordinance.  
(Ord. 2012-007 §2, 2012; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2006-008 §3, 2006; Ord. 2004-001 §2, 2004; Ord. 2002-016 §1, 2002; Ord. 2001-016 §2, 2001; Ord. 95-007 §16, 1995; Ord. 94-026 §2, 1994; Ord. 92-065 §3, 1992)

**18.16.060. Dimensional Standards.**

- A. The minimum parcel size for irrigated land divisions created subject to DCC Title 17 shall be as specified under DCC 18.16.065, "Subzones."
- B. The minimum parcel size for nonirrigated land divisions created subject to DCC Title 17 is as specified under DCC 18.16.055(C).
- C. The minimum parcel size for all other uses permitted by Oregon Revised Statutes 215.263 ~~DCC 18.16.030~~ shall be no greater than the minimum size necessary for the use.
- D. Each parcel 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 DCC 18.120.040.

(Ord. 2012-007 §2, 2012; Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2002-016 §1, 2002; Ord. 2001-016 §2, 2001; Ord. 95-007 §17, 1995; 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)

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DESCHUTES COUNTY BOARD OF COUNTY COMMISSIONERS  
FINDINGS AND DECISION

**FILE NUMBER:** TA-12-2

**APPLICANT:** Deschutes County

**REQUEST:** Text Amendments to: (1) incorporate changes to State Law for the Exclusive Farm Use and Forest Use Zones (Chapters 18.16, 18.36 and 18.40 of Title 18 of the Deschutes County Code); (2) provide a new definition to the Definitions section of Title 18 (18.04.030) for "Room and Board Arrangement," and slightly modify the definitions of "Residential Facility" and "Residential Home; (3) Amend the provision for medical hardship dwellings under 18.116.090 to expand upon who constitutes a relative; (4) Add a provision for a solar setback variance in 18.116.180; (5) Amending the definition of "Property Line Adjustment" in Title 17 to make it consistent with ORS Chapter 92, and amend the Park Dedication and Fee chapter to refer to all park districts in the county.

**STAFF CONTACT:** Paul Blikstad, Senior Planner

**EMERGENCY:**

The adoption of Ordinance Nos. 2012-007, 2012-008 and 2012-009 by emergency is for the following reasons:

1. The County is required to implement State law when the law is mandatory and can adopt state law when it is conditional. By having our code consistent with state law as soon as possible, it makes it much easier for staff and the general public to know what standards apply for each zone, and potential land use applications.
2. Amending the definition of "Property Line Adjustment" allows us to implement the changes to ORS 92, and gives more flexibility to property owners for property line adjustments. We are currently using the new state definition and need to make our code consistent with the ORS Chapter 92 definition. There will be no challenges to our procedure if we immediately adopt the new definition.
3. Because the Board chose to adopt the addressing provisions at the request of the Redmond Fire and Rescue district, our addressing code needs to be updated as soon as possible to incorporate the addressing protocol for the Redmond Fire and Rescue territory for any new addresses being assigned. An immediate change allows us to follow that procedure without any disruption in addressing properties.

**BACKGROUND:**

In 2011, the Planning Division determined that changes needed to be made to certain sections/chapters of our code, to make them consistent with State law. Other minor

changes were necessary to make our code match our current procedures. Staff initiated the proposed changes and has notified the Oregon Department of Land Conservation and Development of the proposed changes. No significant comments were submitted by DLCDC, and the Deschutes County Planning Commission reviewed the proposed changes on March 8, 2012, and recommend approval of them to the Board of County Commissioners.

The Planning Division held a work session with the Board of County Commissioners on April 11, 2012. The Board held a public hearing on April 23, 2012.

**PROPOSED TEXT AMENDMENTS:**

The proposed text amendments are detailed in the Exhibits attached to Ordinances 2012-007, 2012-008 and 2012-009. Below are explanations of the proposed changes.

**Title 18 of the Deschutes County Code Amendments:**

**Section 18.04.030, Definitions:**

One new definition of "Room and Board Arrangement" is needed to accommodate the Board of County Commissioner's decision on application no. CU-10-2, a conditional use permit to establish room and board arrangements in the Exclusive Farm Use zone.

The definitions of "Residential Facility" and "Residential Home" are slightly amended to reference the State Of Oregon rather than a specific state agency, in the event the state further amends the agency's name or transfers oversight of these facilities to another state agency.

**Chapters 18.16, 18.36 and 18.40:**

The Exclusive Farm Use Zone (Chapter 18.16), and the Forest Use Zones (Chapters 18.36 and 18.40) need to be updated (again) to be consistent with the changes made to ORS Chapter 215 and OAR 660-033, and OAR 660-006. Staff has incorporated the changes to state law in the Title 18 chapters, including the amendment to the guest ranch provision, extending the sunset clause to January 2018. The changes include the siting standards for dwellings and structures in the Forest Use (F1 and F2) Zone, and the siting of dwellings in the Exclusive Farm Use (EFU) Zone. Two new uses were added by the State for the EFU zone, which are wind power generation facilities and photovoltaic solar power generation facilities. In the F zones two new uses were also added, which are firearms training facility and permanent facility for the primary processing of forest products.

**Section 18.116.090:**

This section establishes the provision for a medical hardship dwelling (for properties not within the EFU and Forest Use zones). We are making this section consistent with the EFU zone language of who constitutes a "relative," to make the code consistent in both places.

**Section 18.116.180:**

This section establishes the standards for the solar setbacks on individual properties. There is no provision for a solar setback "variance." There are certain instances where a solar setback variance may be appropriate. This provides that option for property owners.

### **Title 17 of the Deschutes County Code Amendments**

#### Section 17.08.030:

This section establishes the definitions used in Title 17, the Deschutes County Subdivision/Partition Ordinance. We are amending the definition of "Property Line Adjustment" to make the County Code consistent with ORS 92.010.

#### Chapter 17.44, Park Development:

This chapter establishes the standards for parks dedication/fees for subdivisions and partitions. We are amending it to take out the specific references to parks districts, and replacing it with language relating to "parks district with a permanent tax rate." Lands being divided within parks districts are not subject to the parks fee or dedication.

### **Title 16 of the Deschutes County Code Amendments**

#### Section 16.08.010, Definitions:

This section establishes the definitions for Title 16 of the Deschutes County Code, Addresses and Road Names. We are amending it to provide for the differences between the County's addressing protocol, and that used by Redmond Fire and Rescue. We are also amending the definition of "Structure" in Title 16 to match the definition in Title 18.

#### Section 16.12.020, Procedures and Standards for Assigning New Address Numbers:

We are amending this section to accommodate the differences between the County's addressing protocol and that used by Redmond Fire and Rescue. This request was submitted by the Redmond Fire and Rescue personnel.

### **REVIEW CRITERIA AND FINDINGS:**

Legislative text amendments are subject to Chapter 22.12 of Title 22 of the Deschutes County Code. DCC 22.12.010 specifies that no legislative changes shall be adopted without review by the Planning Commission and a public hearing before the Board of County Commissioners. A public hearing before the Planning Commission is not required and is at the discretion of the Planning Director. The proposed text amendments were reviewed by the Planning Commission at their March 8, 2012 meeting. A public hearing before the Board was held on April 23, 2012.

DCC 22.12.030 specifies that initiation of a legislative change may be initiated by the Board of County Commissioners ("Board"). This change (TA-12-2) was initiated by the Board at the Planning Division's request. DCC 22.12.050 states that all legislative changes shall be adopted by ordinance. The proposed ordinances affect the proposed changes.

### ***State Statutes and Administrative Rules***

Oregon Revised Statutes Chapter 215 establishes the EFU zone and what is allowed within the zone. ORS 215.283 provides the primary list of uses in the EFU zone, as well as Oregon Administrative Rules 660-033. The proposed amendments reflect the changes made to both the ORS and OAR's.

Oregon Administrative Rules 660-006 establishes uses in the Forest zones. The proposed amendments reflect the changes made to OAR 660-006.

### ***Statewide Planning Goals***

No significant changes to the Goals have been adopted by the Oregon Land Conservation and Development Commission (LCDC) since the County's Comprehensive Plan was last acknowledged as being in compliance with the Goals. Therefore, because these proposed changes are to the County's zoning code that implements the Comprehensive Plan, the Goals are not applicable to these changes.

**[Also, add in the 2011 statute that says that, if all the local government is doing is adopting state law, it's not a land use decision.]**

### ***Deschutes County Comprehensive Plan***

Chapter 1, Comprehensive Planning

Section 1.3, Land Use Planning Policies

- 1.3.1 Protect the limited amount of privately-owned land in Deschutes County through consideration of private property rights and economic impacts to property owners and the community when creating and revising land use policies and regulations.*
- 1.3.2 Consider sustainability and cumulative impacts when creating and revising land use policies and regulations.*
- 1.3.3 Involve the public when amending County Code.*

**FINDING:** The Board finds that the proposed amendments to the County code will continue to protect the privately-owned land in the County. The Board finds that any proposed development may require a land use review process, which will take into account cumulative impacts and sustainability, and will involve public input.

The code changes to Title 17 are minor in nature (property line adjustment definition change, amending the reference to a parks district), and will have no impact on property rights and economic impact.

The code changes to Title 16 relate specifically to addressing protocol in the Redmond Fire and Rescue district. The changes will make the County Code consistent with the addressing protocol within Redmond Fire and Rescue District's boundaries. It will not impact the other areas in the county for addressing purposes.

The proposed amendments to the Exclusive Farm Use Zone and Forest Use Zone are based upon changes made to the Oregon Revised Statutes and Oregon Administrative Rules. The proposed amendments will make the Deschutes County Code consistent with the state law changes (see below).

## Chapter 2, Resource Management

### Section 2.2, Agricultural Lands Policies

*2.2.1 Retain agricultural lands through Exclusive Farm Use zoning.*

*2.2.5 Uses allowed in Exclusive Farm Use Zones shall comply with State Statute and Oregon Administrative Rule.*

**FINDING:** The Board finds that the proposed changes will retain agricultural lands, and the zoning on these lands will remain EFU and will not change because of the proposed text amendments. The proposed changes to the Deschutes County Code have been taken directly from State Statute and Oregon Administrative Rule amendments. Any uses proposed within the EFU zone must comply with State and County regulations, and the two proposed new uses (wind power generation facilities and photovoltaic solar power generation facilities) will require land use review by the County.

### Section 2.3, Forest Lands Policies

*2.3.1 Retain forest lands through Forest 1 and Forest 2 zoning.*

*2.3.5 Uses allowed in Forest zones shall comply with State Statute and Oregon Administrative Rule.*

**FINDING:** The Board finds that the proposed changes will retain forest lands, and the zoning on these forest lands will remain Forest Use and will not change because of the proposed text amendments. The proposed changes to the Deschutes County Code have been taken directly from Oregon Administrative Rule amendments. Any uses proposed within the Forest zones must comply with State and County regulations, and the two proposed new uses (permanent facility for primary processing of forest products and firearms training facility) will require land use review by the County.

## Chapter 3, Rural Growth Management

### Section 3.6 Public Facilities and Services

*3.6.9 New development shall address impacts on existing facilities and plans through the land use entitlement process.*

**FINDING:** Any new development proposed for the EFU and Forest Use zones will be reviewed during the land use review process, which would take into account impacts on existing facilities, such as roads, utilities and fire protection services.

**DECISION:** Based on the above findings, the Board approves the proposed language of TA-12-2 and adopts Ordinance No. 2012-007.

**Chapter 18.36. FOREST USE ZONE - F-1**

- 18.36.010. Purpose.**
- 18.36.020. Uses Permitted Outright.**
- 18.36.030. Conditional Uses Permitted.**
- 18.36.040. Limitations on Conditional Uses.**
- 18.36.050. Standards for Single-Family Dwellings.**
- 18.36.060. Siting of Dwellings and Structures.**
- 18.36.070. Fire Siting Standards for Dwellings and Structures.**
- 18.36.080. Fire Safety Design Standards for Roads.**
- 18.36.085. Stocking Requirement.**
- 18.36.090. Dimensional Standards.**
- 18.36.100. Yards and Setbacks.**
- 18.36.110. Stream Setbacks.**
- 18.36.120. State Law Controls.**
- 18.36.130. Rimrock Setbacks.**
- 18.36.140. Restrictive Covenants.**

“\*\*\*\*” Denotes sections of the Deschutes County Code not amended by Ordinance 2012-007.

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**18.36.020. Uses Permitted Outright.**

The following uses and their accessory uses are permitted outright, subject to applicable siting criteria set forth in DCC 18.36 and any other applicable provisions of DCC Title 18.

- A. 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, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4.
- B. Temporary on-site structures, which that are auxiliary to and used during the term of a particular forest operation, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4. As used here, temporary structures are those which are portable and/or not placed on a permanent foundation, and which are removed at the conclusion of the forest operation requiring its use. For the purposes of this section, including DCC 18.36.020(B) and (C) "auxiliary" means a use or alteration of a structure or land, which that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- C. Physical alterations to ~~commercial forest~~ the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities, subject to the Forest Practices Act (ORS Chapter 527) and Goal 4. Gravel extraction and processing not covered by DCC 18.36.020 is governed by DCC 18.52.
- D. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
- E. Farm use as defined in ORS 215.203.

- F. 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~~ that provides service hookups, including water service hookups.
- G. Temporary portable facility for the primary processing of forest products. The facility shall not be placed on a permanent foundation and shall be removed at the conclusion of the forest operation requiring its use.
- H. Exploration for mineral and aggregate resources as defined in ORS 517.
- I. Towers and fire stations for forest fire protection.
- J. Widening of roads within existing rights of way in conformance with the transportation element of the comprehensive plan including public road and highway projects as described in ORS 215.283(1) ~~(n)~~ through(n).
- K. Water intake facilities, canals and distribution lines for farm irrigation and ponds.
- L. Uninhabitable structures accessory to fish and wildlife enhancement.
- M. 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.
- N. An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under OAR 660-006.  
(Ord. 2012-007 §3, 2012; Ord. 2003-007 §1, 2003; Ord. 94-038 §1, 1994; Ord. 92-025 §2, 1992; Ord. 91-020 §1, 1991; Ord. 91-002 §8, 1991)

**18.36.030. Conditional Uses Permitted.**

The following uses and their accessory uses may be allowed in the Forest Use Zone, subject to applicable provisions of the Comprehensive Plan, DCC 18.36.040 and other applicable sections of DCC Title 18.

- A. Private hunting and fishing operations without any lodging accommodations.
- B. Caretaker residences for public parks and fish hatcheries.
- C. Temporary forest labor camps limited to the duration of the forest operation requiring its use.
- D. Exploration for and production of geo-thermal, gas, oil and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.
- E. Log scaling and weigh stations.
- F. Disposal site for solid waste 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.
- G. Private parks and campgrounds.
  1. Campgrounds in private parks shall only be those allowed by OAR 660-006-0025.
  2. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.
  3. For the purpose of DCC 18.36.030 a campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

4. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.
5. A Campingsites may be occupied by a tent, travel trailer or recreational vehicle.
6. Separate sewer, water or electric service hookups shall not be provided to individual campsites except that electrical service may be provided to yurts allowed for by OAR 660-006-0025(4)(e)(C).
7. Campgrounds shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.
8. A private campground may provide yurts for overnight camping.
  - a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt.
  - b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.
  - c. As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.
- H. Mining and processing of oil, gas or other subsurface resources, as defined in ORS 520.005, and not otherwise permitted under DCC 18.36.030(D).
- I. Television, microwave and radio communication facilities and transmission towers.
- J. Fire stations for rural fire protection.
- K. Commercial Utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to Oregon Administrative Rules 660, Division 4.
- L. Aids to navigation and aviation.
- M. Water intake facilities, related treatment facilities, pumping stations and distribution lines.
- N. Reservoirs and water impoundments.
- O. Cemeteries.
- P. New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g. electrical, gas, oil, geothermal, telephone, fiber optic cable) with rights of way 50 feet or less in width.
- Q. Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.
- R. ~~Type 2 or 3~~ Home Occupations, subject to DCC 18.116.280.
- S. Expansion of existing airports.
- T. Public road and highway projects as described as ORS 215.283(2) ~~(p) through (r)~~ and 215.283(3).
- U. Private accommodations for fishing occupied on a temporary basis subject to other applicable sections of DCC Title 18 and the following requirements:
  1. Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
  2. Only minor incidental and accessory retail sales are permitted;
  3. Accommodations are occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission; and
  4. Accommodations must be located within one-quarter mile of fish bearing Class I Type F waters.
- V. Forest management research and experimentation facilities as ~~defined~~ described by ORS 526.215 or where accessory to forest operations.
- W. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland, subject to DCC 18.120.050 and 18.128.270.

- X. A 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 as defined in ORS 215.283.
  - 1. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
  - 2. The use shall be subject to the review criteria in DCC 18.116.090, as well as DCC 18.36.040 and 18.36.060 of this chapter.
  - 3. The manufactured home shall use the same subsurface sewage disposal system used by the existing dwellings if that disposal system is adequate to accommodate the additional dwelling.
  - 4. If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required.
  - 5. A temporary residence approved under this subsection is not eligible for replacement under OAR 660-006-025(3)(p).
- Y. Single-family dwellings or manufactured homes as specified in DCC 18.116.070, as pursuant to DCC 18.36.050.
- Z. Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.
- AA. Private seasonal accommodations for fee hunting operations may be allowed subject to DCC 18.36.050 and the following requirements:
  - 1. Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
  - 2. Only minor incidental and accessory retail sales are permitted; and
  - 3. Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission.
- BB. Any Extended Outdoor Mass gathering subject to review by a county planning commission pursuant to DCC Chapter 8.16 under the provisions of ORS 433.763. ~~These gatherings are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three month period and any part of which is held in open spaces.~~
- CC. ~~Permanent storage and repair of logging equipment.~~
- DD. Permanent facility for the primary processing of forest products.
- EE. Firearms training facility.  
(Ord. 2012-007 §3, 2012; Ord. 2007-020 §3, 2007; Ord. 2004-002 §5, 2004; Ord. 2000-033 §1, 2000; Ord. 94-038 §1, 1994; Ord. 92-068 §1, 1992; Ord. 92-025 §2, 1992; Ord. 91-038 §1, 1991; Ord. 90-014 §28, 1990; Ord. 86-018 §8, 1986)

**18.36.040. Limitations on Conditional Uses.**

A use authorized by DCC 18.36.030 must meet the following requirements. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands.

- A. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest lands.
- B. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.
- C. Prior to final approval of ~~any~~ the uses listed in DCC 18.36.030(G), (N), (R), (U) and, (X), the land owner shall sign and record in the County Clerk's office a written statement recognizing the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules.

(Ord. 2012-007 §3, 2012; Ord. 94-038 §1, 1994; Ord. 92-025 §2, 1992; Ord. 91-020 §1, 1991)

### 18.36.050. Standards for Single-Family Dwellings.

#### A. General provisions.

1. Dwellings listed as a conditional use under DCC 18.36.050 shall meet the following standards:
  - a. One of the alternative tests set out in DCC 18.36.050(B) (lot of record dwelling), (C) (large tract dwelling), or (D) (template dwelling);
  - b. If the lot or parcel is part of a "tract," the remaining undeveloped lots or parcels of the tract shall be consolidated into a single lot or parcel, or the applicant shall sign and record with the County Clerk covenants, conditions and restrictions (on a form substantially similar to that set forth in DCC 18.36.140) prohibiting the siting of a dwelling on the undeveloped portions of the tract. Such covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by the County Planning Director, or his authorized representative.
  - c. No other dwellings shall be located on the tract.
  - d. The applicant shall provide evidence that any domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (Oregon Administrative Rules 690, Division 10) or surface water (Oregon Administrative Rules 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (Oregon Administrative Rules chapter 629-24-101(3)).
  - i. For purposes of DCC 18.36.050, evidence of a domestic water supply means:
    - a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
    - b) A water use permit issued by the Water Resources Department for the use described in the application; or
    - c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well construction report to the County upon completion of the well.
  - e. If road access to a dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.
2. In addition, dwellings listed as a conditional use under DCC 18.36.030(Y) shall be subject to the following standards or conditions:
  - a. The conditional use standards set forth in DCC 18.36.040;
  - b. The siting criteria set forth in DCC 18.36.060;
  - c. The fire siting standards set forth in DCC 18.36.070;
  - d. The fire safety design standards for roads set forth in DCC 18.36.080;
  - e. The stocking requirements set forth in DCC 18.36.085, if applicable; and
  - f. Any other provisions made applicable by DCC Title 18 or the comprehensive plan.
3. Dwellings in forest zones shall not be subject to conditional use standards.
4. Approval of a dwelling in the forest zone under DCC Chapter 18.36 shall include a condition of approval requiring that, prior to the issuance of a building permit, the landowner sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forestry practices for which no action or claim is allowed under ORS 30.936 or 30.937.

- B. Lot of Record Dwelling. For approval under DCC 18.36.050(B), a single-family dwelling shall meet the following requirements:

1. The lot or parcel on which the dwelling would be sited was lawfully created prior to January 1, 1985 and was acquired and owned continuously by the present owner either prior to January 1, 1985 or by devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.
  2. For the purposes of DCC 18.36.050(B), "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.
  3. The dwelling ~~would~~ must be located on a tract that is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract.
    - a. The road shall be maintained and either paved or surfaced with rock and shall not be a :
      - i. United States Bureau of Land Management (BLM) road, or
      - ii. a United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction, and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

For the purposes of DCC 18.36.050, "public roads" are those roads in which the public has a right of use that is a matter of public record.
  4. For the purposes of DCC 18.36.050, "commercial tree species" means trees recognized for commercial production under administrative rules adopted by the Oregon Department of Forestry pursuant to ~~under~~ ORS 527.715 for commercial production.
  5. The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwellings exists on another lot or parcel that was part of the tract.
  6. When 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.
  - 37 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 DCC 18.88.
- C. Large Tract Dwelling. ~~For approval of a single family dwelling under DCC 18.36.050(C),~~ A dwelling not allowed pursuant to DCC 18.36.050(B) may be allowed if the subject property shall consists of at least 240 contiguous acres or 320 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use and does not include an existing dwelling.
1. A deed restriction shall be filed pursuant to DCC 18.36.140 for all tracts that are used to meet the acreage requirements of this subsection.
  2. A tract shall not be considered to consist of less than 240 acres because it is crossed by a public road or a waterway.
- D. Template Dwelling. For approval under DCC 18.36.050(D), a single-family dwelling shall meet the following requirements:
1. The lot or parcel is predominantly composed of soils that are:
    - a. Capable of producing zero to 20 cubic feet per acre per year of wood fiber if:
      - i. All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and
      - ii. At least three ~~other~~ dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.
    - b. Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

- i. All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and
  - ii. At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.
  - c. Capable of producing more than 50 cubic feet per acre per year of wood fiber if:
    - i. All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and
    - ii. At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.
  - d. Lots or parcels within urban growth boundaries shall not be used to satisfy the template requirements under this subsection.
2. Requirements of Applying Template
- a. If a tract 60 acres or larger described in DCC 18.36.050(D) abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible aligned with the road or stream.
  - b. If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling. However, one of the three required dwellings shall be on the same side of the road or stream as the tract and:
    - i. Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible aligned with the road or stream;
    - ii. Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.
  - c. If a tract reviewed under DCC 18.36.050(D) abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

(Ord. 2012-007 §3, 2012; Ord. 2003-007 §1, 2003; Ord. 94-038 §1, 1994; Ord. 92-025 §2, 1992; Ord. 91-020 §1, 1991)

**18.36.060. Siting of Dwellings and Structures.**

- A. All new dwellings and structures approved pursuant to DCC 18.36.030 or permitted under DCC 18.36.020 shall be sited in accordance with DCC 18.36.060 and DCC 18.36.070.
- B. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands.
- C. These criteria shall include the following such that the dwellings and structures shall be sited on the parcel so that they: ~~Relevant physical and locational factors including, but not limited to, topography, prevailing winds, access, surrounding land use and source of domestic water shall be used to identify a site which:~~
  - A1. ~~Have~~ Has the least impact on nearby or adjoining adjacent lands zoned for forest or agricultural lands use;
  - B2. Ensures that adverse impacts on forest operations and accepted farming practices on the tract will not be minimized curtailed or impeded;
  - C3. Minimizes the amount of forest lands used to site for the dwelling and structures building site, road access and service corridors; ~~and~~

~~D4. Are C~~consistent with the applicable provisions of DCC 18.36.070, minimizes the risks associated with wildfire; and.

D. Siting criteria satisfying the above may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

(Ord. 2012-007 §3, 2012; Ord. 94-038 §1, 1994; Ord. 92-025 §2, 1992)

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**Chapter 18.40. FOREST USE ZONE - F-2**

- 18.40.010. Purpose.**
- 18.40.020. Uses Permitted Outright.**
- 18.40.030. Conditional Uses Permitted.**
- 18.40.040. Limitations on Conditional Uses.**
- 18.40.050. Standards for Single-Family Dwellings.**
- 18.40.060. Siting of Dwellings and Structures.**
- 18.40.070. Fire Siting Standards for Dwellings and Structures.**
- 18.40.080. Fire Safety Design Standards for Roads.**
- 18.40.085. Stocking Requirement.**
- 18.40.090. Dimensional Standards.**
- 18.40.100. Yards and Setbacks.**
- 18.40.110. Stream Setbacks.**
- 18.40.120. State Law Controls.**
- 18.40.130. Rimrock Setback.**

“\*\*\*\*” Denotes sections of the Deschutes County Code not amended by Ordinance 2012-007.

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**18.40.020. Uses Permitted Outright.**

The following uses and their accessory uses are permitted outright, subject to applicable siting criteria set forth in DCC 18.40 and any other applicable provisions of DCC Title 18:

- A. 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, subject to the Forest Practices Act (ORS Chapter 527 and Goal 4).
- B. Temporary on-site structures that are auxiliary to and used during the term of a particular forest operation, subject to the Forest Practices Act (ORS Chapter 527) and Goal 8. As used here, temporary structures are those which are portable and/or not placed on a permanent foundation, and which are removed at the conclusion of the forest operation requiring its use. For the purposes of this section, including DCC 18.36.020(B) and (C) "auxiliary" means a use or alteration of a structure or land which that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.
- C. Physical alterations to ~~commercial forest~~ the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities, subject to the Forest Practices Act (ORS Chapter 527 and Goal 4). Gravel extraction and processing not covered by DCC 18.40.020 is governed by DCC 18.52.
- D. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
- E. Farm use as defined in ORS 215.203.
- F. 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 that provides service hookups, including water service hookups.
- G. Temporary portable facility for the primary processing of forest products. The facility shall not be placed on a permanent foundation and shall be removed at the conclusion of the forest operation requiring its use.

- H. Exploration for mineral and aggregate resources as defined in ORS 517.
- I. Towers and fire stations for forest fire protection.
- J. Widening of roads within existing rights of way in conformance with the transportation element of the comprehensive plan including public road and highway projects as described in ORS 215.283(1) (~~through~~ ~~(n)~~).
- K. Water intake facilities, canals and distribution lines for farm irrigation and ponds.
- L. Uninhabitable structures accessory to fish and wildlife enhancement.
- M. 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.
- N. An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under OAR 660-006. (Ord. 2012-007 §4, 2012; Ord. 2003-007 §2, 2003; Ord. 94-038 §2, 1994; Ord. 92-025 §3, 1992; Ord. 91-020 §1, 1991; Ord. 91-005 §21, 1991; Ord. 91-002 §9, 1991)

**18.40.030. Conditional Uses Permitted.**

The following uses and their accessory uses may be allowed in the Forest Use Zone, subject to applicable provisions of the Comprehensive Plan, DCC 18.40.040 and other applicable sections of DCC Title 18:

- A. Private hunting and fishing operations without any lodging accommodations.
- B. Caretaker residences for public parks and fish hatcheries.
- C. Temporary forest labor camps limited to the duration of the forest operation requiring it use.
- D. Destination Resorts where mapped in a DR zone and subject only to the provisions of DCC 18.113 and other applicable provisions of DCC Title 18 and the Comprehensive Plan not contained in DCC 18.40.
- E. Exploration for and production of geothermal, gas, oil and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.
- F. Log scaling and weigh stations.
- G. Disposal site for solid waste 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.
- H. Private parks and campgrounds.
  - 1. Campgrounds in private parks shall only be those allowed by OAR 660-006-0025.
  - 2. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 4.
  - 3. For the purpose of DCC 18.36.030 a campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.
  - 4. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.
  - 5. A Campingsites may be occupied by a tent, travel trailer or recreational vehicle.
  - 6. Separate sewer, water or electric service hookups shall not be provided to individual campsites except that electrical service may be provided to yurts allowed for by OAR 660-006-0025(4)(e)(C).

7. Campgrounds shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.
8. A private campground may provide yurts for overnight camping.
- a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt.
  - b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.
  - c. As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.
- I. Mining and processing of oil, gas or other subsurface resources, as defined in ORS 520.005, and not otherwise permitted under DCC 18.40.030(E).
- J. Television, microwave and radio communication facilities and transmission towers.
- K. Fire stations for rural fire protection.
- L. Commercial utility facilities for the purpose of generating power. A power generation facility shall not preclude more than 10 acres from use as a commercial forest operation unless an exception is taken pursuant to Oregon Administrative Rules 660, Division 4.
- M. Aids to navigation and aviation.
- N. Water intake facilities, related treatment facilities, pumping stations and distribution lines.
- O. Reservoirs and water impoundments.
- P. Cemeteries.
- Q. New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g. gas, oil, geothermal, telephone, fiber optic cable) with rights of way 50 feet or less in width.
- R. Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.
- S. ~~Type 2 or 3~~ Home Occupations, subject to DCC 18.116.280.
- T. Expansion of existing airports.
- U. Public road and highway projects as described as ORS 215.283(2) ~~(p)~~ through ~~(r)~~ and 215.283(3).
- V. Private accommodations for fishing occupied on a temporary basis subject to other applicable sections of DCC Title 18 and the following requirements:
1. Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
  2. Only minor incidental and accessory retail sales are permitted;
  3. Accommodations are occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission; and
  4. Accommodations must be located within one-quarter mile of fish-bearing ~~Type F~~ Class I waters.
- W. Forest management research and experimentation facilities as ~~defined~~ described by ORS 526.215 or where accessory to forest operations.
- X. Single-family dwellings or manufactured homes as specified in DCC 18.116.070, pursuant to DCC 18.40.050.
- Y. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland, subject to DCC 18.120.050 and 18.128.270.
- Z. A 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 as defined in ORS 215.283.
1. As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
  2. The use shall be subject to the review criteria in DCC 18.116.090, as well as DCC 18.40.040 and 18.40.60.
  3. The manufactured home shall use the same subsurface sewage disposal system used by the existing dwellings if that disposal system is adequate to accommodate the additional dwelling.

4. If the manufactured dwelling will use a public sanitary sewer system, such condition will not be required.

5. A temporary residence approved under this subsection is not eligible for replacement under OAR 660-006-025.

AA. Public parks including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

BB. Private seasonal accommodations for fee hunting operations may be allowed subject to DCC 18.36.050 and the following requirements:

1. Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
2. Only minor incidental and accessory retail sales are permitted; and
3. Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission

CC. Any Extended Outdoor Mass Gathering subject to review by a county planning commission pursuant to DCC Chapter 8.16 under the provisions of ORS 433.763. These gatherings are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three month period and any part of which is held in open spaces.

DD. Permanent storage and repair of logging equipment.

EE. Permanent facility for the primary processing of forest products.

FF. Firearms training facility.

(Ord. 2012-007 §4, 2012; Ord. 2007-020 §4, 2007; Ord. 2004-002 §6, 2004; Ord. 2000-033 §1, 2000; Ord. 94-038 §1, 1994; Ord. 92-068 §1, 1992; Ord. 92-025 §2, 1992; Ord. 91-038 §1, 1991; Ord. 90-014 §28, 1990; Ord. 86-018 §8, 1986)

#### **18.40.040. Limitations on Conditional Uses.**

A use authorized by DCC 18.40.030 must meet the following requirements. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands.

- A. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- B. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.
- C. Prior to final approval of ~~any~~ the uses listed in DCC 18.40.030(H), (O), (S), (V) and (Z), the landowner shall sign and record in the County Clerk's office a written statement recognizing the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules.

(Ord. 2012-007 §4, 2012; Ord. 94-038 §2, 1994; Ord. 92-025 §3, 1992; Ord. 91-020 §1, 1991)

#### **18.40.050. Standards for Single-Family Dwellings.**

A. General Provisions.

1. Dwellings listed as a conditional use under DCC 18.40.030(X) shall meet the following standards:
  - a. One of the alternative tests set out in DCC 18.40.050(B) (lot of record dwelling), DCC 18.40.050(C) (large tract dwelling), or DCC 18.40.050(D) (template dwelling);
  - b. If the lot or parcel is part of a "tract," the remaining undeveloped lots or parcels of the tract shall be consolidated into a single lot or parcel, or the applicant shall sign and record with the County Clerk covenants, conditions and restrictions (on a form substantially similar to that set forth in DCC 18.36.140) prohibiting the siting of a dwelling on the undeveloped portions of the tract. Such covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by the County Planning Director, or his authorized representative.
  - c. No other dwellings shall be located on the tract.

- d. The applicant shall provide evidence that any domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (Oregon Administrative Rules 690, Division 10) or surface water (Oregon Administrative Rules 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (Oregon Administrative Rules Chapter 629-24-101(3)). For purposes of DCC 18.40.050, evidence of a domestic water supply means:
    - i. Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
    - ii. A water use permit issued by the Water Resources Department for the use described in the application; or
    - iii. Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well construction report to the County upon completion of the well.
  - e. If road access to a dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.
2. In addition, dwellings listed as a conditional use under DCC 18.40.030(X) shall be subject to the following standards or conditions:
    - a. The conditional use standards set forth in DCC 18.40.040;
    - b. The siting criteria set forth in DCC 18.40.060;
    - c. The fire siting standards set forth in DCC 18.40.070;
    - d. The fire safety design standards for roads set forth in DCC 18.40.080;
    - e. The stocking requirements set forth in DCC 18.40.085, if applicable; and
    - f. Any other provisions made applicable by DCC Title 18 or the comprehensive plan.
  3. Dwellings in forest zones shall not be subject to conditional use standards.
  4. Approval of a dwelling in the forest zone under DCC Chapter 18.40 shall include a condition of approval requiring that, prior to the issuance of a building permit, the landowner sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.
- B. Lot of Record Dwelling. For approval under DCC 18.40.050, a single-family dwelling shall meet the following requirements:
1. The lot or parcel on which the dwelling would be sited was lawfully created prior to January 1, 1985 and was acquired and owned continuously by the present owner either prior to January 1, 1985 or by devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.
  2. For the purposes of DCC 18.40.050, "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.
  23. The dwelling would be located on a tract that is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract.
    - a. The road shall be maintained and either paved or surfaced with rock and shall not be:
      - i. a United States Bureau of Land Management (BLM) road; or
      - ii. a United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists

between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

~~For the purposes of DCC 18.40.050, "public roads" are those roads in which the public has a right of use that is a matter of public record.~~

4. ~~For the purposes of DCC 18.40.050, "commercial tree species" means trees recognized for commercial production under administrative rules adopted by the Oregon Department of Forestry pursuant to ORS 527.715 for commercial production.~~

5. The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwellings exists on another lot or parcel that was part of the tract.

6. When 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.

37. 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 DCC 18.88.

C. Large Tract Dwelling. ~~For approval of a single family dwelling under DCC 18.40.050(C), A dwelling not allowed pursuant to DCC 18.40.050(B) may be allowed if the subject property shall consists of at least 240 contiguous acres or 320 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use and does not include an existing dwelling.~~

1. A deed restriction shall be filed pursuant to DCC 18.40.140 for all tracts that are used to meet the acreage requirements of this subsection.

2. A tract shall not be considered to consist of less than 240 acres because it is crossed by a public road or a waterway.

D. Template Dwelling. For approval under DCC 18.40.050(D), a single-family dwelling shall meet the following requirements:

1. The lot or parcel is predominantly composed of soils that are:

a. Capable of producing zero to 20 cubic feet per acre per year of wood fiber if:

i. All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

ii. At least three other dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.

b. Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

i. All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

ii. At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.

c. Capable of producing more than 50 cubic feet per acre per year of wood fiber if:

i. All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

ii. At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels.

d. Lots or parcels within urban growth boundaries shall not be used to satisfy the template requirements under this subsection.

2. Requirements of Applying Template

a. If a tract 60 acres or larger described in DCC 18.40.050(D) abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible aligned with the road or stream.

b. If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling. However, one of the three required dwellings shall be on the same side of the road or stream as the tract, and:

- i. Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible aligned with the road or stream;
- ii. Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.
- c. If a tract reviewed under DCC 18.40.050(D) abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

(Ord. 2012-007 §4, 2012; Ord. 2003-007 §2, 2003; Ord. 94-038 §2, 1994; Ord. 92-025 §3, 1992; Ord. 91-020 §1, 1991)

**18.40.060. Siting of Dwellings and Structures.**

A. All new dwellings and structures approved pursuant to DCC 18.40.030 or permitted under DCC 18.40.020 shall be sited in accordance with DCC 18.40.060 and DCC 18.40.070.

B. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks, and to conserve values found on forest lands.

C. These criteria shall include the following such that the dwellings and structures shall be sited on the parcel so that they: ~~Relevant physical and locational factors including, but not limited to, topography, prevailing winds, access, surrounding land use and source of domestic water shall be used to identify a site which:~~

- 1. Has the least impact on nearby or adjoining adjacent lands zoned for forest or agricultural lands use;
- 2. Ensures that adverse impacts on forest operations and accepted farming practices on the tract will not be minimized curtailed or impeded;
- 3. Minimizes the amount of forest lands used to site for the dwelling and structures building-site, road access and service corridors; and
- 4. Are ~~Consistent~~ with the applicable provisions of DCC 18.40.070, minimizes the risks associated with wildfire.

D. Siting criteria satisfying the above may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

~~B. The applicant shall provide evidence that the domestic water supply, if any, is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (Oregon Administrative Rules 690, Division 10) or surface water (Oregon Administrative Rules 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (Oregon Administrative Rules 629-24 101(3)). If the water supply is unavailable from public sources or sources located entirely on the subject property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.~~

(Ord. 2012-007 §4, 2012; Ord. 94-038 §2, 1994; Ord. 92-025 §3, 1992)

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“\*\*\*\*” Denotes Deschutes County Code sections not amended by Ordinance 2012-007.

## Chapter 18.116. SUPPLEMENTARY PROVISIONS

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### 18.116.090. A Manufactured Home or Recreational Vehicle as a Temporary Residence for Medical Condition.

- A. A temporary use permit for one manufactured home of any class or one recreational vehicle on a lot or parcel in addition to an existing dwelling may be granted when a medical condition exists.
- B. The person with a medical condition must be either one of the property owners or a relative of one of the property owners.
- C. For the purposes of this section, a relative is defined as a grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, or sister, sibling, step-sibling, either blood or legal relationship, niece, nephew, uncle, aunt or first cousin.
- D. Such medical condition must be verified by a doctor's written statement, which shall accompany the permit application.
- E. The temporary use permit shall be reviewed annually for compliance with the terms of DCC 18.116.090.
- F. The manufactured home shall be removed or the recreational vehicle shall be vacated, and disconnected from any electric, water or sewer facility connection for which a permit has been issued not later than 90 days following the date the medical condition requiring the temporary use permit ceases to exist.
- G. If a recreational vehicle is used as a medical hardship dwelling, it shall have a bathroom, and shall meet the minimum setbacks for the zone in which it is located.
- H. The applicant shall obtain all necessary permits from the County Building and Environmental Health Divisions prior to initiating the use.

(Ord. 2012-007 § 5, 2012; Ord. 2008-022 § 2, 2008; Ord. 91-005 §45, 1991; Ord. 89-004 §5, 1989)

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### 18.116.180. Building Setbacks for the Protection of Solar Access.

- A. Purpose. The purpose of DCC 18.116.180 is to provide as much solar access as practical during the winter solar heating hours to existing or potential buildings by requiring all new structures, excepting lots less than 10,000 square feet in size or under 80-foot average width, as defined by DCC 17.08.030 “lot width,” and located in the Neighborhood Planning Area of the Urban Unincorporated Community – La Pine, to be constructed as far south on their lots as is necessary and feasible.
- B. Standards. Every new structure or addition to an existing structure, excepting lots less than 10,000 square feet in size or under 80-foot average width, as defined by DCC 17.08.030 “lot width,” and located in the Neighborhood Planning Area of the Urban Unincorporated Community – La Pine, shall meet the following standards for a solar setback from the north lot line, except as provided in DCC 18.116.180(B)(3):
  - 1. South Wall Protection Standard. The south wall protection standard is based on an eight-foot solar fence on the subject property's north lot line which allows solar radiation on a neighboring building's south wall above two feet from the ground, assuming a 20-foot

setback from the common property line to the neighboring building. Solar setbacks for the south wall protection standards can be calculated with the diagram in Appendix A-1 or estimated with the table in Appendix A-2. Final determination of solar setback distance is made by entering the following variables into the Deschutes County Shadow Length computer program:

- a. Pole height;
  - b. The eight-foot fence height;
  - c. The scale of the plot plan submitted in feet per inch; and
  - d. Degrees of slope of the land from east to west and from north to south.
  - e. If a setback meeting this requirement is not feasible due to physical constraints of the lot, including, but not limited to, rock outcroppings, septic systems, existing legal restrictions or lot dimensions, as determined by the Planning Director or Hearings Body, then the structure or addition must be located as far to the south on the lot as feasible and must meet the standard set forth in DCC 18.116.180(B)(2).
2. South Roof Protection Standard. The south roof protection standard is based on a 14 foot solar fence on the subject property's north lot line which allows for solar radiation on a neighboring building above eight feet from ground level and assuming a 20 foot setback from the common boundary line to the neighboring building. Solar setbacks for this standard can be calculated using the diagram in Appendix B-1 or estimated using the table in Appendix B-2. Final determination of the setback will be made using the Shadow Length computer program by specifying a 14-foot solar fence and additional site specific information as listed in DCC 18.116.180(B)(1).
3. Exceptions. The south roof protection standard shall not apply only if the applicant establishes:
- a. That the structure cannot be located on the lot without violating the requirements contained in Appendix B; and
  - b. That the structure is built with its highest point as far to the south as feasible; and
    - 1) That the structure is a single family residence with a highest point less than or equal to 16 feet high; or, if not a single family residence;
    - 2) That it is a permitted or conditional use for the lot.
4. Exemptions.
- a. The governing body may exempt from the provision of DCC 18.116.180 any area where it is determined that solar uses are not feasible because the area is already substantially shaded due to heavy vegetation, steep north facing slopes, and any area or zones in which taller buildings are planned.
  - b. The Planning Director or Hearings Body shall exempt a structure from the provisions of DCC 18.116.180 if the structure will shade only a protected area in which solar uses are not feasible because the protected area is already substantially shaded at the time a request for exemption is made and approved by the Planning Director or Hearings Body.
  - c. The Planning Director or Hearings Body shall exempt a structure from the provisions of DCC 18.116.180 if the structure is in conformance with a solar height restriction as provided in DCC Title 17, the Subdivision/Partition Ordinance, as amended.
5. Variances.
- a. The Planning Director or Hearings Body may authorize a variance from the requirements of DCC 18.116.180.
  - b. A variance may be granted subject to prescribed conditions, provided that the Planning Director or Hearings Body shall make all of the following findings:
    - i. The variance does not preclude the reasonable use of solar energy or insolation by future buildings on the property to be shaded;

ii. The variance does not diminish any solar access which benefits a habitable structure on adjacent lot or parcel;

c. Shaded property.

i. Notwithstanding DCC 18.116.180(5)(a)(i) and (ii), if property is to be shaded that is other than the property for which the variance is sought, in order for the County to approve the variance, the applicant must provide written consent to the shading from the owner or owners of all property to be shaded.

ii. The written consent shall be recorded in the Deschutes County Official Records.

iii. The written consent shall be on a form provided by the County and shall contain the following information:

a). The notarized signatures of all owners and registered leaseholders who hold an interest in the property being shaded;

b). A statement that the solar access provided in DCC 18.116.180 is waived for that particular structure and the County is held harmless for any damages resulting from the waiver.

c). A statement that the waiver applies only to the specific building or buildings to which the waiver is granted;

d). A description and drawing of the shading which would occur; and

e). A statement binding all successors in interest.

(Ord. 2012-007 §5, 2012; Ord. 2006-035 §2, 2006; Ord. 2004-013 §12, 2004; Ord. 91-038 §1, 1991; Ord. 91-020 §1, 1991; Ord. 83-037 §3, 1983)

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