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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18 of *
the Deschutes County Code, the *
Deschutes County Zoning Ordinance, *
Adding an Exception to the Front *
Setback Requirement for New *
Commercial Buildings, Amending *
Nonconforming Use Provisions and *
Making Other Clarifications and *
Corrections and Declaring an *
Emergency. *

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MARY SUE PENNOLLOW
COUNTY CLERK

0127-1771

ORDINANCE NO. 93-043

WHEREAS, it is desirable to amend Title 18 requirements concerning front yard setbacks for new commercial buildings to allow a greater setback than the minimum required;

WHEREAS, it is desirable to amend Title 18 to allow for the expansion of non-conforming structures in certain instances; and

WHEREAS, the Board of County Commissioners finds that certain additional changes to Title 18 are desirable to correct inadvertent errors in grammar and punctuation and to otherwise clarify and streamline the County's zoning code; and

WHEREAS, the Deschutes County Planning Commission, after review conducted in accordance with applicable law, has recommended approval of the proposed Text Amendment to Title 18.

WHEREAS, after notice was given and hearing conducted in accordance with applicable law, the Board of County Commissioners have considered the Planning Commission recommendation; now, therefore,

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

Section 1. The following definitions from Chapter 18.04, Section 18.04.030, Definitions, are amended to read as follows:

"Basement. A story partly or wholly underground. A basement shall be counted as a story in building height measurement when the floor level directly above is more than six feet above the average level of the adjoining [grounds] grade."

"Bed or Banks of Stream or River. The physical container of the waters of a stream or river lying below bank-full stage[,] and the land 10 feet on either side of the container."

1 - ORDINANCE NO. 93-043 (8/25/93)

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"Boat Dock or Pier, Community. A personal use boating structure that is built over or [floating] floats upon the water of a lake, river or stream, [which] that serves more than one property owner for the mooring of boats or as a landing place for marine transport, and that has [having] a surface area of 320 square feet or less."

"Boat Dock or Pier, Individual. A personal use boating structure that is built over or [floating] floats upon the water of a lake, river or stream, [which] and that serves one property owner for mooring boats or as a landing place for marine transport, and that has [having] a surface area of 160 square feet or less."

"Cluster Development. A planned development, at least 5 acres in area, permitting the clustering of single or multi-family residences on one part of the property, with individual lots not exceeding 2 acres in size. Individual lots are contiguous to one another except for occasional corridors to allow for human passage, wildlife travel[,] or natural features such as a stream or bluff. No commercial or industrial uses are permitted."

"Community Service Use. Any public or semi-public uses, such as landfills, schools, utility facilities, churches, community buildings, fire stations, cemeteries, mausoleums, crematories, airports and private uses which attract significant numbers of people, such as airports, livestock sales yards and other similar uses."

"Dwelling, Single-Family. A detached building containing one dwelling unit and designed for occupancy by one family only, not including manufactured homes[,] and such temporary structures as tents, [teepees] teepees, travel trailers and other similar [uses] structures."

"Geothermal Resource, High-Temperature. Any groundwater, steam[,] or other fluid 250 degrees F. or greater which is used for its thermal characteristics."

"Geothermal Resource, Low-Temperature. Any groundwater, steam[,] or other fluid less than 250 degrees F. which is used for its thermal characteristics."

"Grade (Ground Level). The average of the finished ground elevations [at the centers] of all walls of a building. [The elevation nearest the center of the wall shall constitute the ground level.] For purposes of height determination in the Landscape Management Combining Zone, grade shall be the average of natural ground elevations prior to construction for the wall closest to and facing the road, river or stream."

"Land Development. The division of land into parcels [of] or lots for any purpose or the creation of units or parcels for the purpose of sale or lease for a term of one year or more. Includes the intent for disposition of any land, whether contiguous or not, including any land divided, lots, parcels, units or interests offered as a part of a common promotional plan of advertising and disposition by a single developer or group of developers acting in concert. If the land is contiguous or is known, designated or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, to be offered for disposition as part of a common promotional plan."

"Legislative. A planning or zoning action resulting in a general rule or policy which is applicable to an open class of [individual] individuals or situations."

"Livestock Feed Lot. An enclosure designed or used for the purpose of the concentrated feeding or fattening of livestock for commercial slaughter."

"Livestock Sales Yard. An enclosure or structure designed or used for holding livestock for purposes of sale or transfer by auction, consignment[,] or other means."

"Marina. A structure [or structures] built over or floating upon the waters of a lake, river, stream or man-made waterway that provides moorage, launching, storage, supplies and services for recreational and/or commercial marine transport."

"Mineral. Includes, but is not limited to soil, select fill, coal, clay, stone, sand, gravel, aggregate, pumice, cinders, metallic ore[,] and any other inorganic solid excavated from a natural deposit in the earth for commercial, industrial or constructional use."

"Mitigation. The minimizing or offsetting of impacts by the provision of on- or off-site improvement or compensation which benefits impacted property owners, resources and the public interest. Mitigation measures include, but are not limited to, the provision of additional fish and wildlife habitat, conservation easements, on- and off-site screening and buffering, compensation for the maintenance of existing off-site screening, fees in lieu of improvements[,] and similar arrangements which are agreed to in writing by the affected parties[,] and which relate to and are necessitated by a surface mining development or operation."

"Open Space. Lands used for agricultural or forest uses[,] and any land area that would, if preserved and continued in its present use, conserve and enhance natural or scenic resources; protect air, streams or water supply; promote conservation of soils, wetlands, beaches or marshes; conserve landscaped areas such as public or private golf courses, that reduce pollution and enhance the value of adjoining or neighboring property; enhance the value to the public of adjoining or neighboring parks, forests, wildlife preserves, nature reservations or other open spaces; enhance recreation opportunities; preserve historic, geological and archeological sites; promote orderly urban development; and minimize conflicts between farm and non-farm uses."

"Ordinary High Water Mark (OHWM). The highest [line] level on the bank or shore of a lake, river or stream to which the water ordinarily rises annually in season."

"Ordinary Low Water Mark (OLWM). The lowest [line] level on the bank or shore of a lake, river or stream to which the water ordinarily recedes annually in season."

"Penstock. Any conduit or other structure which is or may be used to convey water to the driving mechanism of [the] a generator."

"Person. A natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicate, branch of government[,] or any group or combination acting as a unit."

"Provide. Prepare, plan for[,] and supply what is needed."

"Sign. An identification, description, illustration[,] or device which is affixed to or represented, directly or indirectly, upon a building, structure[,] or land, and which directs attention to a product, place, activity, person, institution or business."

"Stable, Private. A detached accessory building for the keeping of horses owned by the occupants of the premises [and which are not kept for remuneration or profit]."

"Surface mining, minerals. Includes, but is not limited to, soil, select fill, coal, clay, stone, sand, gravel, aggregate, pumice, cinders, metallic ore[,] and any other inorganic solid excavated from a natural deposit in the earth for commercial, industrial or construction use."

"Trailer. Any portable unit designed and built to be towed on its own chassis, comprised of frame and wheels, and

which does not fall within the definitions of vacation trailer, manufactured home or prefabricated house. Includes boat trailers, bunk trailers, portable schoolrooms[,] and industrial, commercial or public offices and accessory uses."

"Walkway. A structure that is built over or floats [floating] upon the waters of a lake, river or stream and that provides access to a boat dock or pier."

"Wetland. [Those] An area[s] that [are] is inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances [do] does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs and other similar areas."

"Yard, Rear. A yard between side lot lines measured horizontally at right angles from the [side] rear lot line to the nearest point of a building."

Section 1A. Section 18.04.030, "Definitions," is amended to delete the definition of "Public Utility Water System."

Section 1B. A new definition, "Road and Street Projects," is added to and made a part of Section 18.04.030, "Definitions," as follows:

"Road and Street Project. The construction and maintenance of the roadway, bicycle lanes, sidewalks or other facilities related to a road or street. Road and street projects shall be a Class I, Class II or Class III project.

A. Class I Project. Land use permit required. "Class I Project" is a major project such as (1) a new controlled-access freeway; (2) a road or street project of four or more lanes on a new location; and (3) a major project involving the acquisition of more than minor amounts of rights-of-way, substantial changes in access control, a large amount of demolition, displacement of a large amount of residences or businesses or substantial changes in local traffic patterns.

B. Class II Project. Land use permit required. "Class II Project" is a (1) modernization where a road or street is widened by more than one lane; (2) traffic safety or intersection improvement which changes local traffic patterns; (3) system change which has significant land use implications; or (4) the construction of a new county road or street where none existed before.

C. Class III Project. No land use permit required. "Class III Project" is a modernization, traffic safety improvement, maintenance, repair or preservation of a road or street."

Section 2. Chapter 18.08, Section 18.08.020, is amended to read as follows:

"18.08.020 Existing Agreements and Zoning Permits.

This title does not repeal, abrogate or impair any existing easements, covenants, deed restrictions or zoning permits such as preliminary plat and partition approvals, conditional use permits, nonconforming use permits, temporary use permits, special exceptions[,] or building permits."

Section 3. Subsection (E) of Section 18.16.060, "EFU Zones - Dimensional Standards," is amended to read as follows:

"E. Building Height. No building or structure shall be erected or enlarged to exceed thirty (30) feet in height, except as allowed under Section [18.129.040] 18.120.040."

Section 4. Section 18.32.020, "MUA-10 - Uses Permitted Outright" is amended to read as follows:

"18.32.020 Use Permitted Outright.

The following uses and their accessory uses are permitted outright:

A. Farm uses as defined in this title.

B. A single family dwelling[s], [and accessory uses] or a manufactured home subject to Section 18.116.070.

[C. Manufactured homes in accordance with Section 18.116.070.]

[D]C. Propagation or harvesting of a forest product.

D. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230.

E. Class III road or street project."

Section 4A. Subsection (C) of section 18.32.030, "MUA-10 - Conditional Uses Permitted," is amended to read as follows:

"C. Commercial activities in conjunction with farm use. The commercial activity shall be associated with a farm use occurring on the parcel where the commercial use is proposed. The commercial activity may use, process, store or market farm products produced in Deschutes County or an adjoining county."

Section 4B. Section 18.32.030, "MUA-10 - Conditional Uses Permitted," is amended to add as new listed uses the uses of "Cemetery, mausoleum or crematorium," as subsection (Z).

Section 5. The Title of Section 18.40.100, "Rimrock Setbacks," is amended to read 18.40.130, "Rimrock Setbacks."

Section 6. Section 18.48.010, "OS&C - Purpose," is amended to read as follows:

"18.48.010. Purpose.

The purpose of the Open Space and Conservation Zone is to protect designated areas of scenic and natural resources; to restrict development [from] in areas with fragile, unusual[,] or unique qualities; to protect and improve the quality of the air, water and land resources and to plan development that will conserve open space."

Section 7. Section 18.52.030, "SM - Uses Permitted Outright," is amended to read as follows:

"18.52.030 Uses Permitted Outright.

The following uses and their accessory uses are permitted outright:

- A. Farm uses as defined in this title.
- B. Forest uses as defined in this title.
- C. One temporary or portable residence when necessary to house a caretaker or a night watchman.
- D. Land Disposal Site as defined in this title for which the operator possesses a valid DEQ permit on the effective date of Ordinance No. 92-066.
- E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230.
- F. Class III road or street project."

Section 7A. The first paragraph of Section 18.52.110, "SM - General Operational Standards," is amended to read as follows:

"Prior to the [commencement] start of any surface mining activity[,] and no later than site plan review, if such review is required under this Section, the applicant shall demonstrate that the following standards are or can be met by the surface mining operation:"

Section 7B. Subsection (I)(b) of Section 18.52.110, "SM - General Operational Standards," is amended to read as follows:

"b. No surface mining activity [will] shall be conducted on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day."

Section 7C. Subsection (L) of Section 18.52.110, "SM - General Operational Standards," is amended to read as follows:

"L. Fish and Wildlife Protection.

a. Fish and wildlife values and habitat required by the site-specific ESEE analysis to be conserved and protected are conserved and protected[,] by use of methods including, but not limited to: seasonal operations and access road closures; retention of or creation of vegetative cover and riparian habitat; and erection of fencing or other barriers to protect wildlife from steep extraction site slopes.

b. Mitigation, as defined in this title, will be provided to compensate for any loss of fish and wildlife habitat caused by the surface mining activity which habitat is required to be protected by the site-specific ESEE analysis. When mitigation is provided, the type and effectiveness of mitigation required has been determined by the Planning Director or Hearings Body to be appropriate[,] from available evidence and[,] in consultation with the Oregon Department of Fish and Wildlife."

Section 7D. Section 18.52.170, "SM - Use Permits," is amended to read as follows:

"18.52.170 Use Permits.

Following site plan approval and prior to [commencement of] starting any surface mining activities on the site, the Planning Director or designee shall physically review the site for conformance with the site plan. When it is determined by the Planning Director or designee that all elements of the approved site plan required for mining have been completed and the reclamation plan has received final approval, the Planning Director or designee shall issue a use permit. No mining

activity shall [commence] start prior to the issuance of such use permit."

Section 8. Section 18.60.020, "RR-10 - Uses Permitted Outright," is amended to read as follows:

"18.60.020 Uses Permitted Outright.

The following uses and their accessory uses are permitted outright.

A. A single-family dwelling, or a manufactured home subject to Section 18.116.070.

B. Utility facilities necessary to serve the area including energy facilities, water supply and treatment and sewage disposal and treatment.

C. Community center, if shown and approved on the original plan or plat of the development.

D. Farm use as defined in ORS 215.203(2).

E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230.

F. Class III road or street project."

Section 8A. Subsections (C) through (Q) of Section 18.60.030, "RR-10 - Conditional Uses Permitted," are renumbered as (B) through (P).

Section 8B. Section 18.60.030, "RR-10 - Conditional Uses Permitted," is amended to add as new listed uses the uses "Public Uses," and "Semi-Public Uses," as subsections (Q) and (R) respectively.

Section 9. Section 18.64.020, "RSC - Uses Permitted Outright," is amended as to read as follows:

"18.64.020 Uses Permitted Outright

In an RSC Zone, the following uses and their accessory uses are permitted outright[, subject to the terms of Section 18.64.100]:

A. Farming, excluding livestock feed lot or sales yard, subject to restrictions in Section 18.64.040, and hog and mink farms.

B. Single-family dwelling [residence], or a manufactured home subject to Section 18.116.070.

C. Retail store, office, or service establishment.

D. Automobile service station.

E. Agriculturally oriented commercial use.

F. Park, playground or community building.

G. Utility facility, except landfills.

H. Television or radio station, transmitter or tower.

I. Restaurant or cocktail lounge.

J. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230.

K. Class III road or street project."

Section 9A. Section 18.64.030, "RSC - Conditional Uses Permitted," is amended to add the uses of "Public Use," and "Semi-public Use," as subsections (R) and (S) respectively.

Section 9B. Section 18.64.100, "Site Plan Review," is deleted.

Section 10. Section 18.68.020, "RSR-M - Uses Permitted Outright," is amended to read as follows:

"18.68.020 Uses Permitted Outright.

The following uses and their accessory uses are permitted outright.

A. Farming, excluding livestock feed lot or sales yard, subject to the restrictions in Section 18.68.040, and hog and mink farms.

B. The propagation and harvesting of forest products.

C. Single-family dwelling, or a manufactured home subject to Section 18.116.070.

D. Park, playground or community building.

E. Utility facility.

F. Church, public school, cemetery.

G. Class I and II road or street project subject to approval as part of a land Partition, subdivision or subject to the standards and criteria established by Section 18116.230.

H. Class III road or street project."

Section 10A. Section 18.68.030, "RSR-M - Conditional Uses Permitted," is amended to add as a new listed uses the use of "Public Use," as subsection (N).

Section 11. Section 18.76.020, "AD - Uses Permitted Outright," is amended to read as follows:

"19.76.020 Uses Permitted Outright.

The following uses and their accessory uses are permitted outright:

A. Airport and non-structural uses such as fuel storage, tie-down areas and parking facilities.

B. Hangars, aircraft site, sale and repair facilities and related offices.

C. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230.

D. Class III road or street project."

Section 12. Section 18.84.070, "LM - Application," is amended to renumber existing subsection (D) as subsection (C) and existing subsection (D) as subsection (C).

Section 12A. Subsection (C) of Section 18.84.080, "LM - Design Review Standards," is amended to read as follows:

"C. No large areas, including roofs, shall be finished with white, bright or reflective material. [Metal roofing] Roofing, including metal roofing, [material is permitted if it is] shall be non-reflective and of a color which blends with the surrounding vegetation and landscape."

Section 12B. Subsection (G) of Section 18.84.080, "LM - Design Review Standards," is amended to read as follows:

"G. New [residential] exterior lighting, including security lighting, shall be sited and shielded so that it is

directed downward and is not directly visible from the designated road, river or stream."

Section 13. The section summary found at the beginning of Chapter 18.88, Wildlife Area Combining Zone, is amended to renumber "18.11.010, Purposes," to read "18.88.010, Purposes."

Section 13A. Section 18.88.010, "WA - Purpose," is amended to read as follows:

"18.88.010 Purpose.

The purpose of the Wildlife Area Combining Zone is to conserve important wildlife areas in Deschutes County; to protect an important environmental, social[,] and economic element of the area; and to permit development compatible with the protection of the wildlife resource."

Section 14. Section 18.90.020, "SBMH - Definition of Habitat Sites," is amended to read as follows:

"1. The sensitive habitat site to be protected by the provisions of this Chapter is defined as the area:

1. Within a radius of 1320 feet of a golden eagle nest, bald eagle nest, prairie falcon nest, osprey nest, sage grouse lek, or a Townsend's big-eared bat hibernating or nursery site.
2. Within a radius of 300 feet of a great blue heron rookery.
3. Within a radius of 900 feet of a great grey owl nest site.

For purposes of triggering the review process set forth in this Chapter, where the precise location of the nest, hibernation or nursery site or rookery can be located only to the nearest quarter section, the nest, lek, hibernation or nursery site or rookery shall be deemed to take up the entire quarter section.

2. Habitat sites located on federal land are not subject to the provisions of this chapter unless the habitat area identified in Section [00.00.020 (1)] 18.90.020 (1) extends onto non-federal land."

Section 14B. The section number currently set forth as Section 18.90.0601 in Chapter 18.90 is renumbered Section 18.90.060 and that section, as renumbered, is amended to read as follows:

"Section 18.90.060 Management Plan Requirement.

For those proposals to be sited on [proposed for] a lot or parcel [lying] located within a habitat site, as defined under Section 18.90.020 and [a] verified by ODFW under Section 18.90.040, a management plan shall be prepared in accordance with the requirements of this section prior to acceptance of an application subject to this Chapter."

Section 15. Section 18.96.030, "FP - Uses Permitted Outright," is amended to read as follows:

"18.96.030 Uses Permitted Outright.

The following uses and their accessory uses are permitted outright:

A. Agricultural use conducted without establishing or utilizing a structure. For purposes of this paragraph, a "structure" does not include a boundary fence as long as such fence is designed to impede as little as possible the movement of floodwaters and flood-carried material.

B. Management, propagation and harvesting of a forest product.

C. Open space.

D. Portions of a residential use that do not contain structures, such as lawn, garden or play areas.

E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230.

F. Class III road or street project."

Section 15A. Subsection (E) of Section 18.96.070, "FP - Application for Conditional Uses," is amended to read as follows:

"E. The level of the lowest habitable floor and of any basement floor[,] for any dwelling unit or structure."

Section 15B. Subsection (F)(a)(ii) of Section 18.96.080, "FP - Criteria to Evaluate Conditional Uses," is amended to read as follows:

"ii. Fully enclosed areas below the lower floor that are subject to flooding are prohibited[,] unless they are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and

exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect[,] or must meet or exceed the following criteria:

1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
2. The bottom of all openings shall be no higher than one foot above grade.
3. Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters."

Section 16. Two new subsections are added to and made a part of Section 18.100.020, "RI - Uses Permitted Outright," as follows, as subsections (P) and (Q):

"P. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230.

Q. Class III road or street project."

Section 17. Two new subsections are added to and made a part of Section 18.104.020, "R & D - Uses Permitted Outright," as follows, as subsections (E) and (F):

"E. Class I and II road or street project subject to approval as part of a land partition, subdivision or subject to the standards and criteria established by Section 18.116.230 of the County Code.

F. Class III road or street project."

Section 17A. Subsection (A) of Section 18.104.040, "R & D - Use Limitations," is amended to read as follows:

"A. Any use on a lot adjacent to or across a street from a residential use or lot in a platted subdivision or residential zone[,] shall not emit odor, dust, fumes, glare, flashing lights, noise[,] or other similar disturbances perceptible without instruments more than 200 feet in the direction of the affected residential use or lot."

Section 17B. Subsection (F) of Section 18.104.040, "R & D - Use Limitations," is amended to read as follows:

"F. No use shall be permitted to operate between the hours of 11:00 p.m. and 7:00 a.m. if located adjacent to or across the street from a residential use or lot in a platted subdivision or residential zone[,] if the use creates noise in violation of the County Noise Ordinance, except as provided by [the County Sheriff] Section 8.08.070A of the County Code."

Section 17C. Section 18.104.080, "R & D - Site Design," is amended to read as follows:

"The site design of any permitted use shall make the most effective use reasonably possible of the site topography, existing landscaping[,] and building placement so as to preserve existing trees and natural features, preserve vistas[,] and other views from public ways and neighboring residential uses[,] and to minimize intrusion into the character of existing developments in the immediate vicinity of the proposed use."

Section 18. Subsection (G)(d)(11) of Section 18.108.020, "PC - Districts Permitted in an PC Zone," is amended to read as follows:

"11. Transitional Zones. Slopes seven feet outward for each foot upward beginning at the side of and at the same elevation as the primary surface and approach surface, and extending to a height of 150 feet above the airport elevation. In addition to the foregoing, there are established height limits beginning at the sides of and at the same elevation as the approach surface[,] and extending to where they intersect the conical surface."

Section 18A. Subsection (C) of Section 18.108.060, "PC - Amendment of a Development Plan," is amended to read as follows:

"C. Standards for Approval. Any amended development plan shall be in conformance with this section, the existing subdivision ordinances of the county[,] and the concept of the planned community for which a change is being requested."

Section 19. Subsection (E)(d) of Section 18.116.030, "Supplementary Provisions - Off-Street Parking and Loading," is amended to read as follows:

"d. Use of Parking Facilities. Required parking space shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only[,] and shall not be used for the storage

of vehicles or materials or for the parking of trucks used in conducting the business or used in conducting the business or use."

Section 19B. Subsection (A)(b) of Section 18.116.050, "Supplementary Provisions - Manufactured Homes," is amended to read as follows:

"b. Be placed on a [permanent] foundation or support [skirting] system, as [described in Section 18.116.606] specified by the manufacturer. Skirting shall be required;"

Section 19C. Subsection (B)(b) of Section 18.116.050, "Supplementary Provisions - Manufactured Homes," is amended to read as follows:

"b. Be placed on a [permanent] foundation, as [described in Section 18.116.060] specified by the manufacturer. Skirting shall be required;"

Section 19D. Subsection (C)(b) of Section 18.116.050, "Supplementary Provisions - Manufactured Homes," is amended to read as follows:

"b. Be placed on a [permanent] foundation or support system [with skirting, as described in Section 18.116.060], as specified by the manufacturer. Skirting shall be required;"

Section 19E. Subsection (D)(b) of Section 18.116.050, "Supplementary Provisions - Manufactured Homes," is amended to read as follows:

"b. Be placed on a [permanent] foundation or support system [with skirting, as described in Section 18.116.060], as specified by the manufacturer. Skirting shall be required;"

Section 19F. Subsection (F) of Section 18.116.080, "Supplementary Provisions - Manufactured Home or RV as a Temporary Residence on an Individual Lot," is renumbered as subsection (E).

Section 19G. Section (B)(b)(8) of Section 18.116.190, "Supplementary Provisions - Solar Access Permit," is amended to read as follows:

"8. A statement that none of the lots impacted [are] is located on a north facing slope with a grade that exceeds, on average, 15 percent;"

Section 19H. A new subsection is added to and made a part of Chapter 18.116 as Section 18.116.230, "Supplementary Provisions - Standards for Class I and II Road Projects:"

"18.116.230 Standards for Class I and II Road Projects.

Class I and II road or street projects shall be reviewed against the applicable comprehensive plan Transportation Plan element, shall be consistent with applicable road standards and shall meet the following criteria:

a. Compatibility with existing land use and social patterns, including noise generation, safety hazards (e.g. children in a residential area), and zoning.

b. Environmental impacts, including hazards imposed to and by wildlife (e.g. migration or water use patterns).

c. Retention of scenic quality, including tree preservation.

d. Means to improve the safety and function of the facility, including surrounding zoning, access control and terrain modifications.

e. In the case of roadways where modification results in a change of traffic types or density, impacts on route safety, route land use patterns, and route nonmotorized/pedestrian traffic.

f. Consideration of the potential developmental impact created by the facility.

g. Cost-effectiveness."

Section 20. Section 18.120.010, "Exceptions - Nonconforming Uses," is amended to read as follows:

"18.120.010 Nonconforming Uses.

Except as otherwise provided in this title, the lawful use of a building, structure or land existing on the effective date of this title or any amendment thereto may be continued although such use or structure does not conform with the standards for new development specified in this title. A nonconforming use or structure may be altered, restored or replaced subject to this section. No nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of this title in effect at the time of the proposed resumption.

A. Expansion or Replacement of a Non-conforming Structure

a. **Non-Conforming Structure.** For the purposes of this section, a nonconforming structure is one that was lawfully established and violates current setbacks of this title but conforms with respect to use.

b. **Replacement or Expansion without Additional Encroachment in Setback Area.** A nonconforming structure may be replaced with a new structure of the same size on the same footprint as the pre-existing nonconforming structure or may be expanded with an addition that does not project into the setback area at any point along the footprint of the structure, subject to all other applicable provisions of this title.

c. **Replacement or Expansion with Additional Encroachment in Setback Area.** Replacement or expansion of a non-conforming structure that would involve an additional projection into the front, side or rear yard setback area at any point along the footprint of the existing or pre-existing structure may be allowed provided such additional projection into the setback area (1) does not exceed 900 square feet; (2) does not exceed the floor space of the existing or pre-existing structure; (3) does not cause the structure to project further toward the front, side or rear property lines than the closest point of the existing or pre-existing structure; and (4) meets the variance approval standards set forth in Section 18.132.025(A)(a), (b), (c) and (d). Such replacements or expansions must conform with all other applicable provisions of this title.

[A]B. **Verification of Non-Conforming Use [or Structure].** Upon application, the Planning Division will verify whether or not a use constitutes a valid non-conforming use in accordance with the provisions of this section and applicable state law. Verification of the existence of a non-conforming use [or structure shall be] is required prior to or concurrent with any application to alter or restore the use. The burden of proof shall be on the applicant to demonstrate its lawful existence. The applicant shall demonstrate all of the following:

a. The nonconforming use [or structure] was lawful on the effective date of the provisions of this title prohibiting the use.

b. The nonconforming use [or structure] was actually in existence on the effective date of the provisions of this title prohibiting the use, or had

proceeded so far toward completion that a right to complete and maintain the use would be vested.

c. The nonconforming use [or structure] has not been interrupted for a period in excess of one year or was never abandoned.

[B]C. Maintenance of a Nonconforming Use. Normal maintenance of a verified nonconforming use or structure shall be permitted. Maintenance does not include alterations, which are subject to paragraph [(D)] (E) below.

[C]D. Restoration or Replacement of a Nonconforming Use. A verified nonconforming use may be restored or replaced if all of the following criteria are met:

a. [The nonconforming use or structure had been damaged or destroyed] Restoration is made necessary by fire, natural disaster or other casualty.

b. The nonconforming use [or structure] is restored or replaced on the same location and is the same size or smaller than it was prior to the damage or destruction.

c. The restoration or replacement of the nonconforming use [or structure] is commenced within one year of the damage or destruction.

[D]E. Alteration of a Nonconforming Use. Any alteration to a nonconforming use [or structure] permitted under this section shall also be subject to all applicable provisions of this title, including site plan review. Alteration does not include expansion of a use or [structure] structures associated with that use or a change in use.

a. The alteration of a nonconforming use [or structure] shall be permitted when necessary to comply with any lawful requirement.

b. In all cases other than that described in (a) above, alteration of a nonconforming use [or structure] or any physical improvements may be permitted by the Hearings Officer when both of the following criteria are met:

1. The alteration is necessary to reasonably continue the nonconforming use.

2. The alteration will have no greater adverse impact on the neighborhood.

F.[E.] Procedure.

[a. Except when decided in conjunction with a request to expand, alter, restore or replace a non-conforming any application for verification of a non-conforming use shall be decided by the Planning Director, subject to such procedure for appeal as set forth in Title 22, the Deschutes County Uniform Development Procedures Ordinance.]

a. Except as set forth in Subsection F(b) and F(c) of this section, any application for verification of a non-conforming use shall be processed in conformance with the procedures for a land use action under Title 22, the Deschutes County Uniform Development Procedures Ordinance.

b. Applications to expand, alter, restore or replace a non-conforming use shall in all cases be subject to a public hearing consistent with the requirements of Title 22, the Deschutes County Uniform Procedures Ordinance.

c. After a decision has been rendered on an application for a verification of a non-conforming use [or structure] (including any appeals provided for under Title 22 and under state law), the applicant shall not be entitled to reapply under Section 22.28.040 for another verification determination involving the same use of the property."

Section 20A. Subsection (E)(b)(2) of Section 18.120.030, "Exceptions - Exceptions to Yard Requirements," is amended to read as follows:

"2. Adherence to the 100-foot setback would create a hardship, as defined in paragraph [3] (c) below, preventing such a dwelling from being sited on the lots;"

Section 20B. Subsection (E)(d)(1)(i) of Section 18.120.030, "Exceptions - Exceptions to Yard Requirements," is amended to read as follows:

"i. In instances where use of a sand filter system for a replacement system would allow the dwelling to be located further from the stream or lake than if another type of replacement system were utilized, the dwelling shall be sited in a manner to allow only enough room for [a] the approved initial on-site sewage disposal system and a sand filter system as a replacement system."

Section 20C. Section 18.120.040, "Exceptions - Building Height Exceptions," is amended to read as follows:

"18.120.040 Building Height Exceptions.

The following structures or structural parts are not subject to the building height limitations of this title: public schools, chimneys, tanks, church spires, belfries, domes, monuments, fire and hose towers, observation towers, transmission towers, smokestacks, flagpoles, radio and other similar projections. This exception does not apply to an Airport Development Zone, [or] Airport Height Combining Zone or Landscape Management Combining Zone."

Section 21. Subsection (A) of Section 18.124.060, "Site Plan Review - Approval Criteria," is deleted and replaced with the following provision:

"A. The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features."

Section 22. Subsections (B), (F) and (K) of Section 18.124.060, "Site Plan Review - Approval Criteria," are deleted and current subsections (C) through (L) are renumbered accordingly.

Section 22A. A new subsection is added to and made a part of Section 18.124.060, "Site Plan Review - Approval Criteria," as subsection (J), as follows:

"J. All exterior lighting shall be shielded so that direct light does not project off-site."

Section 22B. Subsection (C)(3) of Section 18.124.070, "Site Plan Review - Required Minimum Standards," is amended to read as:

"3. Commercial Development Standards:

(a) New commercial buildings shall be sited at the front yard setback line for lots with one frontage, and at both front yard setback lines for corner lots. For lots with more than two front yards, the building(s) shall be oriented to the two busiest streets. The building(s) and any eaves, overhangs[,] or awnings shall not interfere with the required clear vision area at corners or driveways.

(b) An increase in the front yard setback may be allowed where the applicant can demonstrate that one or more of the following factors makes it impracticable to site the new building at the minimum street setback:

- i. Existing development on the site;
- ii. Lot configuration;
- iii. Topography of the lot;
- iv. Significant trees or other vegetative features that could be retained by allowing a greater setback;
- v. Location of driveway access.

Such an increase in the front yard shall be the minimum necessary to accommodate the reason for the increase.

[(b)](c) Off-street motor vehicle parking for new commercial developments in excess of 10,000 square feet shall be located at the side or behind the building(s)."

Section 22C. A new section is added to and made a part of Chapter 18.124, "Site Plan" as Section 18.124.080, as follows:

"18.124.080 Other Conditions

The Planning Director or Hearings Body may require the following in addition to the minimum standards of this ordinance as a condition for site plan approval.

- A. An increase in the required yards.
- B. Additional off-street parking.
- C. Screening of the proposed use by a fence or landscaping or combination thereof.
- D. Limitations on the size, type, location, orientation and number of lights.
- E. Limitations on the number and location of curb cuts.
- F. Dedication of land for the creation or enlargement of streets where the existing street system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.
- G. Improvement, including but not limited to paving, curbing, installation of traffic signals and constructing sidewalks or the street system that serves the proposed use where the existing street system will be burdened by the proposed use.
- H. Improvement or enlargement of utilities serving the proposed use where the existing utilities system will be

burdened by the proposed use. Improvements may include, but shall not be limited to, extension of utility facilities to serve the proposed use and installation of fire hydrants.

I. Landscaping of the site.

J. Any other limitations or conditions that are considered necessary to achieve the purposes of this ordinance."

Section 22D. The title of current Section 18.125.020, "Elements of Site Plan," is amended to read 18.124.020, "Elements of Site Plan."

Section 23. Subsection (A) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"A. Airports, aircraft landing fields, aircraft charter, rental[,] and service maintenance facilities not located in the A-D Zone. The Planning Director or Hearings Body shall find that the location and site design of the proposed facility will not be hazardous to the safety and general welfare of surrounding properties[,] and that the location will not unnecessarily restrict existing and future development of surrounding lands as indicated in the Comprehensive Plan."

Section 23A. Subsection (D)(a) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"a. Such a use shall be authorized as a conditional use only upon finding that sufficient area is provided for the building, required yards and off-street parking. Related structures and uses such as a manse, parochial school[,] or parish house are considered separate uses and additional lot areas shall be required therefore."

Section 23B. Subsection (N)(d) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"d. Transmission towers, posts, overhead wires, pumping stations[,] and similar installations shall be located, designed and installed to minimize conflicts with scenic values."

Section 23C. Subsection (U)(a)(3)(v) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"v. Notification list with order of notification, including names, telephones numbers and addresses of the applicant's responsible officials[,] and those of applicable emergency service agencies."

Section 23D. Subsection (U)(a)(4)(v) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"v. The safety provisions and emergency shutdown procedures to be used for protection of the public health and the environment."

Section 23E. Subsection (U)(a)(5)(ix) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"ix. A description of facility monitoring to assure continuing compliance with applicable noise, air and water quality standards and regulations[,] and for other potentially significant environmental impacts."

Section 23F. Subsection (U)(b)(2) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"2. Scenic Protection. Activities shall be designed and conducted to be as compatible as practical with surrounding scenic and visual characteristics. Energy facilities shall be designed to minimize their visual profile and they shall be painted or prepared to be non-reflective[,] and of colors which blend with and reduce contrast with surrounding landscape colors."

Section 23G. Subsection (U)(b)(16) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"16. Clean-up. Upon completion of each phase of a project, the site shall be promptly cleared of all trash, refuse[,] and other waste material. All drilling equipment shall be removed from well pads within 60 days of the completion of a well."

Section 23H. The first paragraph of Subsection (W)(a) of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to delete the subsection (a) reference.

Section 23I. Current subsection (W)(a)(1)(iii), as redesignated (W)(1)(iii) by Section 23H of this Ordinance, of Section 18.128.040, "Conditional Use - Specific Use Standards," is amended to read as follows:

"iii. A site plan, drawn to scale and accompanied by such drawings, sketches[,] and descriptions as are necessary to describe and illustrate the proposed fill or removal. The site plan shall, at a minimum, include:

An inventory of existing vegetation.

The proposed modifications, if any, to the vegetation.

Existing and proposed site contours.

Location of property lines, easements and high water marks.

Other site elements or information [which] that will assist in the evaluation of the proposed fill or removal."

Section 23J. The following subsections, currently labelled as subsections (W)(a)(4) and (W)(a)(5) and redesignated (W)(4) and (W)(5) by Section 23H of this Ordinance, of Section 18.128.040, "Conditional Use - Specific Use Standards," are deleted, as follows:

[4. Emergency actions taken to mitigate fill and removal violations when such emergency actions are intended to have a beneficial impact on fish and wildlife habitat and are determined to be the actions with the least overall adverse impacts on the surrounding area considering the factors in subsection (4)(i) above.]

[5. Fish and wildlife habitat enhancement projects approved or sponsored by the Oregon Department of Fish and Wildlife.]

Section 24. Subsection (B)(b) of Section 18.132.020, "Variances - Authority of Hearings Body," is amended to read as follows:

"(b) Each of the findings listed in subsection (A)[(a)], (b), [and] (c) and (d)."

Section 25. Section 18.144.040, "General Provisions - Violation Declared a Nuisance," is amended to read as follows:

"18.144.040 Violation Declared a Nuisance.

The location, erection, construction, maintenance, repair alteration or use of a building or structure or the subdivision, partitioning or other use of land in violation of this title or of any permit, land use approval or status

determination issued or made under this title is declared a nuisance.

Section 26. Section 18.144.050, "General Provisions - Infraction," is amended to read as follows:

"18.144.050 Infraction.

The location, erection, construction, maintenance, repair, alteration or use of a building or structure or the subdivision, partitioning or other use of land in violation of any provision of this title or any permit, land use approval or status determination issued or made under this title is a Class A infraction."

Section 27. This ordinance is supported by the staff report attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 28. DELETIONS AND ADDITIONS. Provisions or portions thereof that are to be deleted as a result of the enactment of the above-referenced sections are shown in brackets; provisions that are being added are shown in bold-faced type.

Section 29. REPEAL OF ORDINANCES AS AFFECTING EXISTING LIABILITIES. The repeal, express or implied, of any ordinance, ordinance provision, or code section by this ordinance shall not release or extinguish any duty, condition, penalty, forfeiture, or liability incurred under such ordinance, unless a provision of this ordinance shall so expressly provide, and such ordinance repealed shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such duty, condition, penalty, forfeiture, or liability, and for the purpose of authorizing the prosecution, conviction and punishment of the person or persons who violated the repealed ordinance.

Section 30. SEVERABILITY. The provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance or any exhibit thereto is adjudged to be invalid by a court of competent jurisdiction that decision shall not affect the validity of the remaining portions of this ordinance or exhibit thereto.

Section 31. 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.

0127-1787

Section 32. CORRECTIONS. This ordinance may be corrected by order of the Board of County Commissioners to cure editorial and clerical errors and to insert appropriate legislative history references.

DATED this 25th day of August, 1993.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Excused

TOM THROOP, Chair

Nancy Pope Schlanger

NANCY POPE SCHLANGEN, Commissioner

Barry H. Slaughter

BARRY H. SLAUGHTER, Commissioner

ATTEST:

Oruta Mulachie

Recording Secretary