

1 IN THE BOARD OF COUNTY COMMISSIONERS

2 FOR WASHINGTON COUNTY, OREGON

3 ( An Ordinance Amending the  
4 ORDINANCE No. 605 ( Community Development Code  
5 ( Element of the Comprehensive Plan  
6 ( Relating to a General Update

7 The Board of County Commissioners of Washington County, Oregon, ordains:

8 SECTION 1

9 A. The Board of County Commissioners of Washington County, Oregon, recognizes that  
10 the Community Development Code element of the Comprehensive Plan (Volume IV) was readopted  
11 with amendments on September 9, 1986, by way of Ordinance No. 308, with portions subsequently  
12 amended by Ordinance Nos. 321, 326, 336-341, 356-363, 372-378, 380, 381, 384-386, 392, 393, 397,  
13 399-403, 407, 412, 413, 415, 417, 421, 422, 423, 428-434, 436, 437, 439, 441-443, 449, 451-454, 456,  
14 457, 462-464, 467-469, 471, 478-481, 486-489, 504, 506-512, 517-523, 525-526, 528-529, 538, 540,  
15 545, 551-555, 558-561, 573, 575-577, 581, 583, 588, 589, 591, 592, 593, 594, and 595.

16 B. Subsequent ongoing planning efforts of the County indicate a need for changes to the  
17 Community Development Code relating to a general update. The Board takes note that such changes  
18 are necessary for the benefit of the health, safety, and general welfare of the residents of Washington  
19 County, Oregon.

20 C. Under the provisions of Washington County Charter Chapter X, the Land Use  
21 Ordinance Advisory Commission has carried out its responsibilities, including preparation of notices,  
22 and the County Planning Commission has conducted one or more public hearings on the proposed  
23 amendments and has submitted its recommendations to the Board. The Board finds that this

1 Ordinance is based on that recommendation and any modifications made by the Board, as a result of  
2 the public hearings process.

3 D. The Board finds and takes public notice that it is in receipt of all matters and  
4 information necessary to consider this Ordinance in an adequate manner, and that this Ordinance  
5 complies with the Statewide Planning Goals, the Metro Urban Growth Management Functional Plan,  
6 and the standards for legislative plan adoption, as set forth in Chapters 197 and 215 of the Oregon  
7 Revised Statutes, the Washington County Charter, and the Washington County Community  
8 Development Code.

9 SECTION 2

10 The attached Exhibits are incorporated herein by reference and adopted as amendments to the  
11 Community Development Code:

12 (A) Exhibit 1 (5 pages) amending twenty-five (25) sections of the Community  
13 Development Code. Included in this Exhibit is item number (24), an amendment to replace all  
14 references to the Unified Sewerage Agency (USA) with this agency's new name, Clean Water  
15 Services (CWS). Similarly, this Exhibit contains item number (23), an amendment to replace all  
16 references to the ODOT Aeronautics Division with its new name, the Oregon Department of Aviation.  
17 These changes are insignificant editing changes that do not need to be individually listed and Counsel  
18 and the Department are authorized to make these edits wherever they are found in the Community  
19 Development Code.

20 (B) Exhibit 2 (2 pages) amending section 440-5, Nonconforming Uses and Structures, of  
21 the Community Development Code.

1 (C) Exhibit 3 (2 pages) amending section 203-5, Application Submittal and Acceptance, of  
2 the Community Development Code.

3 (D) Exhibit 4 (1 Page) amending section 205-2, Rules of Procedure, of the Community  
4 Development Code.

5 (E) Exhibit 5 (1 page) amending section 350-6.1, Lot Area, of the Community  
6 Development Code.

7 (F) Exhibit 6 (7 Pages) amending section 340 Exclusive Farm Use District, and section  
8 344, Agriculture and Forest District (AF-20), of the Community Development Code.

9 SECTION 3

10 All other Comprehensive Plan provisions that have been adopted by prior ordinance, which are  
11 not expressly amended or repealed herein, shall remain in full force and effect.

12 SECTION 4

13 All applications completed and submitted under former land use ordinances shall continue to be  
14 processed, pursuant to the provisions of the former ordinance, until a final decision is rendered by the  
15 County or the application is withdrawn, unless specifically provided otherwise by law.

16 SECTION 5

17 If any portion of this Ordinance, including the exhibits, shall for any reason be held invalid or  
18 unconstitutional by a body of competent jurisdiction, the remainder shall not be affected thereby and  
19 shall remain in full force and effect, and any provision of a prior land use ordinance amended or  
20 repealed by the stricken portion of this Ordinance shall be revived and again be considered in full  
21 force and effect.

22 SECTION 6

1 The Office of County Counsel and Department of Land Use and Transportation are authorized  
2 to prepare planning documents to reflect the changes adopted under Section 2 of this Ordinance,  
3 including deleting and adding textual material and maps, renumbering pages or sections, and making  
4 any technical changes not affecting the substance of these amendments as necessary to conform to the  
5 Washington County Comprehensive Plan format.

6 SECTION 7

7 This Ordinance shall take effect on November 27, 2003.

8 ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2003, being the \_\_\_\_\_ reading and  
9 \_\_\_\_\_ public hearing before the Board of County Commissioners of Washington County, Oregon.

10 BOARD OF COUNTY COMMISSIONERS  
11 FOR WASHINGTON COUNTY, OREGON

12 \_\_\_\_\_  
13 *CHAIRMAN*

14 \_\_\_\_\_  
15 *RECORDING SECRETARY*

16 READING

16 PUBLIC HEARING

16 First \_\_\_\_\_  
17 Second \_\_\_\_\_  
17 Third \_\_\_\_\_  
18 Fourth \_\_\_\_\_  
18 Fifth \_\_\_\_\_  
19 Sixth \_\_\_\_\_

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19 VOTE: *Aye*: \_\_\_\_\_

19 *Nay*: \_\_\_\_\_

20 Recording Secretary: \_\_\_\_\_ Date: \_\_\_\_\_

The Community Development Code is amended as follows:

1. Section 101-2 is amended to include the following new language:

101-2.9: Article VIII, Land Use and Zoning for Certain Portions of Unincorporated City of Tigard Area, sets forth the regulations applicable to that area of land generally described in the County's West Tigard Community Plan and the Bull Mountain Community Plan, including Walnut Island and an area north of the Tualatin River and east of Highway 99, but excluding the area immediately adjacent to King City.

2. Section 106-169 is amended to include transit oriented districts (e.g., TO:RC, TO:BUS) and to read as follows:

Primary District A land use district as designated on the Community Plan Map, (i.e., R-5, R-6, R-9, R-15, R-24, R-25+, TO:R9-12, TO:R12-18, TO:R18-24, TO:R24-40, TO:R40-80, TO:R80-120, FD-10, NC, OC, CBD, GC, IND, INS, TO:RC, TO:BUS, TO:EMP, EFU, EFC, AF-20, AF-10, AF-5, RR-5, R-COM, R-IND, MAE).

3. Amend the following subsection in Section 207-1, because it refers to a section of the Code (Section 207-7) that was previously deleted and replaced by Section 207-6:

207-1.3          Defer a decision as provided in Section ~~207-7~~ 207-6;

4. Delete the following Code reference in Section 302-4.14, because it refers to a section of the Code (Section 430-117.2) that does not exist:

302-4.14          Single-Family Accessory Dwelling Unit - Section 430-117.1, ~~or 430-117.2.~~

5. Amend Section 307-3 to correct an inaccurate numerical reference to Section 302-3.15, and to read as follows:

~~307~~2-3.15          Tree removal in areas identified in the applicable Community Plan as Significant Natural Resources, subject to Section 407-3.

6. The list of permitted uses in Section 352-3.1 is amended as follows:

Section 352-3.1.J is amended to delete "religious institutions" from the list of permitted institutional uses.

Section 352-3.1 is amended to add the following provision, and re-numbered accordingly:

D. Church – Section 430-29.

7. Section 373-6.8.A is amended to include transit oriented districts (e.g., TO:RC, TO:BUS) and to read as follows:

The designated resource is in a land use district (e.g., R-9, R-15, R-24, R-25+, [TO:R9-12](#), [TO:R12-18](#), [TO:R18-24](#), [TO:R24-40](#), [TO:R40-80](#), [TO:R80-120](#), Neighborhood Commercial, Community Business, General Commercial, Office Commercial, [TO:RC](#), [TO:BUS](#), [TO:EMP](#), Industrial, MAE, Rural Industrial or Rural Commercial) that allows higher density development; is an accessory building or structure to a historic farm house (e.g., a barn, garage or shed) in the R-5 or R-6 district; or is on land that is needed to accommodate the planned widening or realignment of a public road or transportation facility;

8. Amend the reference in Section 375-7 (3) from "T0:R40-80" to "TO:R40-80" (the correction replaces a "zero" with the letter "O").
9. Section 404-4.5.D is amended to correct the reference to Section 413-14 and to read as follows:
  - D. Parking requirements may be reduced up to thirty (30) percent as provided in Section 413-[1415](#);
10. Section 405-4.4 is amended to reflect the following:

For greenways which are linear green belts linking residential areas with other open-space areas, maintenance shall insure that there exist no hazards, nuisances, or unhealthy conditions. These greenways may contain bicycle paths, footpaths, and bridle paths. Connecting ~~granaries~~ [greenways](#) between residences and recreational areas are encouraged;
11. Section 406-2.2 is amended to reflect the following:

When required by the Uniform Building Code, provide facilities for the [handicapped disabled](#) pursuant to the Uniform Building Code, edition in effect at this time;
12. Amend Section 407-8.7 as follows, because it refers to sections of the Code (Sections 407-10.8 and 407-10.9) that were previously deleted and replaced by Sections 407-8.9 and 407-8.10:

Except as allowed by Sections ~~407-10.8~~ [407-8.9](#) and ~~407-10.9~~ [407-8.10](#), all landscaping required by this Code and approved by the Review Authority shall be installed prior to the issuance of any compliance permits.
13. Section 408-5.1.D(4) is amended to include the transit oriented residential districts and to read as follows:

Abutting undeveloped or underdeveloped property is not designated R-5, R-6, R-9, R-15, [TO:R9-12](#), [TO:R12-18](#), [TO:R18-24](#), FD-10 or an urban reserve area;
14. Section 421-7.10 is amended as follows:

Proposed partitions and subdivisions shall minimize flooding by complying with the applicable standards of Sections 410, 421, 426, ~~605-5.2~~ 605-3.2 and ~~610-5.2~~ 610-3.1, and Chapter 6 of the Unified Sewerage Agency Construction Standards.

15. Amend Section 422-3.2.A to correct an inaccurate numerical reference to Section 405-1, and to read as follows:

422-3.2 Open Space Inside the UGB:

- A. Shall be identified as provided in Section ~~405~~45-1, Master Planning – Site Analysis;

16. Section 425 is amended to delete the following language, in order to be consistent with ORS 215.417, adopted January 2002, which sets forth a 4-year permit expiration for marginal land designation:

~~**425-6 Expiration of Marginal Land Designation Approval**~~

~~Unless development has commenced, the marginal land designation shall expire upon the effective date of change in State law under which the designation was approved.~~

17. Section 428-3.4, Table A, is amended to replace “firebreak” with “fire break.”
18. Section 430-109.6 is amended as follows, to correct a typographical error and to incorporate an existing editor’s note into the text of the subsection:

430-109.6 Site-Specific Standards for Type II and ~~III~~III Applications\*.

~~\*-editor's note: The provisions contained in Section 430-109.6 apply to all Type II and III applications.~~

19. Section 435-2.1 is amended as follows, to incorporate an existing editor’s note into the text of the subsection:

435-2.1 Permitted Variances and Hardship Relief

Under the provisions of this Section, an applicant may propose a variance or hardship relief from a dimensional standard (as defined by Section 106-61) of this Code, and from the minimum required amount of parking of Section 413, except when:

- A. The proposed variance or hardship relief would allow a use which is not permitted in the applicable land use district;
- B. Another procedure is available in this Code for modifying or waiving the particular standard; or

- C. This Code specifically prohibits a variance or hardship relief from a standard (e.g., ~~Section 430-1 prohibits a variance or hardship relief to a standard in Section 434~~ Section 430-1.1 B.(8) prohibits a variance or hardship relief change to the distance between an accessory structure and a primary structure)<sup>\*</sup>.

<sup>\*</sup> ~~editor's note: this parenthetical insert should read "e.g., Section 430-1.1 B.(8) prohibits a variance or hardship relief change to the distance between an accessory structure and a primary structure.~~

20. Section 501-8.2.B is amended as follows, to incorporate an existing editor's note into the text of the subsection:

B. Adequate Level of Arterial and Collector Roads

An applicant shall ensure that an adequate level of Arterial and Collector roads will be available to the proposed development. This requirement is satisfied by payment of the Traffic Impact Fee unless the provisions of Section 501-10 and 501-11 are applicable. Payment of the Traffic Impact Fee is not an assurance for improvements required by Sections 501-8.2.D [Gravel Roads], ~~501-8.2 E. [Future Alignments]~~, 501-8.2 F. [Half-Street Improvements] or 501-8.2 G. [Pedestrian/Utility Easement]. In addition to payment of the Traffic Impact Fee an applicant shall assure that all identified safety improvements within the impact and analysis area pursuant to Resolution and Order No. 86-95, (Determining Traffic Safety Improvements under the Traffic Impact Fee Ordinance - Process Documentation) shall be constructed prior to occupancy of a development with the assurance provided prior to issuance of a building permit and the following:

<sup>\*</sup> ~~editor's note: Should also list Section 501-8.2 D. (Gravel Roads).~~

21. Section 610-1.1.B (5), regarding property line adjustments permitted through a Type I procedure in the RR-5 District, is amended as follows to clarify the applicable district standards:

- (5) In the RR-5 District no lot is reduced below two (2) acres, except existing lots or parcels that are one (1) to two (2) acres may be adjusted through a Type I procedure if none of the lots are reduced below one (1) acre, equal areas of land are transferred, and the provisions of Section 350-6.1 C. (1) and (2) are met.

22. Section 610-1.1.C(4), regarding property line adjustments permitted through a Type II procedure in the RR-5 District, is amended as follows to correct a reference to the applicable district standards:

- (4) In the RR-5 District, a lot or parcel may be reduced to one (1) acre through a Type II procedure if the lot or parcel meets the standards in Section 350-6.1 CD.

23. Replace all CDC references to ODOT Aeronautics Division with Oregon Department of Aviation.
24. Replace all CDC references to Unified Sewerage Agency (USA) with Clean Water Services (CWS).
25. Section 801-8.3 of Article VIII, Adopting City of Tigard Community Development Code Title 18, is amended as follows:
  - A. Except as specifically provided to the contrary in this Ordinance, both the City's Title 18 "Community Development Code" and the City Comprehensive Plan in effect on ~~November 26, 1998~~ October 10, 2002, are hereby adopted by the County as the sole local regulatory standards, background, justification and guidance applicable to applications for any and all land uses requiring ministerial or quasi-judicial decision making within the affected area, as if such standards, background, justification and guidance were fully set forth hereat. The City's Title 18 "Community Development Code" and the City Comprehensive Plan in effect on ~~October 31, 1996~~ November 26, 1998 are repealed.

Section 440-5 addressing Nonconforming Uses and Structures is amended as follows:

**440-5 Restoration or Replacement of a Nonconforming Use or Structure Made Necessary by Fire, Other Casualty or Natural Disaster**

The following nonconforming uses or structures may be replaced or restored through a Type II ~~or III~~ procedure when the replacement or restoration is made necessary by fire, other casualty or natural disaster when in conformance with the following standards.

Restoration or replacement shall begin within one (1) year from the occurrence of the fire, casualty or natural disaster.

**440-5.1 Restoration or Replacement Permitted Through a Type II Procedure**

- A. A nonconforming single dwelling unit may be replaced or restored in the following districts regardless of the extent of damage or destruction: R-5, R-6, R-9, R-15, R-24, R-25+, FD-10, EFU, EFC, AF-20, AF-10, AF-5, RR-5, TO:R9-12, TO:R12-18, TO:R-18-24, TO:R24-40, TO:R40-80 and TO:R80-120 Districts.
- B. A nonconforming manufactured dwelling used as a dwelling unit in an urban district permitting detached dwellings may be replaced or restored regardless of the extent of damage or destruction provided there is compliance with the standards set forth in Sections 430-75.1 (Manufactured Dwellings) and 430-72 (Infill).
- C. A structure or use that is nonconforming as a result of the dimensional standards of the district or the standards of Article IV, may be repaired or replaced if damaged or destroyed, provided that the repair or replacement conforms as much as practicable to those standards.

~~440-5.2 Restoration or Replacement Permitted Through a Type III Procedure~~

~~A. If a nonconforming use or structure, except as permitted by Section 440-5.1, A., B. or C. is damaged or destroyed by fire or other casualty or natural disaster to an extent not exceeding seventy (70) percent in value based on an insurance appraisal, the use may be replaced or restored. The Review Authority shall make findings that the restoration or replacement will have no greater adverse impact on the neighborhood than the use and improvements had before the damage or destruction occurred. If the extent of damage exceeds seventy (70) percent in value, the nonconforming use or structure shall not be replaced or restored.~~

~~B. The Review Authority shall make findings that the restoration or replacement will have no greater adverse impact on the neighborhood than the use and improvements had before the damage or destruction occurred.~~

E. If a nonconforming use or structure, except as permitted by Section 440-5.1 A., B., or C. is damaged or destroyed by fire or other casualty or natural disaster to an extent exceeding seventy (70) percent in value based upon an insurance appraisal, the nonconforming use or structure shall not be replaced or restored.

~~C. A structure or use that is nonconforming as a result of the dimensional standards of the district and standards in Article IV, may be repaired or replaced if damaged or destroyed, provided that the repair or replacement conforms as much as practicable to those standards.~~

Section 203-5 of the Community Development Code is amended as follows:

**203-5 Application Submittal and Acceptance**

- 203-5.1 Applications shall be submitted to the Director in the number specified on the application form. The Director, however, may waive copies of specific documents, maps or exhibits upon a determination that the difficulty or burden of copying outweighs the usefulness of the copies.
- 203-5.2 No application shall be received by the Department for determination of completeness without the appropriate application fee.
- 203-5.3 Except as provided in Sections 203-5.5 and 203-5.6, the Review Authority shall take final action on an application for a development action, including resolution of all appeals under ORS 215.422, within one-hundred twenty (120) days for all applications inside the UGB and mineral aggregate extraction and one-hundred fifty (150) days for all applications (except mineral aggregate extraction) outside the UGB, after the application is deemed complete.
- 203-5.4 If an application is incomplete, the Review Authority shall notify the applicant of exactly what information is missing within thirty (30) days of receipt of the application and allow the applicant to submit the missing information. In response to this notice, the applicant is required to answer in writing before the end of the thirty (30) days whether it will or will not provide any additional evidence. The application shall be deemed complete for the purpose of Section 203-5.3 upon receipt by the governing body or its designee of the missing information. The applicant may affirmatively state its refusal to provide any additional information. It shall also be considered a refusal if no writing is received from the applicant stating whether it will or will not provide additional evidence, before the end of the thirty (30) days or evidence. If there is a refusal, if the applicant refuses to submit the missing information, the application shall be deemed complete for the purpose of Section 203-5.3 on the 31st day after the governing body first received the application. After a refusal, new evidence may only be submitted if the applicant agrees to another 30 days to determine completeness of the application and another 120-days (or 150-days depending on the application) to make a final decision.
- 203-5.5 If the application was complete when first submitted or the applicant submits the requested additional information within one-hundred eighty (180) days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.
- 203-5.6 The 120-day period set in Section 203-5.3 may be extended for a reasonable period of time at the request of the applicant.
- 203-5.7 The decision of the Director as to completeness of an application, including any required engineering, traffic or other such studies, shall be based on the criteria for

completeness, adequacy and methodology set forth in this Code by Resolution and Order of the Board or by action of the Director. Rejection by the Director for incompleteness shall be based solely on failure to address the relevant standards or supply required information and shall not be based on differences of opinion as to quality or accuracy. Acceptance indicates only that the application is ready for review.

203-5.8 The Review Authority shall approve or approve with conditions an application which the Director has determined to be incomplete only if it determines that sufficient, accurate information has been submitted and adequately reviewed by the Review Authority with an opportunity for review by affected parties or that conditions can be imposed to ensure proper review at the appropriate time. In all other cases the Review Authority shall defer or deny.

Section 205-2 of the Community Development Code, regarding rules of procedure for public hearings, is amended as follows, to include the following new language from ORS 197.796(3)(b):

**205-2 Rules of Procedure**

Public hearings shall be conducted in accordance with the Rules of Procedure adopted by the applicable Review Authority.

At the beginning of the hearing for an application, a statement shall be made to those in attendance that:

- A. Lists the applicable substantive criteria;
- B. States that testimony and evidence must be directed toward the criteria described in A. of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and
- C. States that failure to raise an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

D. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the County to respond to the issue precludes an action for damages in circuit court.

Section 350-6.1, regarding lot area in the RR-5 District, is amended as follows to clarify a redundant reference to "lot of exception", and to clarify that requests for lots of exception must include evidence of subsurface sewage permits or site evaluation approvals from the appropriate agency:

350-6.1 Lot Area:

The minimum lot area shall be five (5) acres except:

- A. For lots of record;
- B. The lot area for new lots or parcels created through the land division process of Article VI may be varied by twenty (20) percent provided there is no increase in lot density; and

~~C. For a lot of exception as set forth below.~~

~~C.D.~~ Lot of Exception

Through a Type II procedure, new lots or parcels less than four (4) acres, but no less than one (1) net acre may be approved upon findings that the lots or parcels:

- (1) Were located within the Wolf Creek Highway or Tigard Water District at the time the site was zoned RR-5, July 5, 1982, and has water pressure adequate to provide for fire flow;
- (2) ~~Qualify for a~~ Have received subsurface sewage permit(s) or site evaluation approval(s) from the appropriate agency; and
- (3) Will be served by adequate roads.
- (4) The intent and purpose of this district is not violated.
- (5) Conditions may be attached at the time of approval to:
  - (a) Require dedication of right-of-way to provide adequate roads;
  - (b) Carry out the intent and purpose of the district; and
  - (c) Require increased setbacks from the boundaries.

The following changes update the standards for farm dwellings, both for the primary farm dwelling as well as those for farm help (also referenced as accessory farm dwellings in the OAR.) The standards in 430-37.2 D. and E. are combined in reaction to statutory changes in 2001, which eliminated the standards previously differentiating full-time farm help and seasonal farm help.

### **340 EXCLUSIVE FARM USE DISTRICT (EFU)**

340-4.2 Permitted Uses which are subject to Section 340-4.3:

- A. Commercial Activities in Conjunction with Farm Use not including the processing of farm crops as described in Section 340-4.1 C. - Section 430-33.
- B. Dwelling Unit in conjunction with farm use - Section 430-37.2 A. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use.
- C. Dwelling Units in conjunction with farm use for additional farm related dwelling(s) necessary for full time farm help - Sections 430-37.2 D. ~~and 430-37.2 E.~~ A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use.

### **344 AGRICULTURE AND FOREST DISTRICT (AF-20)**

344-4.2 Permitted Uses which are subject to Section 344-4.3:

- A. Commercial Activities in Conjunction with Farm Use not including the processing of farm crops as described in Section 344-4.1 C. - Section 430-33.
- B. Dwelling Unit in conjunction with farm use - Section 430-37.2 A. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use.
- C. Dwelling Units in conjunction with farm use for additional farm related dwelling(s) necessary for full time farm help - Sections 430-37.2 D. ~~and 430-37.2 E.~~ A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for this use.

### **430-37 Detached Dwelling Unit**

430-37.2 Rural

- A. In the EFU and AF-20 Districts, a dwelling unit customarily provided in conjunction with farm use may be approved when the following standards are met:

- (1) The subject tract is currently employed for farm use, as defined in ORS 215.203, that produced:
  - (a) In the EFU and AF-20 Districts on land identified as high-value farmland at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years; or
  - (b) In the AF-20 District on land not identified as high-value farmland at least \$20,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years.

By March 1st of each year, the Director shall publish an annual table specifying the basis for determining the required annual income in 1994 dollars for that year and each of the last five (5) years. The table shall be computed from the Portland/ Vancouver Area CPIU, with the CPIU for the second half of 1994 as the base number for 1994 dollars. The table shall include a factor, stated as a percentage, by which any dollar amount for the year and each of the last five (5) years shall be multiplied to determine equivalent 1994 dollars. The table shall also include the equivalent of \$20,000 and \$80,000 in 1994 dollars\* for the year and each of the last five (5) years;

- (2) Except as permitted in Section 340-4.1 N. and 344-4.1 N., there is no other dwelling on the subject tract; and
- (3) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in Section (1) above.
- (4) In determining the gross income required by Section (1) above, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from farm land owned, not leased or rented, shall be counted.

\* editor's note: The following table provides equivalent annual farm income amounts for 1994 through 2000~~1~~, based on US Bureau of Labor Statistics data for Average Annual CPIU (Consumer Price Index for Urban Consumers) for the Portland Area:

Year	Annual Average CPIU (Portland Area)	Percentage of the CPIU for 1994	\$ Equivalent to \$20,000 in 1994	\$ Equivalent to \$80,000 in 1994
<u>2001</u>	<u>182.4</u>	<u>122.5%</u>	<u>24,500</u>	<u>98,000</u>
2000	178.0	119.5%	23,900	95,600
1999	172.6	115.9%	23,180	92,720
1998	167.1	112.2%	22,440	89,760
1997	164.0	110.1%	22,000	88,000
<del>1996</del>	<del>158.6</del>	<del>106.5%</del>	<del>21,300</del>	<del>85,200</del>
<del>1995</del>	<del>153.2</del>	<del>102.9%</del>	<del>20,580</del>	<del>82,320</del>
<del>1994</del>	<del>148.9</del>	<del>100.0%</del>	<del>20,000</del>	<del>80,000</del>

- (5) To demonstrate compliance with Section (1) above, an applicant shall submit the following evidence:
- (a) Federal income tax returns, and a list describing where the farmed properties are located, their size, the type of crops or livestock products raised on the properties, and the amount of income produced from the properties and from each farm product; or
  - (b) Sales receipts for the sale (retail or wholesale) of products produced from the property; or
  - (c) Other information as may be necessary to prove income; and
  - (d) An affidavit signed by the person whose income is in question, certifying that income requirements for the parcel have been met.

The Review Authority may consider statistical information compiled by the Oregon State University Extension or other objective criteria, such as average yields per acre and average price per unit, to calculate income to verify an applicant's information.

- (6) If the tract consists of two or more lots or parcels and more than one lot or parcel is used to meet the income standards of this section, the dwelling may be approved if:

Prior to final approval for a dwelling, the applicant records a restrictive covenant that precludes construction of a dwelling on the remainder of the tract. This restriction does not apply to seasonal farm worker housing, accessory farm dwellings and replacement dwellings.

The restrictive covenant shall be irrevocable, unless the Director finds that the tract is no longer subject to Statewide Goal 3 (Agricultural Lands) or, if a dwelling is proposed on another lot or parcel that is part of the tract that was used to meet the income requirements, each parcel meets the income standards of this section.

- B. In the EFU and AF-20 Districts, a dwelling in conjunction with the propagation or harvesting of a forest product may be approved when the following standards are met:

- (1) The lot or parcel is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income; and
- (2) The lot or parcel is not high-value farmland as defined by Section 340-2 or 344-2, whichever is applicable.
- (3) The following information establishes standards which an applicant may use in applying for a dwelling approval under (1) above. Applicants are not limited to these standards if the applicant can otherwise demonstrate that the proposed woodlot can meet the \$20,000 income requirement.

Minimum acreage to produce \$20,000 annual gross income over the growing cycle<sup>1</sup> for merchantable trees.<sup>2</sup>

Cubic Feet Site Class	Acreage (Douglas Fir)
2 (165-224 cf/ac)	34
3 (120-164 cf/ac)	48
4 (85-119 cf/ac)	68
5 (50-84 cf/ac)	86
6 (20-49 cf/ac)	128

**SITE INDEX CONVERSION TABLE**

<b>GROWTH MEASURES</b>	<b>SCALE</b>																
SCS Site Index: Height in Feet at 100 Years	50	60	70	80	90	100	110	120	130	140	150	160	170	180	190	200	210
Oregon Dept. of Forestry Potential Yield: Cubic Feet/Acre Scale	20	20-49	50 - 84			85 - 119			120 - 164			165 - 224					

C. A Dwelling Unit located on real property used for farm use occupied by a relative may be approved when:

- (1) The dwelling is located on the same lot or parcel as the dwelling of the farm operator; and
- (2) The relative is a grandparent, stepgrandparent, grandchild, parent, stepparent, child, sibling, stepsibling, niece, nephew or first cousin of the farm operator, or the farm operator's spouse, whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator;
- (3) The farm operator continues to play the predominant role in the management and farm use of the farm. For the purposes of this section, 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; and
- (4) The lot or parcel which receives a building permit under these provisions shall not be partitioned or subdivided unless any residence approved under these provisions is removed. Unless, 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

<sup>1</sup>Based on a 55 to 60 year growth cycle and a small log value of \$235.00 in June 1983.

<sup>2</sup>Source: Oregon Department of Forestry, September 1983.

forecloses in 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.

D. Dwelling in conjunction with farm use where an additional farm related dwelling(s) is(are) necessary for full time help. Subsequent to or concurrently with the approval of a farm related dwelling pursuant to this Code, an additional dwelling or dwellings may be allowed provided there is a finding that the proposed dwelling is customarily required to conduct the proposed farm use considering:

- (1) Size of Parcel and Farm (proposed and/or existing);
- (2) Type of Farm Use (proposed and/or existing);
- (3) Potential Markets (proposed and/or existing);
- (4) Accepted farming practices as that term is defined in ORS Chapter 215;
- (5) A three (3) year farm management plan which describes the present and proposed farm uses for the farm operation; and
- (6) Other evidence the Director considers necessary (e.g., soil type).

E. ~~(7)~~ In the EFU and AF-20 Districts, dwelling units in conjunction with farm use for additional farm-related dwelling(s) necessary for full-time farm help may be approved if all the following requirements are met:

- ~~(4a)~~ The additional farm dwelling(s) will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use is or will be required by the farm operator;
- ~~(2b)~~ The additional dwelling(s) will be located:
  - ~~(a)~~ On the same lot or parcel as the dwelling of the principal farm dwelling; or
  - ~~(b)~~ On the same tract as the principal farm dwelling when the lot or parcel on which the additional dwelling(s) will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or
  - ~~(c)~~ On a lot or parcel on which the principal farm dwelling is not located, when the additional farm dwelling(s) is a manufactured dwelling and a deed restriction is filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. An additional farm dwelling approved pursuant to this section may not be occupied by a person or persons who will not be principally engaged in the farm use of the land and whose assistance in the management of the farm use is not

or will not be required by the farm operator. The manufactured dwelling may remain if it is re-approved under this section;

- (3c) There is no other dwelling on lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an additional farm dwelling;
- (4d) The principal farm dwelling to which the proposed dwelling would be accessory, meets one of the following:
  - (ai) On land identified as high-value farmland, the principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years; or
  - (bij) In the AF-20 District on land not identified as high-value farmland, the principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$20,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years.
  - (eiii) By March 1 of each year, the Director shall publish an annual table specifying the basis for determining the required annual income in 1994 dollars for that year and each of the last five (5) years. The table shall be computed from the Portland/Vancouver Area CPIU, with the CPIU for the second half of 1994 as the base number for 1994 dollars. The table shall include a factor, stated as a percentage, by which any dollar amount for the year and each of the last five (5) years shall be multiplied to determine equivalent 1994 dollars. The table shall also include the equivalent of \$20,000 and \$80,000 in 1994 dollars for the year and each of the last five (5) years.
  - (div) To demonstrate compliance with Section (4 a and b) above, an applicant shall submit the following evidence:
    - (iaa) Federal income tax returns, and a list describing where the farmed properties are located, their size, the type of crops or livestock raised on the properties, and the amount of income produced from the properties and from each farm product; or
    - (#bb) Sales receipts for the sale (retail or wholesale) of products produced from the property; or
    - (##cc) Other information as may be necessary to prove income; and

(~~iv~~dd) An affidavit signed by the person whose income is in question, certifying that income requirements for the parcel have been meet.

The Review Authority may consider statistical information compiled by the Oregon State University Extension or other objective criteria, such as average yields per acre and average price per unit, to calculate income to verify an applicant's information;

(~~5e~~) The governing body of a county shall not approve any proposed division of a lot or parcel for an additional farm dwelling approved pursuant to Section 430-37.2 ~~FD~~.

If it is determined that an additional farm dwelling(s) satisfies the requirements of OAR 660-33-135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-33-100;

(~~6f~~) An additional farm dwelling approved pursuant to Section 430-37.2 D. cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to OAR 660-33-130(4); and

(~~7g~~) For the purposes of this section, "tract" means one (1) or more contiguous lots or parcels under the same ownership.