

SECTION 400

NATURAL RESOURCE DISTRICTS

401 EXCLUSIVE FARM USE DISTRICT (EFU)

401.01 PURPOSE

Section 401 is adopted to:

- A. Preserve agricultural use of agricultural land;
- B. Protect agricultural lands from conflicting uses, high taxation, and the cost of public facilities unnecessary for agriculture;
- C. Maintain and increase the agricultural economic base of the County;
- D. Increase agricultural income and employment by creating conditions which further the growth and expansion of agriculture and which attract related industries;
- E. Maintain and improve the quality of air, water, and land resources;
- F. Conserve scenic and open space; and
- G. Protect wildlife habitats.

[Amended by Ord. ZDO-230, 9/26/11]

401.02 AREA OF APPLICATION

- A. The Exclusive Farm Use District shall be applied to those areas which are generally suitable for small and large scale agricultural uses. Criteria to be considered are:
 - 1. Lands suitable for or characterized by small or large scale agricultural uses, such as the raising of poultry, fur bearing animals, and livestock and the growing of berries, nursery stock, vegetables, grains and field crops.
 - 2. Lands classified by the U.S. Natural Resources Conservation Service as predominantly Class I-IV soils or identified as agricultural soil by more detailed data.
 - 3. Land in other soil classes that is suitable for farm use as defined in Oregon Revised Statutes 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices.

4. Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.
5. Lands designated and acknowledged as Agriculture on Comprehensive Plan Map IV-7, *Non-Urban Area Land Use Plan, and Mt. Hood Corridor Land Use Plan.*

[Amended by Ord. ZDO-224, 5/31/11]

401.03 DEFINITIONS

Unless specifically defined below or in Section 202 words or phrases used in this section shall be interpreted to give them the same meaning as they have in common usage and to give this section its most reasonable application.

- A. Agricultural Land: As defined in Oregon Administrative Rules (OAR) 660-33-0020.
- B. Farm Use: As defined in Oregon Revised Statutes (ORS) 215.203.
- C. High Value Farmland: As defined in ORS 215.710 and OAR 660-033-0020(8).
- D. Low Value Farmland: All land not defined as High Value Farmland in ORS 215.710 and OAR 660-033-0020(8).
- E. Date of Creation and Existence: When a lot, parcel, or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.
- F. Tract: One or more contiguous lots or parcels under the same ownership, including lots or parcels divided by a county or public road, or contiguous at a common point. Lots or parcels divided by a State Highway are not considered contiguous.
- G. Golf Course: As defined in Subsection 407.06(B)(31).
- H. Irrigated: Agricultural Land watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For the purposes of this section, an area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.

- I. Farm Stand: A structure designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of the incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and the farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.
- J. Owner: For purposes of a Lot of Record Dwelling, “Owner” includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, stepparent, stepchild, grandparent, or grandchild of the owner or a business entity owned by any one or a combination of these family members.
- K. Historic Property: As defined in ORS 358.480.
- L. Accessory Farm Dwelling: Includes all types of residential structures allowed by the applicable state building code.

[Amended by Ord. ZDO-224, 5/31/11]

401.04 PRIMARY USES ALLOWED ON LOW AND HIGH VALUE FARMLAND

- A. Farm uses as defined in Oregon Revised Statutes (ORS) 215.203.
- B. Nonresidential buildings customarily provided in conjunction with farm uses.
- C. Accessory buildings customarily incidental to an existing dwelling.
- D. Propagation and harvesting of a forest product. Inside the Portland Metropolitan Urban Growth Boundary, refer to Subsection 1002.04 regarding a development restriction that may apply if excessive tree removal occurs.
- E. Creation, restoration, or enhancement of wetlands.
- F. Alteration, restoration, or replacement of a lawfully established dwelling.
 - 1. A lawfully established dwelling is a single family dwelling which has:
 - a. Intact exterior walls and roof structure;
 - b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

- c. Interior wiring for interior lights; and
 - d. A heating system.
 - 2. The dwelling to be replaced shall be removed, demolished, or if not a manufactured dwelling, converted to an allowable use within 90 days of the occupancy of the new dwelling. Manufactured dwellings and residential trailers to be replaced must be removed from the property within 30 days of the occupancy of the new dwelling.
 - 3. If the dwelling to be replaced is located on a portion of the lot not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records to the County Clerk an irrevocable deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. Any release shall be signed by the County and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling.
- G. A winery as described in ORS 215.452.
- H. Farm stands.
- I. Operations for the exploration for, and production of, geothermal resources as defined by ORS 522.05 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to a wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).
- J. Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).
- K. Climbing and passing lanes within a public right-of-way existing as of July 1, 1987.
- L. Reconstruction or modification of public roads and highways including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
- M. Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- N. Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right-of-ways

existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

- O. Reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under ORS Chapter 215.
- P. Collocation of wireless telecommunication facilities listed in Subsection 835.04(A), subject to Section 835, provided such facilities include an existing tower that is over 200 feet in height.
- Q. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in the section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

401.05 PRIMARY USES ALLOWED ON LOW VALUE FARMLAND

- A. Churches and cemeteries in conjunction with churches. Churches shall not be sited within three miles of an Urban Growth Boundary.

[Amended by Ord. ZDO-224, 5/31/11]

401.06 USES SUBJECT TO REVIEW BY THE PLANNING DIRECTOR

- A. The following uses may only be approved where it:
 - 1. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 - 2. Will not significantly increase the cost of accepted farm or forest practices on land devoted to farm or forest use.
- B. Unless specified otherwise, the following uses may be allowed on Low and High Value Farmland subject to Subsection 1305.02.

1. A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area, exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet of floor area to the processing activities within another building supporting farm uses. A processing facility shall comply with Subsection 401.10(G) and other applicable siting standards, but the standards shall not be applied in a manner that prohibits the siting of the processing facility.
2. A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in Oregon Revised Statutes (ORS) 215.203(2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.
3. Parking of seven or fewer log trucks. The term "parking" does not include a maintenance/repair facility. The parking/storage of other forestry equipment is not permitted.
4. The propagation, cultivation, maintenance and harvesting of aquatic species.
5. Dwellings and other building customarily provided in conjunction with farm uses subject to Subsection 401.09(E) or (F) and Oregon Administrative Rules 660-033-0135.
6. A dwelling on real property used for farm use if the dwelling is located on the same lot or parcel as the dwelling of the farm operator and occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator subject to Subsection 401.09(H).
7. Accessory farm dwellings customarily provided in conjunction with farm use subject to Subsection 401.09(I).
8. One single family Lot of Record dwelling on a lawfully created lot or parcel subject to Subsection 401.09(B), (C) or (D). Lot of Record dwellings proposed on High Value Farmland composed of Class 1 or 2, or

prime or unique Soils, shall be reviewed by the Hearings Officer subject to Section 1300.

9. One manufactured dwelling, residential trailer or recreational vehicle, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative, as defined in Subsection 401.03(J), of the resident, subject to Subsection 1204.03.
10. Replacement dwelling to be used in conjunction with farm use if the existing dwelling is listed on the National Register of Historic Places (as required under ORS 358.480). The use or operation of a historic property for other than uses provided under ORS 358.480(2), including use as a separate residence or creation of a separate parcel, shall be subject to all other applicable provisions of this Section.
11. Residential home or facility as defined in ORS 197.660, in existing dwellings.
12. Farmworker housing as defined in Subsection 202, subject to Subsection 401.09(I).
13. Home occupations as provided in ORS 215.448 and Section 822.
14. Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.
15. Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
16. Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required but not resulting in the creation of new land parcels.
17. Utility facilities necessary for public service, including wetland waste water treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275. A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided.
18. Collocation of wireless telecommunication facilities listed in Subsection 835.05(A)(2), subject to Section 835, provided such facilities include an existing tower that is over 200 feet in height.

19. Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.
 20. Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community.
 21. Single family dwelling, not provided in conjunction with farm use subject to Subsection 401.09(G).
 22. Fire service facilities providing rural fire protection services.
- C. The following uses may be allowed on Low Value Farmland subject to Subsection 1305.02.
1. Private parks, playgrounds, hunting and fishing preserves and campgrounds except as provided for in Subsection 401.08(F).
 - a. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. A camping site may be occupied by a tent, travel trailer or recreational vehicle. Campgrounds shall not include intensively developed recreational areas such as swimming pools, tennis courts, retail stores or gas stations.
 - b. A private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. A “yurt” means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

[Amended by Ord. ZDO-224, 5/31/11]

401.07 CONDITIONAL USES

Conditional uses may be allowed subject to review by the Hearings Officer pursuant to Section 1300. Approval shall not be granted unless the proposal complies with Section 1203 and any applicable provisions of Section 800.

- A. Except for uses listed under Subsections 401.07(B)(4) and (C)(2), the use may only be approved where it:
1. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 2. Will not significantly increase the cost of accepted farm or forest practices on land devoted to farm or forest use.

- B. The following uses may be allowed on Low and High Value Farmland, subject to Subsection 401.07:
1. Commercial activities that are in conjunction with farm use but not including the processing of farm crops as provided for in Subsection 401.06(B)(1).
 2. Mineral, aggregate, oil, and gas uses. Pursuant to Oregon Revised Statutes (ORS) 215.298, a land use permit is required for mining more than 1000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A permit for mining of aggregate shall be issued only for a site included on an inventory acknowledged in the Comprehensive Plan.
 - a. Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources, subject to ORS 215.298.
 - b. Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.
 - c. Processing of other mineral resources and other subsurface resources.
 - d. Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under Subsection 401.04(I).
 3. Personal use airports for airplanes and helicopter pads, including associated hangar, maintenance, and service. A personal use airport as used in this subsection means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.
 4. Roads, highways and other transportation facilities, and improvements not allowed under Subsections 401.04 through 401.06. Such uses may be established, subject to the adoption of an Exception to Statewide Planning Goal 3, Agricultural Lands, and to any other applicable Statewide

Planning Goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in Oregon Administrative Rules (OAR) 660-012-0035 and 660-012-0065.

5. Transmission towers over 200 feet in height. Towers supporting wireless telecommunication facilities are subject to Section 835.
 6. Commercial utility facilities for the purpose of generating power for public use by sale. A power generation facility shall not preclude more than 12 acres on High Value Farmland, or more than 20 acres on Low Value Farmland, from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR 660, Division 4.
 7. An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks, and is subject to ORS 215.297.
 8. A home occupation to host events, subject to Section 806.
 9. A home occupation for canine skills training, subject to Section 836.
- C. The following uses may be allowed on Low Value Farmland subject to Subsection 401.07:
1. Dog kennels.
 2. A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities, or buildings necessary for its operation.
 3. Composting facilities, subject to Section 834.
 4. Golf courses, on land determined not to be high value farmland, as defined in ORS 195.300.
 5. Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

401.08 PROHIBITED AND PREEXISTING USES

- A. Structures and uses of land not specifically mentioned in this Section.

- B. Bed and Breakfast Residences and Inns.
- C. Outdoor advertising displays, advertising signs or advertising structures, except as provided in Section 1010.
- D. Any lot division, or property line adjustment, except those approved pursuant to Subsection 401.10 and Section 1107.
- E. Subdivisions, except as provided for in Subsection 401.10(A).
- F. All other legally established preexisting uses and structures not specifically permitted in Section 401 shall be nonconforming uses subject to Section 1206.
- G. Preexisting uses on High Value Farmland which are located wholly within this zone may be maintained, enhanced or expanded on the same tract subject to Section 1206, except golf courses may be expanded to no more than 18 holes.
- H. A nonconforming school use may be expanded subject to:
 - 1. Section 1206; and
 - 2. The use was established on or before January 1, 2009; and
 - 3. The expansion occurs on:
 - a. The tax lot on which the school was established on or before January 1, 2009; or
 - b. A tax lot that is contiguous to the tax lot described in 'a' above; and that was owned by the applicant on January 1, 2009; and
 - 4. Meets the standards as provided in Subsection 401.06(A)(1) and (2).
- I. Manufactured Dwelling Parks: Redevelopment of a manufactured dwelling park with a different use shall require compliance with Subsection 825.03.

401.09 CRITERIA FOR DWELLINGS

A permanent dwelling may be established under the following applicable provisions, when the applicant provides a complete application as required in Section 401.11 and subject to Subsections 1001.01 and 1305.02. The landowner for any dwelling approved under this Section shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under Oregon Revised Statutes ORS 30.936 or 30.937.

- A. The SCS Soils Atlas for Clackamas County shall be used to determine the soil classification and soil rating for a specific lot or parcel, except;
1. For purposes of approving a Lot of Record Dwelling application, the applicant may submit a report from a soils scientist whose credentials are acceptable to the State Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and submits a statement from the State Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report and finds the analysis in the report to be soundly and scientifically based.
 2. For Nonfarm Dwelling applications, the applicant may submit a more detailed site specific soils report from a soils scientist who is certified as a soils classifier by the ARCPACS (A Federation of Certifying Boards in Agronomy, Biology, Earth and Environmental Sciences) and submit a statement from the county Soils Section of the Water and Environment Services that finds the analysis in the report to be soundly and scientifically based.
- B. Lot of Record Dwelling when determined to be located on Low Value Farmland, subject to the following criteria:
1. The lot or parcel on which the dwelling will be sited was lawfully created prior to January 1, 1985;
 2. The lot or parcel has been under the continuous ownership of the present owner who either;
 - a. Acquired the lot or parcel prior to January 1, 1985; or
 - b. Acquired the lot or parcel by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985;
 3. The tract on which the dwelling will be sited does not include a dwelling;
 4. The lot or parcel on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993;
 5. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law;
 6. When the lot or parcel on which the dwelling will be sited is part of a tract, all remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

7. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. The Oregon Department of Fish and Wildlife (ODFW) suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.
 8. An approval to construct a dwelling granted under this Subsection may be transferred to any other person after the effective date of the land use decision.
- C. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Class III and IV Soil, subject to the following criteria:
1. The lot or parcel on which the dwelling will be sited was lawfully created prior to January 1, 1985;
 2. The lot or parcel has been under the continuous ownership of the present owner who either;
 - a. Acquired the lot or parcel prior to January 1, 1985; or
 - b. Acquired the lot or parcel by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985;
 3. The tract on which the dwelling will be sited does not include a dwelling;
 4. The lot or parcel on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993;
 5. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law;
 6. When the lot or parcel on which the dwelling will be sited is part of a tract, all remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;
 7. The tract is no more than 21 acres;
 8. The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on

January 1, 1993; or, the tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary;

9. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or the impacts can be adequately mitigated so as not to interfere. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of impact mitigation measures, winter range is seriously considered impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.
10. An approval to construct a dwelling granted under this Subsection may be transferred to any other person after the land use decision becomes final.

D. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Prime, Unique, Class I or II Soils if a Hearings Officer review pursuant to Subsection 1300 finds the following:

1. The lot or parcel on which the dwelling will be sited was lawfully created prior to January 1, 1985;
2. The lot or parcel has been under the continuous ownership of the present owner who either;
 - a. Acquired the lot or parcel prior to January 1, 1985; or
 - b. Acquired the lot or parcel by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985;
3. The tract on which the dwelling will be sited does not include a dwelling;
4. The lot or parcel on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993;
5. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law;

6. When the lot or parcel on which the dwelling will be sited is part of a tract, all remaining portions of the tract are required to be consolidated into a single lot or parcel;
 7. The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity;
 8. The dwelling will comply with the provisions of 401.07(A)(1) and (2);
 9. The dwelling will not materially alter the stability of the overall land use pattern in the area;
 10. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. (Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet).
 11. An approval to construct a dwelling granted under this Section may be transferred to any other person after the effective date of the land use decision.
- E. Dwelling in Conjunction with a Farm Use on High Value Farmland: A primary farm dwelling for the farm operator may be allowed subject to the following criteria:
1. The subject tract is currently employed in farm use that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years;
 2. The lot or parcel on which the dwelling will be sited was lawfully created;
 3. Except as permitted in Subsection 401.09(I), there is no other dwelling on the subject tract;
 4. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;
 5. In determining the gross income requirement, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract. Only gross annual income from land owned, not leased or rented, shall be counted.

6. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used again to qualify any other parcel for a primary farm dwelling.
 7. Only a lot or parcel zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.
- F. Dwelling in Conjunction with a Farm Use on Low Value Farmland: A primary farm dwelling for the farm operator may be allowed on low value farmland subject to the following criteria:
1. Income Test; Criteria:
 - a. The subject tract is currently employed for the farm use that produced at least \$32,500 in gross annual income from the sale of farm products in the last two or three of the last five years;
 - b. Except as permitted in Subsection 401.09(I), there is no other dwelling on the subject tract;
 - c. The lot or parcel on which the dwelling will be sited was lawfully created;
 - d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;
 - e. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted; or
 - f. Gross farm income earned from a lot or parcel which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
 - g. Only a lot or parcel zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.
 - h. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement

dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used to qualify any other parcel for a primary farm dwelling.

2. 160 Acre Test; Criteria:

- a. The parcel on which the dwelling will be located is at least 160 acres;
- b. The subject tract is currently employed in a farm use;
- c. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock at a commercial scale;
- d. Except as permitted in Subsection 401.09(I), there is no other dwelling on the subject tract; or

3. Capability Test; Criteria:

- a. The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract;
- b. The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in Subsection 401.09(F)(3)(a);
- c. The subject tract is currently employed in farm use at a level capable of producing the annual gross sales required in Subsection 401.09(F)(3)(b);
- d. The subject lot or parcel on which the dwelling is proposed is not less than 10 acres;
- e. Except as permitted in Subsection 401.09(I), there is no other dwelling on the subject tract;
- f. If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by Subsection 401.09(F)(3)(c).

- G. Dwelling not in Conjunction with a Farm Use: A dwelling for a nonfarm use may be allowed subject to the following criteria:

1. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
2. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils;
3. The dwelling will be sited on a lot or parcel lawfully created before January 1, 1993;
4. The dwelling shall not materially alter the stability of the overall land use pattern of the area. The County shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots in the area similarly situated, subject to Oregon Administrative Rules (OAR) 660-033-0130(4)(a)(D)(i) through (iii).
 - a. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a “distinct agricultural area” based on topography, soils types, land use pattern, or the type of farm operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries, and the location of the subject parcel with this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area; and to the extent OAR 660-033-0130(4)(a)(D)(ii) is applicable.
 - b. Determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.
5. The dwelling shall comply with such other conditions as the County considers necessary.
6. Prior to Planning approval for issuance of a building or manufactured dwelling permit, the applicant shall notify the County Assessor that the lot or parcel is no longer being used for farmland and; request the County

Assessor to disqualify the lot or parcel for special assessment under ORS 308.370, 308.765, 321.257 to 321.381, 321.730 or 321.815 and; pay any additional tax imposed upon disqualification from special assessment. A lot or parcel that has been disqualified pursuant to this Section shall not requalify for special assessment unless, when combined with another contiguous lot or parcel, it constitutes a qualifying parcel.

H. Accessory Farm Dwelling – Relative: An accessory farm dwelling for a relative of the farm operator may be allowed subject to the following criteria:

1. The accessory farm dwelling shall be located on the same lot or parcel as the primary farm dwelling of the farm operator;
2. The accessory farm dwelling shall be located on a lawfully created lot or parcel;
3. The accessory farm dwelling shall be occupied by a child, parent, stepparent, grandchild, grandparent, stepgrandparent, 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, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator. The size, type, and intensity of the farm operation shall be used to evaluate the need for the dwelling;
4. The accessory farm dwelling shall be occupied by a person whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management of the farm use of the farm. 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;
5. There are no other dwellings on the lot or parcel that are vacant or currently occupied by persons not working on the subject farm and that could reasonably be used as an accessory farm dwelling.
6. At any time the accessory farm dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.

I. Accessory Farm Dwelling – Non-Relative: An accessory farm dwelling for a nonrelative of the farm operator may be allowed subject to the following criteria:

1. The accessory farm dwelling shall be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal

or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;

2. The accessory farm dwelling shall be located on a lawfully created lot or parcel;
3. The accessory farm dwelling shall be located:
 - a. On the same lot or parcel as the primary farm dwelling; or
 - b. On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or
 - c. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling 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. The manufactured dwelling may remain if it is re-approved pursuant to Section 401; or
 - d. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved in this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or
 - e. On a parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements of Subsection 401.09(E)(1) or 401.09(F)(1) whichever is applicable.
4. 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 accessory farm dwelling;
5. The primary farm dwelling to which the proposed dwelling would be accessory, shall meet one of the following:

- a. On Low Value Farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed in farm use, as defined in ORS 215.203, and produced at least \$32,500 in gross annual income from the sale of farm products within the last two years or three of the last five years; or
 - b. On land identified as High Value Farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed in farm use, as defined in ORS 215.203, and produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years;
6. In determining the gross annual income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross annual income from land owned, not leased or rented, shall be counted.
 7. Any proposed land division or property line adjustment of a lot or parcel for an accessory farm dwelling approved pursuant to this Subsection shall not be approved. If it is determined that an accessory farm dwelling satisfies the requirements for a dwelling in conjunction with a farm use under Subsection 401.09(E or F), a parcel may be created consistent with the minimum parcel size requirements in Subsection 401.10(A);
 8. An accessory farm dwelling approved pursuant to this Subsection shall not later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to Subsection 401.06(B)(21).
 9. At any time the dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.

[Amended by Ord. ZDO-224, 5/31/11]

401.10 LAND DIVISIONS, DIMENSIONS AND ADJUSTMENTS

Land divisions proposed for primary uses may be permitted by the Planning Director, subject to Subsection 1305.02. All land divisions under this subsection shall be subject to Oregon Revised Statutes (ORS) Chapter 92. Lot divisions shall be processed and reviewed consistent with the following criteria:

- A. Land Divisions: All new parcels shall be at least 80 acres. Land divisions for primary uses may be permitted by the Planning Director pursuant to Subsection 1305.02.

- B. Conditional Use Divisions: The Hearings Officer may approve a division of land for nonfarm uses, except dwellings, set out in ORS 215.283(2) if the Hearings Officer finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. Such land divisions shall be received pursuant to Section 1300.
- C. Nonfarm Use Land Divisions: Lots less than 80 acres in size may be approved by the Planning Director pursuant to Subsection 1305.02 and subject to the following criteria:
1. The originating lot or parcel is at least 80 acres, and is not stocked to the requirements under ORS 527.610 to 527.770,
 2. The lot is composed of at least 95% Class VI through Class VIII agricultural soils, and composed of at least 95% soils not capable of producing 50 cubic feet per acre per year of wood fiber;
 3. The new lot or parcel for a dwelling will not be smaller than 20 acres;
 4. The criteria in Section 401.09(G)(1,2,4,5 and 6) are satisfied.
- D. Historic property land divisions subject to Section 707.
- E. Property line adjustments shall be subject to Section 1107.
- F. Right-of-Way Inclusion: For purposes of satisfying the lot size requirements of this district, lots which front on existing county or public roads may include the land area between the front property line and the middle of the road right-of-way. Lots which front on state and federal highways may not include the land area between the front property line and the middle of the road right of way.
- G. Structure Setbacks:
1. Minimum front yard setback: 30 feet.
 2. Minimum rear yard setback: 30 feet
 3. Minimum side yard setback: 10 feet
 4. Minimum setbacks for accessory structures: Accessory structures shall maintain a minimum front yard setback of 30 feet and minimum rear and side yard setbacks of 10 feet.
 5. Corner Vision: No sight-obscuring structures or plantings exceeding 30 inches in height shall be located within a 20 foot radius of the lot corner nearest the intersection of two public, county or state road, or from the intersection of a private driveway or easement and a public, county or

state road. Trees located within a 20 foot radius of any such intersection shall be maintained to allow eight feet of visual clearance below the lowest hanging branches.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]

401.11 SUBMITTAL REQUIREMENTS

- A. Planning Director Review: An application for any use requiring review by the Planning Director pursuant to Subsection 1305.02 shall include the following:
1. A complete Land Use Application Form;
 2. Accurate Site Plan drawn to scale on 8.5”x 11” or 8.5”x 14” paper, showing the property and proposal;
 3. Application fee;
 4. Supplemental Application Form addressing each of the applicable approval criteria for the proposed use; and
 5. Farm dwellings requiring a justification of income shall include tax forms, farm receipts, or other appropriate documentation demonstrating the income produced from the subject property.

[Amended by Ord. ZDO-230, 9/26/11]

401.12 APPROVAL PERIOD AND TIME EXTENSION

- A. Approval Period: Approval of an administrative action under Section 401 is valid for four years from the date of the final written decision. If the County’s final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented. “Implemented” means:
1. For a land division, the final plat shall be recorded with the County Clerk. If a final plat is not required under Oregon Revised Statutes Chapter 92, deeds with the legal descriptions of the new parcels shall be recorded with the County Clerk; or
 2. For all other administrative actions, a building or manufactured dwelling placement permit for a new primary structure that was the subject of the administrative action shall be obtained and maintained. If no building or manufactured dwelling placement permit is required, all other necessary County development permits shall be obtained and maintained.
- B. Time Extension: If the approval of an administrative action is not implemented within the initial approval period established by Subsection

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

401.12(A), a two-year time extension may be approved by the Planning Director pursuant to Subsection 1305.02, and subject to Subsection 1305.05.

- C. Subsections 401.12(A) and (B) do not apply to home occupations or conditional uses, which shall be subject to any applicable approval period and time extension provisions of Sections 822 or 1203.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11]