


REVIEWED
HL
LEGAL COUNSEL

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK
COMMISSIONERS' JOURNAL
06/24/2009 08:59:38 AM
CJ 2009-1291

2009-1291

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending the Deschutes County Code *
Chapter 18.16 to Make the Chapter Consistent With * ORDINANCE NO. 2009-014
Amendments to ORS 215.283 and 215.284 and OAR *
660-033-0120 and 660-033-0130, and Declaring an *
Emergency. *

WHEREAS, the Planning Division staff initiated a text amendment to Deschutes County Code (DCC) Chapter 18.16 to comply with amendments to ORS 215.283 and 215.284, along with OAR 660-033-0120 and 660-033-0130; and

WHEREAS, the Deschutes County Planning Commission recommended approval of the proposed text amendment; and

WHEREAS the Board considered this matter after a public hearing on June 22, 2009 and concluded that the proposed changes will make the Deschutes County Code consistent with State law; now, therefore,

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

Section 1. AMENDMENT. DCC Chapter, 18.16, Exclusive Farm Use Zone is amended to read as described in Exhibit "A," attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

///

Section 2. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

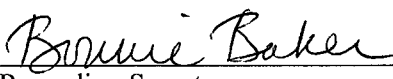
Dated this 22nd of June, 2009

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


TAMMY BANEY, CHAIR


DENNIS R. LUKE, VICE CHAIR

ATTEST:


Recording Secretary


ALAN UNGER, COMMISSIONER

Date of 1st Reading: 22nd day of June, 2009.


Date of 2nd Reading: 22nd day of June, 2009.

Record of Adoption Vote

| Commissioner | Yes | No | Abstained | Excused |
|----------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Tammy Baney | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Dennis R. Luke | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Alan Unger | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Effective date: 22nd day of June, 2009.

ATTEST:


Recording Secretary

Chapter 18.16. EXCLUSIVE FARM USE ZONES

18.16.010. Purpose.

18.16.020. Uses Permitted Outright.

18.16.025. Uses Permitted Subject to the Special Provisions Under DCC Section 18.16.038 and a Review Under DCC Chapter 18.124 For Items C Through M.

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

18.16.031. Nonresidential Conditional Uses on Nonhigh Value Farmland Only.

18.16.033. Nonresidential Conditional Uses on High Value Farmland Only.

18.16.035. Destination Resorts.

18.16.037. Guest Ranch.

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

18.16.040. Limitations on Conditional Uses.

18.16.050. Standards for Dwellings in the EFU Zones.

18.16.055. Land Divisions.

18.16.060. Dimensional Standards.

18.16.065. Subzones.

18.16.067. Farm Management Plans.

18.16.070. Yards.

18.16.080. Stream Setbacks.

18.16.090. Rimrock Setback.

18.16.010. Purpose.

- A. The purpose of the Exclusive Farm Use zones is to preserve and maintain agricultural lands and to serve as a sanctuary for farm uses.
- B. The purposes of this zone are served by the land use restrictions set forth in the Comprehensive Plan and in DCC 18.16 and by the restrictions on private civil actions and enforcement actions set forth in ORS 30.930 through 30.947.

(Ord. 95-007 §9, 1995; Ord. 92-065 §3, 1992; Ord. 91-038 §§1 and 2, 1991)

18.16.020. Uses Permitted Outright.

The following uses and their accessory uses are permitted outright:

- A. Farm use as defined in DCC Title 18.
- B. Propagation or harvesting of a forest product.
- C. Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(2)(a) or (b).
- D. Accessory buildings customarily provided in conjunction with farm use.
- E. Climbing and passing lanes within a the right of way existing as of July 1, 1987. ORS 215.283(k)
- F. Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.
- G. Temporary public road ~~or~~ and highway detours that will be abandoned and restored to original condition or use when no longer needed.
- H. Minor betterment of existing public roads and highway-related facilities such as maintenance yards, weigh stations and rest areas, within a right of way existing as of July 1, 1987, and contiguous publicly owned property utilized to support the operation and maintenance of public roads and highways.
- I. Creation, restoration or enhancement of wetlands.

- J. Alteration, restoration or replacement of a lawfully established dwelling that:
1. Has intact exterior walls and roof structure;
 2. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
 3. Has interior wiring for interior lights;
 4. Has a heating system; and
 5. In the case of replacement, is removed, demolished or converted to an allowable use within three months of completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel, and shall comply with all applicable siting standards. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of the statute and county code have changed to allow the siting of another dwelling; and
 6. The replacement dwelling is subject to OAR 660-033-0130(30), as follows:
The County shall require as a condition of approval of a single-family replacement dwelling that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937.
 7. An applicant for a replacement dwelling may request a deferred replacement dwelling permit.
 - a. The dwelling to be replaced shall be removed or demolished within three months after the deferred replacement permit is issued.
 - b. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the replacement permit becomes void.
 - c. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.
 - d. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or child of the applicant.
- K. A replacement dwelling to be used in conjunction with farm use if the existing dwelling is listed on the National Register of Historic Places and on the County inventory as a historic property as defined in ORS 358.480, and subject to 18.16.020(J)(6) above.
- L. Wildlife habitat conservation and management plan approved under ORS 215.800 to 215.808.
- M. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.
- N. Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:
1. A public right of way;
 2. Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or
 3. The property to be served by the utility.
- O. The land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone, subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.521.

- P. Fire service facilities providing rural fire protection services.
- Q. Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(2)(a) or (b).
- R. A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation on nonhigh value farmland only.
- S. The breeding, kenneling and training of greyhounds for racing.
- T. Outdoor mass gathering described in ORS 197.015(10)(d), and subject to DCC Chapter 8.16.

(Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-001 §2, 2004; Ord. 2001-039 §1, 2001; Ord. 2001-016 §2, 2001; Ord. 98-030 §1, 1998; Ord. 95-007 §10, 1995; Ord. 92-065 §3, 1992; Ord. 91-038 §§1 and 2, 1991; Ord. 91-024 §1, 1991; Ord. 91-020 §1, 1991; Ord. 91-005 §4, 1991; Ord. 91-002 §3, 1991; Ord. 86-007 §1, 1986; Ord. 81-025 §1, 1981; Ord. 81-001 §1, 1981)

18.16.025. Uses Permitted Subject to the Special Provisions Under DCC Section 18.16.038 and a Review Under DCC Chapter 18.124 where applicable for Items C Through M.

- A. Dwellings customarily provided in conjunction with farm use (farm-related dwellings), subject to DCC 18.16.050.
- B. A relative farm assistance help dwelling, subject to DCC 18.16.050.
- C. Churches and cemeteries in conjunction with churches consistent with ORS 215.441, that are not within 3 miles of an acknowledged urban growth boundary, on nonhigh value farmland.
- D. Churches and cemeteries in conjunction with churches consistent with ORS 215.441, that are within 3 miles of an acknowledged urban growth boundary, subject to the approval of an exception pursuant to ORS 197.732 and OAR chapter 660, division 004, on nonhigh value farmland.
- E. Expansion of an existing church or cemetery in conjunction with a church on the same tract as the existing use.
- F. Public or private schools, including all buildings essential to the operation of the school, that are not within 3 miles of an acknowledged urban growth boundary on nonhigh value farmland.
- G. Public or private schools, including all buildings essential to the operation of the school, that are within 3 miles of an acknowledged urban growth boundary, subject to the approval of an exception pursuant to ORS 197.732 and OAR chapter 660 division 004, on nonhigh value farmland.
- H. Expansion of an existing public or private school on the same tract as the existing use, including all buildings essential to the operation of such a school.
- I. Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale and transmission towers over 200 feet in height.
- J. Winery, as described in ORS 215.452.
- K. Farm stands.
- L. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may be reasonably necessary.
- M. A facility for the processing of farm crops, or the production of biofuel as defined in ORS 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility.
 - a. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses.

- b. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.
- c. The County shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-001 §2, 2004)

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

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

- A. Nonfarm dwelling ~~and accessory uses thereto.~~
- B. Lot of record dwelling.
- C. Residential home or facility, as defined in DCC 18.04.030, in existing dwellings.
- D. A hardship dwelling, which can include one manufactured dwelling or recreational vehicle, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.
- E. A dwelling in conjunction with a wildlife habitat conservation and management plan.
- F. Commercial activities that are in conjunction with farm use, but not including the processing of farm crops as described in DCC 18.16.025.
- G. Operations conducted for:
 - 1. Mining and processing of geothermal resources as defined by ORS 522.005; and
 - 2. Mining and processing of natural gas or oil as defined by ORS 520.005, not otherwise permitted under DCC 18.16.020.
- H. Expansion of an existing private park, playground, hunting and fishing preserve and campground on the same tract as the existing use.
- I. ~~Expansion of an existing Ppublic park and playground on the same tract as the existing use, including only those uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable. The expansion of a public park consistent with the provisions of ORS 195.120, and including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.~~
- J. Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
- K. Transmission towers over 200 feet in height.
- L. Commercial utility facility, including a hydroelectric facility (in accordance with DCC 18.116.130 and 18.128.260), for the purpose of generating power for public use by sale.
- M. Personal use airport for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal use airport as used in DCC 18.16.030 means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by invited guests and by commercial aviation activities in connection with agricultural operations.
- N. Home Occupation, subject to DCC 18.116.280.
 - 1. The home occupation shall:
 - a. be operated substantially in the dwelling or other buildings normally associated with uses permitted in the EFU zone;
 - b. be operated by a resident or employee of a resident of the property on which the business is located; and
 - c. employ on the site no more than five full-time or part-time persons. ~~Home occupations are not allowed in structures accessory to resource use.~~
 - 2. The home occupation shall not unreasonably interfere with other uses permitted in the EFU zone.
- O. A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 213.203(2). The primary processing of a forest product, as used in DCC 18.16.030, means the use of a

portable chipper or stud mill or other similar method of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in DCC 18.16.030, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

- ~~P. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete when such uses are in conjunction with the maintenance or construction of public roads or highways.~~
- QP. Construction of additional passing and travel lanes requiring the acquisition of right of way, but not resulting in the creation of new land parcels.
- RQ. 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.
- SR. Improvement of public roads and highway-related facilities such as maintenance yards, weigh stations and rest areas where additional property or right of way is required, but not resulting in the creation of new land parcels.
- TS. The propagation, cultivation, maintenance and harvesting of aquatic species.
- UT. ~~Bed and breakfast inn, with R~~room and board arrangements for a maximum of five unrelated persons in an existing residence. If approved, this use is subject to the recording of the statement listed in DCC 18.16.020(J)(6).
- VU. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland.
- WV. Roads, highways and other transportation facilities, and improvements not otherwise allowed under DCC 18.16, if an exception to Goal 3, Agricultural Lands, and to any other applicable goal is first granted under state law. Transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.
- XW. Surface mining of mineral and aggregate resources in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for facilities, ponds, reservoirs, and the off-site use, storage, and sale of excavated material.
- YX. A living history museum.
- ZY. Operations for the extraction and bottling of water.
- AAZ. Transportation improvements on rural lands allowed by OAR 660-012-0065.
- BBAA. Expansion of existing county fairgrounds and activities relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
- BB. Extended outdoor mass gatherings, subject to DCC 8.16.
- CC. A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
(Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-001 §2, 2004; Ord. 2001-039 §1, 2001; Ord. 2001-016 §2, 2001; Ord. 98-030 §1, 1998; Ord. 95-025 §1, 1995; Ord. 95-007 §11, 1995; Ord. 94-008 §9, 1994; Ord. 92-065 §3, 1992; Ord. 91-038 §2, 1991; Ord. 91-020 §1, 1991; Ord. 91-014 §1, 1991; Ord. 91-005 §5, 1991; Ord. 90-018 §1, 1990; Ord. 90-014 §§23 and 31, 1991; Ord. 87-013 §1, 1987; Ord. 86-018 §3, 1986; Ord. 83-028 §1, 1983)

18.16.031. Nonresidential Conditional Uses on Nonhigh Value Farmland Only.

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

- A. Dog kennel.
- B. A site for the disposal of solid waste approved by the governing body of a city or County or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
- C. Golf course and accessory golf course uses as defined in DCC Title 18.

- D. Except for those composting facilities that are a farm use as defined in OAR 660-033-0020(7), composting operations and facilities for which a permit has been granted by the Oregon Department of Environmental Quality under ORS 459.245 and OAR 340-96-020. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.
- E. Private parks, playgrounds, hunting and fishing preserves and campgrounds.
(Ord. 2009-014 §1, 2009; Ord. 2004-001 §2, 2004; Ord. 95-007 §12, 1995)

18.16.033. Nonresidential Conditional Uses on High Value Farmland Only.

In addition to those uses listed in DCC 18.16.030 above, the following uses may be allowed on tracts in the Exclusive Farm Use Zones that constitute high value farmland subject to applicable provisions of the Comprehensive Plan and DCC 18.16.040 and other applicable sections of DCC Title 18.

- A. Maintenance, enhancement or expansion of dog kennels existing as of March 1, 1994, subject to other requirements of law. New dog kennels are prohibited.
- B. Maintenance, enhancement or expansion of a site described in 18.16.032~~1~~ (B) existing as of March 1, 1994, subject to other requirements of law. New such sites are prohibited.
- C. Maintenance, enhancement or expansion of golf course and accessory golf course uses as defined in DCC Title 18 existing as of March 1, 1994, subject to other requirements of law. New such uses are prohibited. Expanded courses may not exceed 36 holes total.
(Ord. 2009-014 §1, 2009; Ord. 2004-001 §2, 2004; Ord. 95-007 §13, 1995)

18.16.035. Destination Resorts.

Destination resorts may be allowed, where mapped, as a conditional use, subject to all applicable standards of the ~~DR~~ Destination Resort Zone.
(Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 92-065 §3, 1992; Ord. 92-004 §3, 1992)

18.16.037. Guest Ranch.

- A. A guest ranch may be established in conjunction with an existing and continuing livestock operation, using accepted livestock practices that qualifies as a farm use under ORS 215.203, subject to the applicable provisions set forth in DCC 18.16.040(A)(1), (2) and (3), the applicable provisions of DCC 18.128, and the provisions of ORS 215.296(1) and (2).
- B. "Guest ranch" means a facility for overnight guest lodging units, including passive recreational activities and food services, as set forth in ORS 215.990(2) to (4), that are incidental and accessory to an existing livestock operation that qualifies as a farm use under ORS 215.203. Guest lodging unit means guest rooms in a ranch facilities may include a lodge, bunkhouse, or cottage or cabin used only for transient overnight lodging and not for a permanent residence accommodations, and may include as well as passive recreational activities and food services as set forth in DCC 18.128.360(4D) and (5E).
- C. For the purposes of DCC 18.16.037, "livestock" means cattle, sheep, horses, and bison.
- D. A proposed division of land in an exclusive farm use zone for a guest ranch or a division of a lot or parcel that separates a guest ranch from the dwelling of the person conducting the livestock operation shall not be allowed.

(Ord. 2009-014 §1, 2009; Ord. 2001-043 §1, 2001; Ord. 98-056 §1, 1998)

Note: DCC 18.16.037 will be repealed January 2, 2010 (Ord. 2006-017 §1, 2006).

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

- A. A utility facility necessary for public use allowed under DCC 18.16.025(~~C~~) shall be one that is necessary to be situated in an agricultural zone in order for service to be provided. To demonstrate that a utility facility is necessary, an applicant ~~just~~ must show that reasonable alternatives have been

considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

1. Technical and engineering feasibility;
2. The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
3. Lack of available urban and nonresource lands;
4. Availability of existing rights of way;
5. Public health and safety; and
6. Other requirements of state and federal agencies.
7. Costs associated with any of the factors listed in 1-6 above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities that are not substantially similar.
8. The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
9. In addition to the provisions of 1-6 above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.
10. The provisions above do not apply to interstate gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.
11. The County shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use, in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

B. Wineries are subject to the following:

A winery, authorized under DCC 18.16.025 is a facility that produces wine with a maximum annual production of:

1. Less than 50,000 gallons and that:
 - a. Owns an on-site vineyard of at least 15 acres;
 - b. Owns a contiguous vineyard of at least 15 acres;
 - c. Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
 - d. Obtains grapes from any combination of a, b or c above; or
2. At least 50,000 gallons and no more than 100,000 gallons and that:
 - a. Owns an on-site vineyard of at least 40 acres;
 - b. Owns a contiguous vineyard of at least 40 acres;
 - c. Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
 - d. Obtains grapes from any combination of (2)(a-c).
3. The winery shall allow only the sale of:
 - a. Wines produced in conjunction with the winery; and
 - b. Items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.
4. Prior to issuance of a permit to establish a winery, the applicant shall show that vineyards, described under either 1 or 2 above, have been planted or that the contract has been executed, as applicable.

5. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands: The minimum setback for winery buildings adjacent to an intensive farm use on nearby land shall be 100 feet. Site plan review under DCC 18.124 shall be required for a winery.
 - a. Establishment of a setback, not to exceed 100 feet, from all property lines for the winery and all public gathering places; and
 - b. Provision of direct road access, internal circulation and parking shall be demonstrated through site plan review under DCC 18.124.
 6. Approval of a winery shall not be a basis for an exception under ORS 197.732(1)(a) or (b).
- C. Farm stands are subject to the following:
1. The structures are designed and used for the sale of farm crops or 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 sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and
 2. The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops or livestock, and does not include structures for banquets, public gatherings or public entertainment.
 3. As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area.
 4. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.
 5. As use in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.
- D. A site for the takeoff and landing of model aircraft is subject to the following:
1. 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. As used in this section, "model aircraft" mean 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.
- E. A facility for the processing of farm crops shall be located on a farm operation that provides at least one-quarter of the farm crops processed at the facility.
- 1, The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses.
 2. A processing facility shall comply with all applicable siting standards, but the standards shall not be applied in a manner that prohibits the siting of the processing facility.
 3. The County shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2004-001 §2, 2004)

18.16.040. Limitations on Conditional Uses.

- A. Conditional uses permitted by DCC 18.16.030(~~F~~) through (~~BB~~) may be established subject to ORS 215.296 and applicable provisions in DCC 18.128 and upon a finding by the Planning Director or Hearings Body that the proposed use:
 - 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm or forest uses; and
 - 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 - 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.
- B. A commercial activity allowed under DCC 18.16.030(~~HF~~) shall be associated with a farm use occurring on the parcel where the commercial use is proposed. The commercial activity may use, process, store or market farm products produced outside of Deschutes County.
- C. A power generation facility that is part of a commercial utility facility for the purpose of generating power for public use by sale identified in DCC 18.16.030(~~OL~~) and:
 - 1. That is located on high-value farmland shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and Oregon Administrative Rules 660, Division 004.
 - 2. That is ~~not~~ located on nonhigh-value farmland shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and Oregon Administrative Rules 660, Division 4.
- D. No aircraft may be based on a personal-use airport identified in DCC 18.16.030(~~MQ~~) 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 regulations of the Oregon Department of Aviation.
- E. The facility for the primary processing of forest products identified in DCC 18.16.030(~~R~~) is intended to be portable or temporary in nature. Such a facility may be approved for a one-year period which is renewable.
- F. Batching and blending mineral and aggregate into asphaltic cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date of the application for batching and blending is filed.
- G. Accessory uses for golf courses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings. Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to service only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.
- H. An expansion of an existing golf course as allowed under DCC 18.16.033(C) shall comply with the definition of "golf course" set forth in DCC Title 18 and the provisions of DCC 18.16.040(A).
- I. An applicant for a nonfarm conditional use may demonstrate that the standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.
- J. For purposes of approving a conditional use permit for a lot of record dwelling under DCC 18.16.030, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner:

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

18.16.050. Standards for Dwellings in the EFU Zones.

Dwellings listed in DCC 18.16.025 and 18.16.030 may be allowed under the conditions set forth below for each kind of dwelling, and all dwellings are subject to the landowner for the property upon which the dwelling is placed, signing and recording in the deed records for the County, a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

- A. Farm-related dwellings on nonhigh value farmland. A dwelling customarily provided in conjunction with farm use, as listed in DCC 18.16.030(A), may be approved if it satisfies any of the alternative tests set forth below:
1. Acreage test.
 - a. On land not identified as high-value farmland, a dwelling, including a manufactured home in accordance with DCC 18.116.070, may be is considered ~~to be~~ customarily provided in conjunction with farm use if:
 - i. The parcel on which the dwelling will be located is at least:

- (a) One hundred sixty acres and not in the Horse Ridge East subzone; or
 - (b) Three hundred twenty acres in the Horse Ridge East subzone;
 - ii. The subject tract is currently employed for farm use, as defined in DCC 18.04.040030, and which is evidenced by a farm management plan;
 - iii. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale;
 - iv. There is no other dwelling on the subject tract, except as allowed under DCC 18.16.020(K); and
 - ~~v. The dwelling will be located on the least productive part of the parcel.~~
- 2. Median acreage/gross sales test.
 - a. On land not identified as high-value farmland, a dwelling, including a manufactured home in accordance with DCC 18.116.070, may be is considered ~~to be~~ customarily provided in conjunction with farm use if:
 - i. The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area that includes all tracts wholly or partially within one mile of the perimeter of the subject tract;
 - ii. The subject tract is capable of producing at least the median level of annual gross sales of County indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in DCC 18.16.050(A)(2)(a)(i);
 - iii. The subject tract is currently employed for farm use, as defined in DCC 18.04.030, and which is evidenced by a farm management plan, at a level capable of producing the annual gross sales required in DCC 18.16.050(A)(2)(a)(ii). If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to establishment of the farm use capable of meeting the median income test.
 - iv. The subject lot or parcel on which the dwelling is proposed is at least 20 acres in size;
 - v. There is no other dwelling on the subject tract, except as allowed under DCC 18.16.020(K); and
 - vi. ~~The dwelling will be located on the least productive part of the parcel; and~~
 - ~~vii. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.~~
 - b. For the purpose of calculating appropriate tract sizes and gross incomes to satisfy DCC 18.16.050(A)(2)(a)(i) and (ii), the County will utilize the methodology contained in Oregon Administrative Rules 660-33-135(3) using data on gross sales per acre tabulated by LCDC pursuant to Oregon Administrative Rules 660-33-135(4).
- 3. Gross annual income test.
 - a. On land not identified as high-value farmland, a dwelling, including a manufactured home in accordance with DCC 18.116.070, may be is considered ~~to be~~ customarily provided in conjunction with farm use if:
 - i. The subject tract is currently employed for a farm use that produced \$32,500 in gross annual income in the last two years or three of the last five years.
 - ii. There is no other dwelling on the subject tract, except as allowed under 18.16.020(K);
 - iii. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in DCC 18.16.050(A)(3)(a)(i); and
 - ~~iv. The dwelling will be located on the least productive part of the parcel.~~
 - b. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

- c. Noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross income requirements.
 - d. Only gross income from land owned, not leased or rented, shall be counted; and 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.
 - e. Prior to a dwelling being approved under this section that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form attached to Chapter 18.16, has been recorded with the county clerk or counties where the property subject to the covenants, conditions and restrictions is located.
 - 1. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for primary farm dwelling and shall preclude:
 - a. All future rights to construct a dwelling except for accessory farm dwellings, relative farm ~~assistance help~~ dwellings, temporary hardship dwellings or replacement dwellings allowed under ORS Chapter 215; and
 - b. The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling;
 - c. The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;
 - d. The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by this section.
- B. Farm related dwellings on high value farmland. On land identified as high-value farmland, a dwelling, including a manufactured home in accordance with DCC 18.116.070, may be is considered ~~to be~~ customarily provided in conjunction with farm use if:
- 1. The subject lot or parcel is currently employed for the farm use as defined in DCC 18.04.030 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, and the lot or parcel on which the dwelling is proposed is at least the size of the minimum lot or parcel size in the subzone. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract;
 - 2. There is no other dwelling on the subject tract, except as allowed under 18.16.020(K);
 - 3. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income under DCC 18.16.050(B)(1); and
 - 4. ~~The dwelling will be located on the least productive part of the parcel.~~
 - 5. Noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross income requirements;
 - ~~5~~6. Only gross income from land owned, not leased or rented, shall be counted; and 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.
 - ~~6~~7. Prior to a dwelling being approved under this section that requires one or more contiguous or noncontiguous lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form attached to Chapter 18.16, has been recorded with the county clerk. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for primary farm dwelling and shall preclude:
 - a. All future rights to construct a dwelling except for accessory farm dwellings, relative farm ~~assistance help~~ dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and
 - b. The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

- C. Accessory dwelling. A dwelling, including a manufactured home in accordance with DCC 18.116.070, is considered to be an accessory farm dwelling customarily provided in conjunction with farm use when:
1. The accessory dwelling meets the following criteria:
 - a. The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and
 - b. The accessory farm dwelling will be located:
 - i. On the same lot or parcel as the primary farm dwelling; or
 - ii. On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or
 - iii. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured home and a deed restriction substantially in compliance with the form set forth in Exhibit A to DCC 18.16 is filed with the County Clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured home may remain if it is reapproved under DCC 18.16.050; or
 - iv. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under DCC 18.16.065 and the lot or parcel complies with the gross farm income requirements in DCC 18.16.050(A)(3) or (B)(1), whichever is applicable; and
 - c. There is no other dwelling on land zoned EFU owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling; and
 2. The primary farm dwelling to which the proposed dwelling would be accessory meets one of the following:
 - a. On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed in farm use and produced \$32,500 in gross annual sales in the last two years or three of the last five years. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
 - b. On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, and produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. Gross income shall be calculated by deducting the cost of purchased livestock from the total gross income attributed to the tract; and
 3. A lot or parcel approved for an accessory farm dwelling under DCC 18.16.050 shall not be approved for a division of land except as provided for in DCC 18.16.055(B).
 4. An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a nonfarm dwelling pursuant to DCC 18.16.050(G).
- D. Relative farm ~~assistance~~ help dwelling.
1. A dwelling listed in DCC 18.16.030(B) is allowed when:
 - a. The subject tract is at least 40 acres in size, unless it is demonstrated to the Planning Director or Hearings Body that a smaller unit of land is a commercial agricultural enterprise.
 - b. The subject tract is used for farm use;
 - c. The dwelling is a manufactured home and is sited in accordance with DCC 18.116.070, or is a pre-existing site-built home that: (1) was established at least 30 years prior to the date the ~~conditional~~ land use permit was submitted and (2) is located on a parcel of at least 40 acres in size and that meets the minimum irrigated acres standard for the subzone within which it is located;

- d. The dwelling is located on the same lot or parcel as the dwelling of the farm operator, and is occupied by a relative of the farm operator or farm operator's spouse, including a grandparent, step-grandparent, grandchild, parent, step-parent, child, brother, sister, sibling, step-sibling, niece, nephew, or first cousin of either, if the farm operator does, or will, require the assistance of the relative in the management of the farm use.
 1. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this subsection obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.
 2. Prior conditions of approval for the subject land and dwelling remain in effect.
 3. For purposes of this subsection, "Foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).
 - e. The farm operator plays the predominant role in the management and farm use of the farm and will continue to do so after the relative farm help dwelling is approved.
 - f. Any approval granted under DCC 18.16.050 shall be conditioned with a requirement that the farm operator annually submit a report to the Planning Division identifying the resident(s) of the dwelling, their relationship to the farm operator, the assistance the resident provides to the farm operator, and verifying the farm operator's continued residence on the property and the predominant role the farm operator continues to play in the management and farm use of the farm.
2. A manufactured home permitted under DCC 18.16.050 shall be considered to be a temporary installation, and permits for such home shall be renewable and renewed on an annual basis. The manufactured home shall be removed from the property if it no longer meets the criteria of DCC 18.16.050 and the approval shall be so conditioned.
 3. A pre-existing dwelling approved under DCC 18.16.050 shall be removed or converted to an allowable use within one year of the date the relative farm help dwelling no longer meets the criteria of DCC 18.16.050 and the approval shall be so conditioned.
 4. Upon approval of a dwelling under DCC 18.16.050, a Conditions of Approval Agreement shall be recorded with the Deschutes County Clerk prior to issuance of any building or placement permit for the new dwelling on the property.
 5. For the purposes of DCC 18.16.050(D), a farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.
- E. Lot of record dwelling on nonhigh value farmland.
1. A lot of record dwelling ~~may~~ will be approved on nonhigh value farmland when all of the following requirements are met:
 - a. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner:
 - i. Prior to January 1, 1985; or
 - ii. By devise or by intestate succession from a person who acquired and owned continuously the lot or parcel prior to January 1, 1985.
 - b. The tract on which the dwelling will be sited does not include a dwelling.
 - c. For lots or parcels located within a wildlife area (WA) combining zone, siting of the proposed dwelling would be consistent with the limitations on density as applied under the applicable density restrictions of DCC 18.88.
 - d. If the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed.
 - e. The County Assessor shall be notified of any approval of a dwelling under DCC 18.16.050.

- f. If the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of the tract;
 - 2. For purposes of DCC 18.16.050(E), "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members.
 - 3. For purposes of DCC 18.16.050(E), the date of creation and existence means that, when a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a lot of record dwelling, the date of the reconfiguration is the date of creation and existence. Reconfigured means any change in the boundary of the lot, parcel or tract.
- F. Lot of record dwelling on high-value farmland.
- 1. A lot of record dwelling will be approved on high value farmland when all of the following requirements are met:
 - a. The requirements set forth in DCC 18.16.050(E)(1)(a) through (f), as determined by the County; and
 - b. The requirements of Oregon Administrative Rules 660-33-130(3)(c)(C), as determined by the County hearings officer.
 - 2. Applicants under DCC 18.16.050(F) shall make their application to the County. The County shall notify the State Department of Agriculture at least 20 calendar days prior to the public hearing under DCC 18.16.050(F)(1)(b).
 - 3. Applicants under DCC 18.16.050(F) shall be subject to such other procedural requirements as are imposed by the Oregon Department of Agriculture.
 - 4. For purposes of DCC 18.16.050(F), the date of creation and existence means that, when a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a lot of record dwelling, the date of the reconfiguration is the date of creation and existence. Reconfigured means any change in the boundary of the lot, parcel or tract.
- G. Nonfarm dwelling.
- 1. One single-family dwelling, including a manufactured home in accordance with DCC 18.116.070, not provided in conjunction with farm use, may be permitted on an existing lot or parcel subject to the following criteria:
 - a. The Planning Director or Hearings Body shall make findings that:
 - i. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices, as defined in ORS 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.
 - ii. The proposed nonfarm dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the County shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated, by applying the standards under OAR 660-033-0130(4)(a)(D), and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area.
 - iii. The proposed nonfarm dwelling is situated on an existing lot or parcel, or a portion of a lot or parcel that is generally unsuitable for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.
 - iv. The proposed nonfarm dwelling is not within one-quarter mile of a dairy farm, feed lot, or sales yard, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion

potential of affected agricultural uses, open space and any other factor that may affect the livability of the nonfarm-dwelling or the agriculture of the area.

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

- v. The nonfarm dwelling shall be located on a lot or parcel created prior to January 1, 1993, or was created or is being created as a nonfarm parcel under the land division standards in DCC 18.16.055(B) or (C).

2. For the purposes of DCC 18.16.050(G) only, "unsuitability" shall be determined with reference to the following:
- a. A lot or parcel or a portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land. If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel.
 - b. A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as part of a commercial farm or ranch, it is not "generally unsuitable." A lot or parcel or portion of a lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use. If the parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself.
 - c. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable." If a lot or parcel is under forest assessment, it is presumed suitable if it is composed predominantly of soil capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land.
3. Loss of tax deferral. Except as provided in DCC 18.16.050(I)(2), pursuant to ORS 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use zone that is or has been receiving special assessment may be approved only on the condition that before a building permit is issued the applicant must produce evidence from the County Assessor's office that the parcel upon which the dwelling is proposed has been disqualified under ORS 308A.113 or ORS 308A.116 for special assessment at value for farm use under ORS 308A.062 or other special assessment under ORS 308A.068, 321.352, 321.730 or 321.815 and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.

H. Temporary hardship dwelling.

1. A temporary hardship dwelling listed in DCC 18.16.030(~~F~~) is allowed under the following conditions:
 - a. The dwelling is a manufactured home or recreational vehicle, and is used in conjunction with an existing dwelling on the lot or parcel;
 - b. The manufactured home or recreational vehicle would be temporarily sited on the lot or parcel only for the term of a hardship suffered by the existing resident or relative of the resident. The manufactured dwelling shall be removed or demolished within three months of the date the hardship no longer exists. The recreational vehicle shall not be occupied once the term of the medical hardship is completed, except as allowed under DCC 18.116.095. A temporary residence approved under this section is not eligible for replacement under DCC 18.16.030(~~F~~)020(J);

- c. The existence of a medical hardship is verified by a written doctor's statement, which shall accompany the permit application; and
 - d. The temporary manufactured home uses the same subsurface sewage disposal system used by the existing dwelling, provided that the existing disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required.
 - e. If a recreational vehicle is used as a medical hardship dwelling, it shall be required to have a bathroom, and shall meet the minimum setbacks established under DCC 18.16.070.
2. Permits granted under DCC 18.16.050(H) shall be subject to the provisions of DCC 18.116.090(~~B~~) and (~~C~~) and shall be required to meet any applicable DEQ review and removal requirements as a condition of approval.
 3. As used in DCC 18.16.050(H), the term "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
 4. As used in DCC 18.16.050(H), the term "relative" means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, ~~or~~ sister, sibling, step-sibling, niece, nephew, uncle, aunt, or first cousin of the existing resident.
 5. The proposed hardship dwelling or recreational vehicle shall meet the criteria under DCC 18.16.040(A)(1-2) and DCC 18.16.020(J)(6).

I. Wildlife conservation plan dwelling.

1. A dwelling listed in DCC 18.16.030(G) is allowed when the Planning Director or the Hearings Body finds that the proposed dwelling:
 - a. Is situated on a lot or parcel existing on November 4, 1993, that qualifies for a farm dwelling, as listed in DCC 18.16.030(A), or a nonfarm dwelling, as listed in DCC 18.16.030(C);
 - b. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;
 - c. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use;
 - d. Will not be established on a lot or parcel that is predominantly composed of soils rated Class I or II, when not irrigated, or rated Prime or Unique by the United States Natural Resources Conservation Service or any combination of such soils; and
 - e. Is the only dwelling situated on the affected lot or parcel.
2. For a wildlife conservation plan dwelling approval based upon nonfarm dwelling criteria, DCC 18.16.050(I) shall also apply. Unless prior to approval of a conditional use permit for a wildlife conservation plan dwelling the applicant submits to the assessor certification demonstrating approval by Oregon Department of Fish and Wildlife of a wildlife conservation and management plan and its implementation, the conditional use permit shall contain a condition requiring that the applicant, prior to issuance of a building permit for such dwelling, either 1) submit certification to the assessor from ODFW demonstrating approval and implementation of a wildlife conservation and management plan qualifying under ORS 215.808 or 2) pay the tax penalties required by DCC 18.16.050(G)(3).

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

18.16.055. Land Divisions.

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

B. Irrigated land division.

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

C. Nonirrigated land division.

1. The minimum lot or parcel size for a nonirrigated land division is 80 acres.
2. Notwithstanding 1 above, land divisions creating nonfarm parcels less than the minimum lot size may be allowed as follows:
 - a. If the parent parcel is greater than 80 acres in size, up to two new nonfarm parcels may be allowed subject to the following:
 - i. Parent parcel was lawfully created prior to July 1, 2001;
 - ii. Remainder parcel shall be at least 80 acres in size;
 - iii. All standards established under 18.16.050(G) for the dwellings shall be met;
 - iv. The minimum lot size for the nonfarm parcels is 5 acres.
 - v. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.
 - vi. Be located outside of the Horse Ridge East subzone.
 - b. If the parent parcel is greater than or equal to 40 acres and less than or equal to 80 acres, one new nonfarm parcel is allowed subject to the following:
 - i. Parent parcel was lawfully created prior to July 1, 2001;

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

18.16.060. Dimensional Standards.

- A. The minimum parcel size for ~~divisions of irrigated land~~ land divisions ~~parcels~~ created subject to DCC Title 17 shall be as specified under DCC 18.16.065, "Subzones."
 - B. The minimum parcel size for nonirrigated land divisions created subject to DCC Title 17 is as specified under DCC 18.16.055(C).
 - C. The minimum parcel size lot area for all other uses permitted by DCC 18.16.030(~~G~~) ~~through (CC)~~ shall ~~that determined by the Planning Director or Hearings Body to carry out the intent and purposes of ORS 215, DCC Title 18 and the Comprehensive Plan. In no case shall lot areas be no greater than the~~ minimum size necessary for the use less than one acre.
 - D. Each parcel lot shall have a minimum street frontage of 50 feet.
 - E. Building height. No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed under DCC 18.120.040.
- (Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2002-016 §1, 2002; Ord. 2001-016 §2, 2001; Ord. 95-007 §17, 1995; Ord. 93-043 §3, 1993; Ord. 93-004 §1, 1993; Ord. 92-065 §3, 1992; Ord. 92-055 §1, 1992; Ord. 91-038 §§1 and 2, 1991; Ord. 91-020 §1, 1991)

18.16.065. Subzones.

- A. Lower Bridge. A proposed ~~farm~~ irrigated land division must result in parcels that demonstrate the following characteristics or capabilities:
One hundred thirty acres of irrigated land.
- B. Sisters/Cloverdale. A proposed ~~farm~~ irrigated land division must result in parcels that demonstrate the following characteristics or capabilities:
Sixty-three acres of irrigated land.
- C. Terrebonne. A proposed ~~farm~~ irrigated land division must result in parcels that demonstrate the following characteristics or capabilities:
Thirty-five acres of irrigated land.

- D. Tumalo/Redmond/Bend. A proposed ~~farm~~ irrigated land division must result in parcels that demonstrate the following characteristics or capabilities:
Twenty-three acres of irrigated land.
- E. Alfalfa. A proposed ~~farm~~ irrigated land division must result in parcels that demonstrate the following characteristics or capabilities:
Thirty-six irrigated acres.
- F. La Pine. A proposed ~~farm~~ irrigated land division must result in parcels that demonstrate the following characteristics or capabilities:
Thirty-seven acres of irrigated land.
- G. Horse Ridge East. Minimum parcel size for a land farm division ~~or for farm-related dwellings on existing parcels~~ is 320 acres.
(Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 2002-016 §1, 2002; Ord. 2001-016 §2, 2001; Ord. 95-007 §18, 1995; Ord. 92-065 §3, 1992)

18.16.067. Farm Management Plans.

- A. Contents. A farm management plan shall consist of the following components:
1. A written description of existing and/or proposed farm uses, including type of crops or livestock, size and location of areas for each use, and land or soil preparation required.
 2. An assessment of the soils, climate and irrigation on the parcel demonstrating that the parcel is suitable for the current or proposed use outlined in DCC 18.16.067(A)(1).
 3. A business plan, including a demonstration that markets exist for the product; estimates of gross sales or actual gross sales figures; estimated or actual figures concerning necessary expenditures; and a list of capital expenditures incurred or projected to be incurred in establishing the farm use on the parcel.
 4. A written description of the farm uses in the area, including acreage, size and type of crop or livestock raised showing that the proposed plan is representative of similar farm uses, if any, in the area and will not conflict with the existing agriculture types.
 5. For farm uses not currently practiced in the area, an analysis showing that the plan is representative of the type of agriculture proposed.
- B. Conditional approvals.
1. For purposes of land use approval, in instances where at the time of application the subject land is not currently in farm use, a farm management plan will be deemed to demonstrate current employment of the land for farm use if:
 - a. The farm management plan establishes a level of farming that constitutes a farm use;
 - b. The farm management plan sets forth specific timelines for the completion of capital improvements (barns, fencing, irrigation, etc.) and for the establishment of the proposed farm use on the parcel; and
 - c. Land use approval is subject to a condition that no building permit for the farm dwelling can be issued prior to a determination that pursuant to the farm management plan a farm use has been established on the subject land.
 2. For purposes of determining under DCC 18.16.067 that a farm use has been established on the land, the County shall determine that the farm management plan has been implemented to the extent that the farm use has achieved the gross farm sales figure required under DCC 18.16.050.
(Ord. 95-007 §19, 1995; Ord. 93-004 §2, 1993; Ord. 92-065 §3, 1992)

18.16.070. Yards.

- A. The front yard shall be a minimum of: 40 feet from a property line fronting on a local street, 60 feet from a property line fronting on a collector street, and 100 feet from a property line fronting on an arterial street.

- B. Each side yard shall be a minimum of 25 feet, except that for a nonfarm dwelling proposed on property parcels or lots with side yards adjacent to a property currently employed in farm use, and receiving special assessment for farm use, the side yard shall be a minimum of 100 feet.
- C. Rear yards shall be a minimum of 25 feet, except that for a nonfarm dwellings proposed on property parcels or lots with a rear yards adjacent to a property currently employed in farm use, and receiving special assessment for farm use, the rear yard shall be a minimum of 100 feet.
- D. In addition to the setbacks set forth herein, any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
(Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 94-008 §16, 1994; Ord. 93-004 §3, 1993; Ord. 92-065 §3, 1992; Ord. 91-038 §§1 and 2, 1991; Ord. 89-016 §1, 1989; Ord. 83-037 §8, 1983)

18.16.080. Stream Setbacks.

To permit better light, air, vision, stream pollution control, protection of fish and wildlife areas and preservation of natural scenic amenities and vistas along streams and lakes, the following setbacks shall apply:

- A. All sewage disposal installations, such as septic tanks and septic drainfields, shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet, measured at right angles to the ordinary high water mark. In those cases where practical difficulties preclude the location of the facilities at a distance of 100 feet and the County Sanitarian finds that a closer location will not endanger health, the Planning Director or Hearings Body may permit the location of these facilities closer to the stream or lake, but in no case closer than 25 feet.
- B. All structures, buildings or similar permanent fixtures shall be set back from the ordinary high water mark along all streams or lakes a minimum of 100 feet measured at right angles to the ordinary high water mark.

(Ord. 91-038 §§1 and 2, 1991; Ord. 91-020 §1, 1991)

18.16.090. Rimrock Setback.

Notwithstanding the provisions of DCC 18.16.070, setbacks from rimrock shall be as provided in DCC 18.116.160 or 18.84.090, whichever is applicable.

(Ord. 2009-014 §1, 2009; Ord. 2008-001 §2, 2008; Ord. 92-065 §3, 1992; Ord. 91-038 §§1 and 2, 1991; Ord. 86-053 §5, 1986)

Zoning Maps (Hasn't the EFU zoning map been amended since 1995? Amended by Ord. 95-043 §§1 and 2, 1995; Ord. 94-052 §1, 1994; Ord. 93-014 §1, 1993; Ord. 92-064 §1, 1992)

EXHIBIT A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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

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

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

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

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

Declarant shall cause to be removed any manufactured home sited on the property described herein pursuant to Deschutes County land use permit No. _____ for an accessory dwelling prior to any further conveyance of the property.

Declarant's obligations under this covenant shall not be extinguished by any subsequent conveyance made in disregard of these covenants, conditions and restrictions.

These covenants, conditions, and restrictions shall in addition run with the land and be binding upon any of the Declarant's successors in interest should the property be transferred in disregard of this covenant.

It is intended that this covenant shall have the same effect as a regulation designed to implement the comprehensive plan. This covenant may be enforced by Deschutes County by a suit in equity, or if Deschutes County fails to take such action, by any person described in ORS 215.188.

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

Dated this _____ day of _____.

(Signature)

(notary seal)