

REVIEWED AS TO FORM
CODE REVIEW COMM.

0167-2162

REVIEWED
BWW
LEGAL COUNSEL

98-20301

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 18, Deschutes *
County Zoning Ordinance, of the Deschutes *
County Code, and Declaring an Emergency. *

ORDINANCE NO. 98-030

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

Section 1. AMENDMENT. Sections 18.16.020, Uses permitted outright, 18.16.030, Conditional uses permitted -High value and nonhigh value farmland, 18.16.040, Limitations on conditional uses and 18.16.050, Standards for dwellings in the EFU zones, of Chapter 18.16, Exclusive Farm Use Zones, of the Deschutes County Code are 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. FINDINGS. Findings to support this ordinance are set forth in the staff report for File No. TA-98-8, attached as Exhibit "B," and incorporated herein by this reference.

Section 3. EFFECTIVE DATE. 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 13 day of May, 1998.

BOARD OF COUNTY COMMISSIONERS OF
DESCHUTES COUNTY, OREGON

Nancy Pope Schlangen

NANCY POPE SCHLANGEN, Chair

Robert L. Nipper

ROBERT L. NIPPER, Commissioner

Linda L. Swearingen

LINDA L. SWEARINGEN, Commissioner

ATTEST:

Anita Mutchie

Recording Secretary

RECEIVED
MAY 15 1998

MICROFILMED
MAY 27 1998

EXHIBIT "A"

18.16.020. Uses permitted outright.

The following uses and their accessory uses are permitted outright:

- A. Farm use as defined in this title.
- B. Propagation or harvesting of a forest product.
- C. Exploration for minerals as defined by Oregon Revised Statutes 517.750.
- D. Accessory buildings customarily provided in conjunction with farm use.
- E. Climbing and passing lanes within a right of way existing as of July 1, 1987.
- F. Reconstruction or modification of public roads and highways, 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 highway detour 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.

An accessory farm dwelling approved under subsection 18.16.050(C) of this chapter may be replaced only by a manufactured home.

- 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 Oregon Revised Statutes 358.480.

L. Wildlife habitat conservation and management plan approved under ORS 215.802. (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)

18.16.030. 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, sections 18.16.040 and 18.16.050 of this chapter, and other applicable sections of this title.

- A. Dwellings customarily provided in conjunction with farm use (farm-related dwellings).
- B. A relative farm-help dwelling.
- C. Nonfarm dwelling and accessory uses thereto.
- D. Lot of record dwelling.
- E. Residential home, as defined in section 18.04.030 of this title, in existing dwellings.
- F. A hardship dwelling.
- G. A dwelling in conjunction with a wildlife habitat conservation and management plan.
- ~~G.H.~~ Commercial activity that is in conjunction with farm use.
- ~~H.I.~~ Operations conducted for (1) exploration, mining and processing of geothermal resources as defined by Oregon Revised Statutes 522.005; (2) exploration and extraction of natural gas or oil; or (3) surface mining of mineral and aggregate resources exclusively for on-site personal, farm or forest use or in conjunction with maintenance for irrigation canals.
- ~~I.J.~~ Homestead retention when the entire

EXHIBIT "A"

parcel has been under single ownership for at least the preceding 10 consecutive years and the parcel occupies not less than 320 acres. This use will permit the owner to convey the parcel but retain a leasehold interest in the residence and the land underlying the residence up to a maximum of five acres. In no case shall another residence be constructed elsewhere on the parcel except in conformance with the terms of this chapter. The leasehold interest shall extend throughout the lifetimes of the seller and his or her spouse.

J.K. Expansion of an existing private park, playground, hunting and fishing preserve and campground.

K.L. Expansion of an existing park, playground or community center owned and operated by a governmental agency or a nonprofit community organization.

L.M. Utility facility necessary for public service except commercial utility facility for the purpose of generating power for public use by sale and transmission towers over 200 feet in height.

M.N. Transmission tower over 200 feet in height.

N.O. Commercial utility facility, including a hydroelectric facility (in accordance with sections 18.116.130 and 18.128.040(V) of this title), for the purpose of generating power for public use by sale.

O.P. Personal use landing strip for airplanes and helicopter pad, including associated hangar, maintenance and service facilities. A personal use airport as used in this section 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.

P.Q. Home occupation carried on by residents as an accessory use within their existing dwelling or other existing residential accessory building. Home occupations are not allowed in structures accessory to resource use.

Q.R. A facility for the primary processing of forest products. 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 method 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.

R.S. 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.

S.T. Expansion of an existing church or cemetery in conjunction with a church, provided such church or cemetery is not within three miles of an urban growth boundary.

T.U. Expansion of an existing church or cemetery in conjunction with a church within three miles of an urban growth boundary if an exception is first granted under state law.

U.V. Expansion of an existing public or private school, including all buildings essential to the operation of such a school, provided such school is not within three miles of an urban growth boundary.

V.W. Expansion of an existing public or private school, including all buildings essential to the operation of such a school, located within three miles of an urban growth boundary, if an exception is first granted under state law.

W.X. Construction of additional passing and travel lanes requiring the acquisition of right of way, but not resulting in the creation of new land parcels.

X.Y. 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.

Y.Z. 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.

EXHIBIT "A"

~~Z-AA.~~ The propagation, cultivation, maintenance and harvesting of aquatic species.

~~AA-BB.~~ Bed and breakfast inn.

~~BB-CC.~~ Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland.

~~CC-DD.~~ Rural fire station.

~~DD-EE.~~ Roads, highways and other transportation facilities, and improvements not otherwise allowed under this chapter, if an exception to Goal 3, Agricultural Lands, and to any other applicable goal is first granted under state law. (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. 91-014 § 1, 1991; Ord. 91-020 § 1, 1991; Ord. 90-018 § 1, 1990; Ord. 90-014 §§ 23 and 31, 1991; Ord. 91-005 § 5, 1991; Ord. 87-013 § 1, 1987; Ord. 86-018 § 3, 1986; Ord. 83-028 § 1, 1983)

18.16.040. Limitations on conditional uses.

A. Conditional uses permitted by subsections 18.16.030(G)(H) through (CC) (DD) in this chapter may be established subject to applicable provisions in chapter 18.128 of this title 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 Oregon Revised Statutes 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 subsection 18.16.030(H) above in this chapter shall be associated with a farm use occurring on the parcel where the commercial use is proposed.

The commercial activity may use, process, store or market farm products produced in Deschutes County or an adjoining county.

C. A utility facility necessary for public use allowed under subsection 18.16.030(M) above in this chapter shall be one that is necessary to be situated in an agricultural zone in order for the service to be provided.

D. 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 subsection 18.16.030(N)(O) above in this chapter 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 Oregon Administrative Rules 660, Division 4.

2. That is not located on high-value farmland shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to Oregon Administrative Rules 660, Division 4.

E. No aircraft may be based on a personal-use airport identified in subsection 18.16.030(Q)(P) above in this chapter 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 Aeronautics Division in specific instances. A personal use airport lawfully existing as of September 1, 1975, shall continue to be permitted subject to any applicable regulations of the Oregon Aeronautics Division.

F. The facility for the primary processing of forest products identified under in subsection 18.16.030(Q)(R) above in this chapter is intended to be portable or temporary in nature. Such a facility may be approved for a one-year period which is renewable.

G. 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 totalling 40 acres or more that are planted as of the date of the application for batching and blending is filed.

H. Accessory uses for golf courses shall be limited in size and orientation on the site to serve

EXHIBIT "A"

the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., food and beverage service, pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

I. An expansion of an existing golf course as allowed under subsection 18.16.033(C) of this chapter shall comply with the definition of "golf course" set forth in this title and the provisions of subsection A of this section.

J. 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. (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 section 18.16.030 of this chapter may be allowed under the conditions set forth below for each kind of dwelling:

A. Farm-Related Dwellings on Nonhigh Value Farmland. A dwelling customarily provided in conjunction with farm use, as listed ~~at~~ in subsection 18.16.030(A) of this chapter, 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 ~~Section~~ section 18.116.070 of this title, 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-~~(a) One hundred sixty acres and not in the Horse Ridge East subzone; or

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

ii. The subject tract is currently employed

for farm use, as 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; 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 section 18.116.070 of this title, 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 ~~subsection~~ sub-subparagraph (i) of this section subparagraph;

iii. The subject tract is currently employed for farm use, as evidenced by a farm management plan, at a level capable of producing the annual gross sales required in ~~subsection~~ sub-subparagraph (ii) of this section subparagraph;

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; and

vi. The dwelling will be located on the least productive part of the parcel.

b. For the purpose of calculating appropriate tract sizes and gross incomes to satisfy sub-subparagraphs (a)(i) and (ii) of this subsection, the county will utilize the methodology contained in Oregon Administrative

EXHIBIT "A"

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 section 18.116.070 of this title, 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;

iii. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in ~~subsection~~ sub-subparagraph (i) of this ~~section~~ paragraph; 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.

B. Farm Related Dwellings on High Value Farmland.

On land identified as high-value farmland, a dwelling, including a manufactured home in accordance with section 18.116.070 of this title, is considered to be customarily provided in conjunction with farm use if:

1. The subject tract is currently employed for the farm use that produced at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years. 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;

3. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in ~~subsection~~ paragraph (1) of this ~~section~~ subsection; and

4. The dwelling will be located on the least

productive part of the parcel.

C. Accessory Dwelling.

A dwelling, including a manufactured home in accordance with section 18.116.070 of this title, 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 assistance in the management of the farm use 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 principal farm dwelling; or

ii. On the same tract as the principal farm dwelling when the lot or parcel on which the accessory 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 principal farm dwelling is not located, when the accessory farm dwelling is a manufactured home and a deed restriction substantially in compliance with the form set forth in Exhibit A to this chapter is filed with the County Clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. An accessory farm dwelling approved pursuant to this section may not be occupied by a person or persons who will not be principally engaged in the farm use of the land and whose assistance in the management of the farm use is not or will not be required by the farm operator. The manufactured home may remain if it is reapproved under this section; 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 principal farm dwelling to which the

EXHIBIT "A"

proposed dwelling would be accessory meets one of the following:

a. On land not identified as high-value farmland, the principal 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 principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, and produced at least \$80,000 (1994 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years. 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 this section shall not be approved for a division of land except as provided for in subsection 18.16.055(B) of this chapter.

D. Relative Farm Help Dwelling.

1. A dwelling listed in ~~Deschutes County Code~~ subsection 18.16.030(B) of this chapter 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 section 18.116.070 of this chapter;

d. The dwelling is located on the same lot or parcel as the dwelling of the farm operator, and is occupied by a grandparent, grandchild, parent, child, brother, or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the commercial farm use is or will be required by the farm operator.

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.

2. The manufactured home shall be considered a temporary installation and permits for such home shall be renewable on an annual basis. The manufactured home shall be removed from the property if it is no longer needed for the operation of the farm.

3. For the purposes of this subsection, 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 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 by the present owner:

i. Prior to January 1, 1985; or

ii. By devise or by intestate succession from a person who acquired 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 chapter 18.88 of this title.

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 this section.

2. For purposes of this subsection, "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,

EXHIBIT "A"

nephew, step-parent, step-child, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

F. Lot of Record Dwelling on High-Value Farmland.

1. A lot of record dwelling will be approved on nonhigh value farmland when all of the following requirements are met:

a. The requirements set forth in ~~section subparagraphs 18.16.050(E)(1)(a) through (e) of this section~~, as determined by the county; and

b. The requirements of Oregon Administrative Rules 660-33-130(3)(c)(C), as determined by a Hearings Officer of the State Department of Agriculture.

2. Applicants under this ~~section subsection~~ shall make their application to the county. The county shall give its conditional approval under ~~subsection subparagraph 4(1)(a) of this section subsection~~ before forwarding an application made under this ~~section subsection~~ to the State Department of Agriculture for hearing under ~~subsection subparagraph 4(1)(b) of this subsection~~.

3. Applicants under this ~~section subsection~~ shall be subject to such other procedural requirements as are imposed by the Oregon Department of Agriculture.

G. Nonfarm Dwelling.

1. One single-family dwelling, including a manufactured home in accordance with section 18.116.070 of this title, 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 Oregon Revised Statutes 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

ii. The proposed nonfarm dwelling does 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 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, sales yard, slaughterhouse or poultry, hog or mink farm, 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.

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

2. For the purposes of this subsection only, "unsuitability" shall be determined with reference to the following:

a. 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.

EXHIBIT "A"

b. 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 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 is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because 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.

a. Except as provided in paragraph (1)(2) of this section. Pursuant pursuant to Oregon Revised Statutes 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 for special assessment at value for farm use under Oregon Revised Statutes 308.370 or other special assessment under Oregon Revised Statutes 308.765, 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.

~~b. A parcel that has been disqualified for special assessment at value for farm use pursuant to Oregon Revised Statutes 215.236(4) shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.~~

H. Temporary Hardship Dwelling.

1. A dwelling listed in subsection 18.16.030(F) of this chapter is allowed under the following conditions:

a. The dwelling is a manufactured home and is used in conjunction with an existing dwelling on the lot or parcel;

b. The manufactured home 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;

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.

2. Permits granted under this subsection shall be subject to the provisions of subsections 18.116.090(B) and (C) of this title and shall be required to meet any applicable DEQ review and removal requirements as a condition of approval.

3. As used in this subsection, the term "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons. As used in this subsection, the term "relative" means grandparent, grandchild, parent, child, brother or sister of the existing resident.

I. Wildlife Conservation Plan Dwelling.

1. A dwelling listed in subsection 18.16.030(G) of this chapter 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 subsection 18.16.030(A) of this chapter, or a nonfarm dwelling, as listed in subsection 18.16.030(C) of this chapter;

EXHIBIT "A"

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, this subsection 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 paragraph (G)(3) of this section. (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)

DESCHUTES COUNTY PLANNING DIVISION


STAFF REPORT

File No: TA-98-8

Hearing Date: Wednesday, May 13, 1998

Applicant: Deschutes County

Subject: Wildlife Habitat Conservation & Management Program

Staff Planner: Dave Leslie, Associate Planner 

Summary

In early 1998, the Oregon Fish and Wildlife Commission adopted rules to implement SB 791. These rules, found in ORS 215.800-808, allow landowners who own property in an area zoned EFU to develop a wildlife habitat conservation and management plan, and become eligible for open space use assessment by the county assessor. For a lot or parcel meeting the criteria in ORS 215.804, this can result in assessment equivalent to 'farm deferral' status, including a lot or parcel that has been disqualified from farm deferral assessment status as a result of a nonfarm dwelling.

A habitat management plan must be developed by a landowner and a "cooperating agency" and be approved by Oregon Department of Fish and Wildlife. ODFW is responsible for monitoring an approved plan to determine landowner compliance and will inform the County Assessor when a property owner implements an approved plan.

A new category of residence, called a "Wildlife Conservation Plan Dwelling" is proposed for the EFU zone as a conditional use. This type of dwelling will be applicable to parcels that qualify for either a farm or nonfarm dwelling when a wildlife management plan is contemplated by a landowner.

For your information the applicable state statutes and administrative rules, ORS 215.800 through 808 and OAR 635, Division 430, are included in your packet.

Planning Commission Recommendation

The Planning Commission held a public hearing on this matter on April 23, 1998. The commission discussed the potential impacts of the wildlife program on wildlife habitat and the possible tax implications at considerable length. Ted Wise, Wildlife Biologist for ODFW and Ben Westlund, State Representative, testified in support of the proposed amendments. There was

no testimony in opposition to the amendment. The Planning Commission recommended unanimously, on a 4-0 vote, that the Board of Commissioners adopt the proposed amendments.

Review with Wildlife Biologists

Planning staff met with wildlife biologist from "cooperating" agencies, including ODFW, U.S. Fish and Wildlife Service and the Natural Resource Conservation Service, and the Assessor's Office on April 7 to discuss the statutes, rules and procedures for landowners to participate in this program. ODFW has prepared a general brochure to inform property owners about the wildlife conservation program and a handout to help property owners determine if they are eligible to participate in the program and where they can get assistance. ODFW has also prepared an application form for landowners to use when preparing a wildlife management plan. The draft amendments discussed below were reviewed at this meeting and have been sent to the Department of Land Conservation and Development for comments. No comments were submitted by DLCDC at the time of this staff report.

Proposed Zoning Ordinance Text Amendments

Proposed amendments to the county zoning ordinance (Title 18) have been drafted to assist in implementing the wildlife habitat program in Deschutes County. If these amendments are approved, wildlife habitat conservation and management in conjunction with a management plan approved by ODFW will be an allowed use in the EFU zone. (See section 18.16.020.L)

Section 18.16.030 has been revised to indicate that a "wildlife conservation plan dwelling" is a conditional use in the EFU zone. This section contemplates that a wildlife habitat conservation and management plan will be submitted by the landowner to ODFW, but does not require that such a plan be submitted to ODFW in order for the County to approve this type of dwelling. A parcel must qualify for either a nonfarm or farm dwelling under this category of dwelling.

Existing provisions in the EFU zone will be used to determine that a parcel qualifies for a nonfarm or farm dwelling. However, section 18.16.050(G) has been revised so that a parcel which meets the nonfarm dwelling criteria will not need to be disqualified from farm assessment when an approved wildlife plan has been implemented, pursuant to ORS 215.806. The determination of qualifying for open space assessment will be made by the County Assessor, not the Planning Division.

As a result of Legal Counsel review, changes to the comprehensive plan were deemed unnecessary. Therefore, comprehensive plan policies reviewed by the Planning Commission have not been forwarded to the Board for adoption. Subsequent to the Planning Commission's review, several other editing changes were made to the proposed amendments to the zoning ordinance to provide additional clarity and consistency within the ordinance.

Estimating Participation

Predicting how many landowners will participate in this wildlife management program and estimating the tax consequences that will result from the implementation of wildlife habitat management plans in Deschutes County is very difficult. Polk and Marion Counties, the two pilot counties for this program, have experienced limited participation in the program since 1993. According to their planning staff, only two parcels have been qualified in Polk County and between 6 to 10 in Marion County.

0167-2174

However, ODFW records indicate a total of 34 wildlife management plans have been approved since 1993 in these two counties. Although the disparity in these numbers appears significant, the experience in Polk and Marion counties may not be very meaningful for predicting what can be expected in Deschutes County, particularly since the number of nonfarm dwelling approvals is generally higher in Deschutes County.

Although both farm and nonfarm dwellings can qualify for the wildlife program, it is generally thought that this program will be of greater interest to owners qualifying for nonfarm dwellings due to the potential tax benefits of open space use assessment otherwise not available. Since 1992, Deschutes County has approved an annual average of 54 conditional use permits for nonfarm dwellings. As a result of construction of nonfarm dwellings, a total of 415 parcels have been disqualified from the farm deferral assessment program by the Assessor's Office. Because this is an entirely new program in Deschutes County it is too early to know how many property owners will be interested in this program. It is also difficult to predict the number of nonfarm parcels that generally encompass, or could be enhanced, to adequately provide wildlife habitat.

ODFW estimates that their office will be able to process between 10 to 15 plans per year at present staffing levels. No fees are required for a landowner to submit a plan to ODFW for approval and ODFW staffing levels may be reduced next year if current funding estimates are realized during the next biennium. The ability of ODFW to process, review and monitor wildlife plans may be a significant factor in the number of parcels that qualify for open space use assessment on an annual basis.

Exhibit "B"
Page 3 of 3
Ordinance 98-030