



**LAND USE APPLICATION
CONDITIONAL USE REQUEST
Supplemental Information
NON-FARM DWELLING**

Conditional Use: EFU, SF-40

In addition to the General Criteria and Conditions set forth in Article 6.020 and 6.030 the following additional standards are required by the County and State:

Standards for non-farm dwellings required by the Morrow County Zoning Ordinance 3.010 F:

1. There must be no other dwelling on the parcel.
2. The dwelling or activities associated with the dwelling shall not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.
3. The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern of the area, the County shall consider the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the County shall:
 - a. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban residential or other urban or non-resource uses shall not be included in the study area.
 - b. Identify within the study area the broad types of farm use (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm/lot-of-record dwellings that could be approved under this section, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under ORS 215.263(5). The findings shall describe the existing land use pattern of the study area including the distribution arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph.
 - c. Determine whether approval of the proposed non-farm/lot-of-record

dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

4. The dwelling shall be situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm use in conjunction with other land.

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 a 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.

5. A non-farm dwelling shall not be located within one mile of a livestock commercial feedlot, livestock sales yard, slaughter house, hog or mink farm, or within one-quarter mile of agricultural lands capable of being intensively farmed, unless adequate provisions are provided and approved by the Commission for a buffer between such uses. The establishment of a buffer shall consider such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of such proposed use or the agriculture of the area.

As a Condition of Approval, the landowner for the dwelling shall sign and record in the Morrow County deed records a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim from relief or cause of action alleging injury from farming practices for which no action or claim is allowed under ORS 30.936 or 30.937.

To allow the creation of a non-farm parcel, the applicant is required to disqualify the parcel from farm deferral taxation program and pay the taxes from the previous ten years (ORS 215.236). This shall be listed as a Condition of Approval.

State Policy and Standards for non-farm dwellings in Exclusive Farm Use Zones

Oregon Revised Statute 30.936 Immunity from private action based on farming or

forest practice on certain lands; exceptions.

(1) No farming or forest practice on lands zoned for farm or forest use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

(2) Subsection (1) of this section shall not apply to a right of action or claim for relief for:

- (a) Damage to commercial agricultural products; or
- (b) Death or serious physical injury as defined in ORS 161.015.

(3) Subsection (1) of this section applies regardless of whether the farming or forest practice has undergone any change or interruption.

Oregon Revised Statute 30.937 Immunity from private action based on farming or forest practice allowed as preexisting nonconforming use; exceptions.

(1) No farming or forest practice allowed as a preexisting nonconforming use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

(2) Subsection (1) of this section shall not apply to a right of action or claim for relief for:

- (a) Damage to commercial agricultural products; or
- (b) Death or serious physical injury as defined in ORS 161.015.

(3) Subsection (1) of this section applies only where a farming or forest practice existed before the conflicting nonfarm or nonforest use of real property that gave rise to the right of action or claim for relief.

(4) Subsection (1) of this section applies only where a farming or forest practice has not significantly increased in size or intensity from November 4, 1993, or the date on which the applicable urban growth boundary is changed to include the subject farming or forest practice within its limits, whichever is later.

Oregon Revised Statute 215.236, Establishing nonfarm dwelling in exclusive farm use zone; procedures; disqualification for farm use valuation; additional tax or penalty; requalification.

(1) As used in this section, "dwelling" means a single-family residential dwelling not provided in conjunction with farm use.

(2) The governing body or its designee may not grant final approval of an application made under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is, or has been, receiving special assessment without evidence that the lot or parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308A.050 to 308A.128 or other special assessment under ORS 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855 and any additional tax imposed as the result of disqualification has been paid.

(3) The governing body or its designee may grant tentative approval of an application made under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is specially assessed at value for farm use

under ORS 308A.050 to 308A.128 upon making the findings required by ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7). An application for the establishment of a dwelling that has been tentatively approved shall be given final approval by the governing body or its designee upon receipt of evidence that the lot or parcel upon which establishment of the dwelling is proposed has been disqualified for special assessment at value for farm use under ORS 308A.050 to 308A.128 and any additional tax imposed as the result of disqualification has been paid.

(4) The owner of a lot or parcel upon which the establishment of a dwelling has been tentatively approved as provided by subsection (3) of this section shall, before final approval, simultaneously:

- (a) Notify the county assessor that the lot or parcel is no longer being used as farmland;
- (b) Request that the county assessor disqualify the lot or parcel from special assessment under ORS 308A.050 to 308A.128, 308A.315, 321.257 to 321.390, 321.700 to 321.754 or 321.805 to 321.855; and
- (c) Pay any additional tax imposed upon disqualification from special assessment.

(5) Except as provided in subsection (6) of this section, a lot or parcel that has been disqualified pursuant to subsection (4) of this section may not requalify for special assessment unless, when combined with another contiguous lot or parcel, it constitutes a qualifying parcel.

- (6) (a) A lot or parcel that has been disqualified pursuant to subsection (4) of this section may requalify for wildlife habitat special assessment under ORS 308A.403 to 308A.430 without satisfying the requirements of subsection (5) of this section.
- (b) Upon disqualification from wildlife habitat special assessment under ORS 308A.430, the lot or parcel shall be subject to the requirements of subsection (5) of this section.

(7) When the owner of a lot or parcel upon which the establishment of a dwelling has been tentatively approved notifies the county assessor that the lot or parcel is no longer being used as farmland and requests disqualification of the lot or parcel for special assessment at value for farm use, the county assessor shall:

- (a) Disqualify the lot or parcel for special assessment at value for farm use under ORS 308A.050 to 308A.128 or other special assessment by removing the special assessment;
- (b) Provide the owner of the lot or parcel with written notice of the disqualification; and
- (c) Impose the additional tax, if any, provided by statute upon disqualification.

(8) The Department of Consumer and Business Services, a building official, as defined in ORS 455.715 (1), or any other agency or official responsible for the administration and enforcement of the state building code, as defined in ORS 455.010, may not issue a building permit for the construction of a dwelling on a lot or parcel in an exclusive farm use zone without evidence that the owner of the lot or parcel upon which the dwelling is proposed to be constructed has paid the additional tax, if any, imposed by the county assessor under subsection (7)(c) of this section.

Oregon Revised Statute 215.243, Agricultural Land Use Policy

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones.

Oregon Revised Statute 215.263 (5)

In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:

(1) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

- (A) The nonfarm dwellings have been approved under ORS 215.284 (7);
- (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
- (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;
- (D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and
- (E) 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.

(2) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

- (A) The nonfarm dwellings have been approved under ORS 215.284 (7);
- (B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
- (C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;
- (D) The parcels for the nonfarm dwellings are:
 - (i) Not capable of producing more than at least 20 cubic feet per acre per year of wood fiber; and
 - (ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90 percent Class VI through VIII soils and are not capable of producing

adequate herbaceous forage for grazing livestock. The Land Conservation and Development Commission, in cooperation with the State Department of Agriculture and other interested persons, may establish by rule objective criteria for identifying units of land that are not capable of producing adequate herbaceous forage for grazing livestock. In developing the criteria, the commission shall use the latest information from the United States Natural Resources Conservation Service and consider costs required to utilize grazing lands that differ in acreage and productivity level;

(E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

(F) 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.

Oregon Revised Statute 215.284 (2), Uses Permitted in Exclusive Farm Use Zones in Nonmarginal Lands Counties:

2) In counties not described in subsection (1) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

- (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
- (b) The dwelling is situated upon a lot or parcel or portion of a lot or parcel that is generally unsuitable land 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 lot or parcel or portion of a lot or parcel may 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;
- (c) The dwelling will be sited on a lot or parcel created before January 1, 1993;
- (d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and
- (e) The dwelling complies with such other conditions as the governing body or its designee considers necessary.

Oregon Revised Statute 215.284 (7), Uses Permitted in Exclusive Farm Use Zones in Nonmarginal Lands Counties:

In counties in eastern Oregon, as defined in ORS 321.805, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to the approval of the county governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

- (a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;
- (b) The dwelling will be sited on a lot or parcel created after January 1, 1993, as allowed under ORS 215.263 (5);
- (c) The dwelling will not materially alter the stability of the overall land use pattern of the area; and

- (d) The dwelling complies with such other conditions as the governing body or its designee considers necessary.