



Accessory Dwelling Units to Support Farm Transitions

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Executive Summary

America's farmers are aging. Not all farmers have family members willing to operate the family farm, leaving them searching for creative ways to transition off the farm, but ensure its continued success. One of these ways is through land use tools, specifically Accessory Dwelling Units. This paper examines the different tools and how they've been implemented across the country, and locally.

Land use tools to support agriculture are extensive. Accessory dwelling units, transfer of development rights, conservation easements, and clustering ordinances are all very different tools that can be used individually or together to support agriculture, land preservation, and the environment. Accessory dwelling units are secondary homes placed on a parcel for many reasons: affordable housing, housing diversity, increased density, supporting agriculture. Transfer of development rights separates the development rights from the remaining property rights and then transfers them to an area where density is desired. This prevents any future development from occurring on that parcel. Conservation easements place an easement on the property that prevents any future development. In exchange for the easement, the property owner is compensated through lower land costs and thus lower property taxes. Finally, clustering ordinances allows parcels to be subdivided into smaller than permitted lots, leaving a large natural parcel for conservation.

These tools have been used across the country in various forms. Clackamas County Oregon has strict growth boundaries paired with accessory dwelling unit ordinances that have led to decreased land consumption and stronger agriculture. Fauquier County, Virginia has very lenient tenant housing ordinances that makes it easy for farmers to add housing when necessary.

Locally, two farmers and their families are searching for creative ways to transition off the farm. Marshwatch Farm, a Community Supported Agriculture operation in Scott County, Minnesota is searching for a field manager they can groom into a full farm manager. They would like to remain on the property to provide guidance but are struggling to find ways to add housing for their full-time and seasonal workers. Garden Farme is a 100-year family farm, certified organic operation that sells its produce to local restaurants and cooperatives. The owner of the farm has a friendly and open relationship with the city administrator and planning department, which has lead to many discussions surrounding the best options to move forward.

Introduction

America's farmers are aging. In 2007, 57 percent of U.S. farmers were 55 or older; almost one-third of principal operators were older than 65 (FarmLASTS, 2010). The FarmLASTS project estimated that approximately 70 percent of private farm and rangeland will transition to new ownership and up to one-quarter of farmers and ranchers will retire over the next twenty years. With these statistics, all levels of government and the private sector will need to be prepared to ensure success for the next generation of farmers.

As many of the existing farmers retire, processes to bring new people into agriculture will have to be created. These processes will be multi-pronged; they will need to include training programs, housing, and accessibility to financing and land. These programs must be sensitive to the needs of both the existing farmer, who may want to stay in the house, maintain revenue, and still be part of the operation, and the new farmer, who may need affordable housing, a steady income stream, and training.

One way some farmers have proposed to begin the transition process is through on-site farm managers. These farm managers would learn how to efficiently operate the farm under the guidance of the primary farm operator. Additionally, the primary farm operator would provide salary and housing benefits for the on-site manager. To do this, a farmer must work closely with his or her local zoning authority (city, township, or county) to receive a permit for an accessory dwelling unit (ADU). Many local governments do not currently have ordinances that permit ADUs, thus they must examine what ordinances exist and how ADUs can fit.

This report focuses primarily on ADU ordinances and their use locally and elsewhere in relation to land preservation and agriculture. We have reviewed other tools that may be used to support ADUs such as transfer of development rights programs, conservation easements, cluster ordinances. Access to financing as a barrier to achieving farm transitions was examined as well. Finally, we summarized the lessons learned for both farmers and local governments.

“Finding appropriate housing for a farm family may be at least as big a challenge as finding farmland...where land values are high, the cost of a home can be prohibitive... The impact on farm viability...is significantly affected by whether the family lives on the farm...”

-FarmLASTS Project. Page 10.

Land Use Tools to Support Agriculture

Zoning for Agriculture

Agricultural zoning districts can be used to direct how and where future development occurs. With agricultural zoning it is common to see large lot sizes (one unit per twenty acres or larger) and restriction on uses. Major overhauls to agricultural zoning ordinances may see pushback from farmers because much of their livelihood is dependent on the use of their land. To ensure agricultural zoning is legally sound, the zoning authority should communicate how the ordinance serves the public good and is backed by a current comprehensive plan. Furthermore, the zoning cannot result in a regulatory taking of the property and thus should be reasonable, inclusive, and fair (Bowers & Daniels 1997).



Attached ADU above a garage.

Accessory Dwelling Unit Ordinances

An accessory dwelling unit (mother-in-law suite, granny flat, secondary suite, guesthouse, farmworker, tenant home) is a secondary home placed on a lot to provide additional independent living quarters. Because it is a secondary home, the ADU deed is attached to the primary unit's deed and cannot be sold separately from the primary unit. The various purposes for these units includes housing affordability, diversity, and supporting other objectives like farming or increasing density.

There are a variety of accessory dwelling units that can be employed: interior, attached, and detached (HUD, 2008). Interior ADUs are located within the home or existing space, often the basement or attic. Attached ADUs are added to the existing unit on the side or rear of the home or above the garage. Because of the nature of farmworker housing, detached ADUs will be most common in rural areas. Detached ADUs are completely separate from any existing structure on the property, but are clustered near the primary dwelling unit on the property.

Permitting new housing will inevitably alter the landscape, so changes to the ordinances should proceed

cautiously. The Community Social Planning Council completed a Farm Worker Housing Policy Review in 2010 that summarized many of the concerns of increasing rural development: potential misuse as rental housing, loss of agricultural land, increased density of development, and increased demands on infrastructure (including sewers and septic systems, wells, and roads). To combat these concerns, the report developed five principles to be applied to requests for ADUs:

1. Limit dwellings permitted in agricultural zones. Any ADUs approved in a rural zone should be to support the agricultural operation.
2. At least one occupant of the ADU should be a full-time employee of the farm.
3. Fully examine the possibility of seasonal and temporary accommodations before permanent ones are permitted.
4. Permit ADUs for farmworker housing before permitting housing located far away from the farm. This minimizes the amount of land consumed for housing, leaving it available for agriculture.
5. Approval of ADUs does not mean rural lands will be available for further subdivisions and development.

While there is demand for these types of units, the development of the ordinances may result in too many regulations; red tape can hinder the development of ADUs. Santa Cruz, California, widely recognized for one of the most successful urban ADU programs in the country, developed the Accessory Dwelling Unit Manual that provides all the ordinances and requirements in layman's terms complete with examples of appropriate ADUs. The end of the document has a step-by-step process for obtaining an ADU permit as well as the contacts and useful web sites an applicant may need (City of Santa Cruz, 2003).

Transfer of Development Rights

Transfer of Development Rights (TDR) is a growth management technique that was intended to preserve open space and agricultural land by transferring only the development rights of a parcel. Each parcel of land has a bundle of rights; these include mineral, water, air, and development, among others. TDR programs allow the development rights of one area, an area where development is not desirable, to be sold and transferred to a different area where development is desired.

The benefits of TDR programs are vast. More than twenty states have implemented TDR programs since the concept was first introduced

Pruetz developed four questions that can help determine whether TDR programs are appropriate for a specific community:

- Are there many requests to increase permitted densities or building size (up-zoning)?
- Does your community's comprehensive plan identify a need or specific location appropriate for up-zoning?
- In preservation areas, are the zoning restrictions currently strong enough to discourage development?
- Is there a will to apply TDR requirements to all developments that exceed existing zoning codes?

Pruetz's mini quiz was designed to determine whether there was a market for increased development, a will for preservation, and the existing framework in place, but was not meant to discourage areas from pursuing a TDR program.

more than forty years ago resulting in over 350,000 acres preserved (Pruetz and Standridge, 2009). On its face, TDR programs have succeeded in preserving land, the stated desire for the program. Additionally, some have suggested that TDR programs can create double financial benefits for the landowners who participate in them by giving them cash up front for the sale of the development rights while allowing them to continue to work the land, providing a continuous income stream.

TDR programs are complex and require many parts. The first is the sending area, the zoned area where development is no longer wanted. Permanent easements are put on each parcel's deed prohibiting any future development. There are often programmed financial benefits tied to these permanent easements that could result in lower property value

and property taxes in addition to the value of the sale to the receiving area. The receiving areas are those areas zoned for increased density. Zoning codes must be amended in these areas to permit higher development by right or conditions. TDR programs may complement ADU ordinances, transferring the building rights where development is wanted. For a farmer owning two forty-acre parcels, zoned one in forty, he or she could transfer the development rights from one parcel to the other, ensuring the first will always be open space, amenable to agriculture.

Pruetz and Standridge identified ten factors that led to successful TDR programs. They are summarized in the table below.

Factor	Rationale
Bonus Development Demand	Additional density must be desired. Downzoning to create demand would be challenged as a regulatory taking so demand for dense development must exceed currently permitted density in the receiving areas.
Receiving Areas Fit the Community	A receiving area's increased density should be compatible with existing and future land use and infrastructure plans.
Highly Regulated Sending Areas	Sending area zoning that only permits large lot sizes removes development pressures and can help preserve the land.
Limited Alternatives for Denser Development	When a community offers other alternatives to TDRs for additional density, TDRs lose their financial edge. Developers may choose other alternatives with density bonuses like increased landscaping or clustering that will raise the value of their own property.
Properly Incentivized TDRs	In many locations a one TDR to one additional unit ratio, is appropriate. For other areas, that ratio may not be enough to justify the costs, causing developers to forego participation. It is important to understand the market forces and find the right ratio.
Ability to Use TDRs Easily	It is important to streamline approvals in receiving-area zoning codes to make the process as efficient and easy to understand as possible.
Preservation as a Publically Supported Goal	Successful TDR programs are dependent on public and political will. Those with sending area properties must want to preserve their land and not believe that their properties have a higher development value; those in the receiving area must want highly dense development.
Simplicity	Simplicity of programs makes it easy for everyone to understand, participate, and support.
Promotion and Facilitation by Officials	If people don't know TDR programs are available, the program will not exceed. Public outreach and easily accessed information can help TDRs be successful.
TDR Bank	TDR Banks are a facilitation mechanism. The local government buys TDRs from those in sending areas who cannot find a buyer and then matches the purchased TDRs with private buyers later.

Factors from Pruetz & Standridge's 2008 article "What Makes Transfer of Development Rights Work

Conservation Easements

A conservation easement is a legal agreement made between the landowner and the local government or conservation organization that limits the uses on the property permanently. With this tool, the landowner sells or donates certain rights of the property (development rights, mineral rights, etc.) that limits future uses of the land. In exchange, the seller may receive State and/or Federal tax benefits, sale value, and the satisfaction of environmental and agricultural preservation. This land preservation tool reduces or eliminates the development potential while keeping the land privately held so it can continue to be farmed.

Dakota County, Minnesota has a land conservation program that has protected 8,413 acres as of October 2013 (Dakota County, Minnesota). Beginning in 2003, the County responded to “creeping” development from the suburbs of the Minneapolis-St. Paul Metropolitan with a Land Conservation program with the goals of preserving water quality and farmland. The program is voluntary; it requires an application to the program. Selection of lands is based on minimum requirements: “located in rural Dakota County; within a half-mile of a river or lake or adjacent to protected land; at least 75 percent prime soils; and that are

at least 50 percent farmed are eligible” (Dakota County, 2013). The linkage between preserved lands and water quality has been the main driver of public support. If the land is selected to be part of the program, the County buys the building rights to the property while the owner retains the remaining rights, including the right to farm. In terms of funding, the County matches money it receives from the Federal and State governments for the Farmland Protection Program. Additionally, there has been private donation from the landowner (in easement value) that ranges between fifteen and twenty percent of the total program costs (Ihrke, 2013). The program has been very successful in Dakota County; the County turns down applications every year due to lack of funds.

Cluster Ordinances

A cluster ordinance is a tool that permits the existing allowable density using less land. The purpose of clustering is the preservation of sensitive lands that may include farmland or natural resources. Using a minimum size requirement, a parcel can be subdivided into smaller lots that are sited near one another to preserve the remaining open space acreage on the parcel. Often, the remaining land is kept in a few larger lots that are viable for farming or preservation. An easement can be placed on the open-space lots to prevent further

development, keeping it actively farmed or a natural preservation area.

Pivo et al. identified three of the most typical justifications in cluster ordinances: the preservation of “prime agricultural farmland, woodland, and unique natural amenities” (Pivo, 1990); to “provide...a compatible mixture of agricultural uses and low-density residential development, to promote agriculture, and to protect scenic and environmentally sensitive areas;”

and “to encourage the preservation of agricultural lands for continuing and enhanced production.” With these justifications, cluster ordinances are well suited for the pursuit of agricultural preservation and support of farming.

Based on Pivo et al.’s research, eleven cluster ordinance guidelines were created. The most relevant guidelines are presented below:

Guideline	Justification
Locate in Urban to Rural Transition Areas	As an alternative to large lot developments, clustered development can keep natural preservation areas, including agricultural activities, whole.
Limit Development Through “Gross Density”	In cluster ordinances where gross density can be higher than traditional subdivision allows, an incentive to cluster, and thus preserve land, is created.
Properly Site Clustered Developments	Highly dense rural development can have unintended consequences on existing infrastructure and the character of the neighborhood. Properly siting the developments can help avoid any potential conflicts.
Encourage by Streamlining the Permitting Process	A difficult permitting process can often be a hindrance to clustered developments, so creating easy to use and understand processes can remove those barriers.
Set Standards For Minimum Parcel Acreage	To successfully preserve natural and agricultural lands, the area must be large enough to viably be farmed or provide the desired conservation areas.
Be Sensitive to Rural Lifestyle Needs	Ensuring the clustered development lot sizes are large enough to support private space and small-scale farm activities can reduce neighborhood opposition.
Clusters Should be Between Four and Eight Homes	Four to eight homes was found to be the most supportive of preservation goals, maintaining rural character, preserving rural amenities, and minimizing the impact on infrastructure.

Guidelines from Pivo et al.’s 1990 article “Rural Cluster Zoning: Survey and Guidelines.”

In Howard County, Maryland, they have combined transfer of development rights, clustering, and preservation easements. In 1992, the zoning code was amended to include rural cluster provisions in the transitioning areas between urban and rural (Howard County, 2007). Through this ordinance, a density of one unit per 4.25 "gross acres" is permitted. Minimum lot size with a shared septic is 33,000 square feet, while an individual septic system mandates a minimum lot size of 40,000 square feet (a little less than one acre). This means a 25-acre parcel could be subdivided to include four lots with an easement placed on the remaining acreage, a "preservation parcel."

Alternatively, the County has a density or cluster exchange option that permits higher density in certain locations. The density exchange option works the same way as a TDR program does with restrictions on sending and receiving parcels zoning, size, and location. The cluster exchange option is similar with fewer restrictions on size.

Within the preservation parcel, Howard County permits many uses. By-right uses on the preservation parcels include farming, commercial feed mills, conservation areas, and single-family detached homes. Agribusinesses, golf courses, and farm tenant houses can locate in the preservation parcels with a variance from the County.



Clustered developments.

Access to Financing

Local banks often have programs for farm operating and equipment loans, some even offer real estate and home mortgage loans under the agricultural branch. Many new and small farmers qualify for Farm Service Agency loans as well, but these are often very restrictive. For the purposes of additional housing units on the farmstead, it may be necessary to secure private financing.

However, obtaining private funding may be difficult. Like with most loans, collateral is often necessary. Aging farmers may not be willing to put part of or the entire farm up while banks may not be willing to make a loan for a second house on a parcel. A second home on a

parcel may be difficult to sell in the event of foreclosure because of the proximity to the primary owner and any legal land and property separation issues that may arise.

With that said, if a farmer is dedicated to constructing ADUs on their farm, there are ways they can secure funding. Brian Kalvetter from People's State Bank of Plainview said his bank would approve funding for an accessory dwelling unit the same way they would finance any other home construction. While the borrower may not qualify for a low-interest agriculture loan, if they have financial strength and enough capital, the bank would find some way to support the farmer (Kalvetter, 2013).

National Case Studies

Clackamas County, Oregon

Oregon historically has very strict land use policies. Beginning in 1919, the state gave local governments authority to develop land use plans. Planning in its earliest stages was weak and led to haphazard growth and sprawl. Feeling the development pressure from nearby communities, farmers petitioned the state legislature for stricter land use controls. After a few iterations of

farmland protection bills, Oregon passed SB 100, making land use planning required by every city and county and establishing minimum zoning requirements. With the passage of SB 100 the Land Conservation and Development Commission was created to ensure that communities were in compliance with the planning requirements and fulfilled the original ten goals (later updated to fourteen and more recently to nineteen).

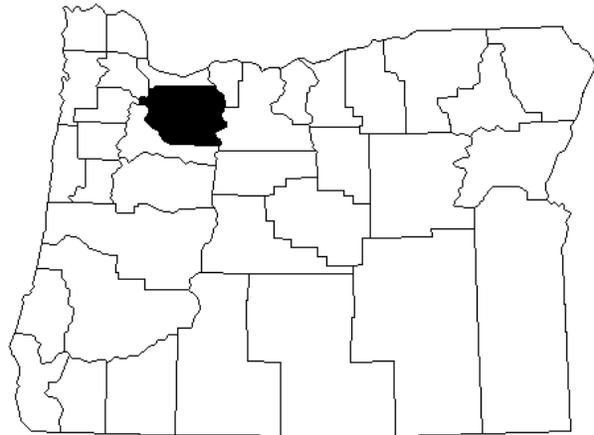
Many of the original goals revolved around the preservation of open space, specifically agriculture and forest lands. At the State level, the goal states that "agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space, and with the state's agricultural land use policy" (The State of Oregon). In developing its permitted uses in the exclusive farm use zones, Oregon understood they cannot exclude all development from occurring – but they can severely limit its related uses. Allowed within the Exclusive Farm Use zones are:

- Churches
- Accessory dwelling units for farm use
- Non-residential buildings related to the farm activity
- Temporary residential uses like a mobile home or recreational vehicle
- Farm stands

Clackamas County, in the northwest corner of Oregon, makes up one of four counties in the Portland Metropolitan Area. It is 1,879 square miles (Clackamas, 2013), and boasts high quality farmland. Since its incorporation in 1843, agriculture has been a major economic activity within the county.

Clackamas County used the State Statutes to guide the development of their own statutes in the Exclusive Farm Use zone. They have two types of accessory farm dwelling permits – one for relatives and one for non-relatives.

The statute for accessory farm dwelling - relatives permits a relative of the primary farm operator or spouse and the relative's immediate family to occupy the unit. To receive this permit, the accessory dwelling must be located on the same parcel as the primary dwelling and be occupied by a relative (defined as child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin of the primary farm operator or spouse) who will be directly supporting the activities of the farm. This relative dwelling unit requires that if the accessory farm dwelling is not "used for farm help or the farm management plan is not implemented and maintained as approved in the land use application" (Clackamas County, 401-21) the dwelling will be either removed, demolished, or



Clackamas County, Oregon

converted to a non-residential structure that will continue to support the agricultural activities.

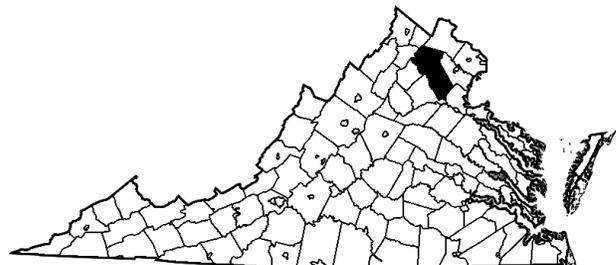
Accessory farm dwellings for year-round and seasonal farm workers are permitted as well. This permit type has slightly different requirements. Again, the dwelling unit must be occupied by at least one person who is essential in the agricultural activities of the farm. In terms of siting, the year-round farm workers dwelling has more flexibility. It can be located on the same lot as the primary dwelling or a contiguous parcel. If the accessory dwelling will be a manufactured dwelling, there is even more flexibility to be located on any non-contiguous parcel owned by the farmer. When ownership of the non-contiguous parcel changes the manufactured dwelling will need to be moved or demolished.

These permits are subject to a review by the planning department. To receive the permits, the farm must pass an income test based on Oregon's two different farmland values: low or high. If the farm is located on low value farmland, the farm must have earned at least \$32,500 from the sales of its agricultural products in each of the last two years, three years of the last five years, or an average of three of the last five years. If the farm is located on high value farmland, the income received from agricultural products must be \$80,000 or greater in each of the last two years, three of the last five years, or in an average of three of the last five years. This income test is to help differentiate the economic value the farm provides to the area and prevents hobby farms turning into rural subdivisions.

Accessory dwelling units represent a very small percent of rural housing. Gary Hewitt, the Clackamas County Planning Director believes the requirements associated with the accessory dwelling units have worked well to reduce unwanted development but serve the interests of the agricultural businesses in the county. Clackamas County is home to many intensive agricultural activities including berry farming, equestrian, and nurseries, many of which have taken advantage of the accessory dwelling units to support their employees.

Fauquier County, Virginia

A primarily rural county, Fauquier County is located in the northern part of Virginia, near Washington D.C. Historically, its ordinances have aimed to protect farmland using a growth boundary. Between 2000 and 2006, the increase in median home price significantly outpaced the increase in median household income, growing by 127 percent compared to just 21 percent, respectively (HUD, 2008). To combat the exploding home costs and ensure housing accessibility, the Board of Supervisors approved three different accessory dwelling units. Two of these were geared towards small rural and city lots: efficiency apartment and family apartment. The efficiency apartment permitted a 650 square feet unit with no more than two bedrooms that could be rented. The family apartment permitted a 1,400 square feet unit for family only. This unit could be rented out to non-family after ten years. The third ADU was a farmworker tenant unit with the only restriction being one member of the household must be actively employed on the farm.



Fauquier County, Virginia

In November 2012, the Board of Supervisors amended the ordinances to streamline the regulations. Currently, the County recognizes two different types of ordinances: small lot accessory dwelling unit and tenant worker dwelling unit. Now, the small lot accessory dwelling unit permits a unit of 800 square feet with two bedrooms, and a maximum capacity of three people. The tenant worker dwelling unit remained unchanged.

To support farmers in the County, the tenant worker ordinances are quite lax. Article 6-102.14 from Fauquier County's zoning ordinance, the entire ordinance that directs tenant worker housing construction, reads:

Quarters of a caretaker, watchman or tenant farmer, and his family, but only in the Rural Districts at a density not to exceed one (1) unit per fifty (50) acres.

This means that for every fifty acres in a lot located in a rural zone, a farmer can construct a tenant home. There are no size limitations, design restrictions, or engineering requirements. The only additional requirement is that the owner of the primary dwelling unit signs an affidavit stating the occupant of the tenant home is, in fact, an employee of the farm.

If a farmer lives on a lot smaller than fifty acres, they are eligible for an

accessory dwelling unit, but are limited by the size restrictions and number of people that reside there. Furthermore, if an accessory dwelling unit is constructed on the lot, no future accessory dwelling unit is permitted on that parcel, regardless of size. The limit is one primary dwelling unit and one accessory dwelling unit.

Before the ordinance changed, there was a flurry of applications for family apartment permits, so that individuals could construct a 1,400 square feet unit before the size limitation was reduced. Since the change, they have permitted "maybe a dozen" (Hinton, 2013). Hinton believes the smaller size has discouraged interest in the separate units; the zoning department has seen more building permits to construct additions to the house that omit a separate kitchen.

Local Case Studies

Marshwatch Farm Scott County, Minnesota

Marshwatch Farm's Perspective

Joe Adams, and his wife Terrie, are the owners of Marshwatch Farms. Marshwatch Farms is an (uncertified) organic Community Supported Agriculture (CSA) operation. The very successful CSA provides seasonal vegetables, herbs, eggs and honey. Beyond the CSA, the farm offers a

blue bird trail, shelter, and on-site market.



Marshwatch Farms

Currently, Joe and Terrie have decided they no longer want to actively manage the farm. They have begun advertising for a field manager, with hopes that such position will turn into a full time farm manager. As part of the benefits for this position, Joe and Terrie would turn over the home on the property. They would then live in their motor coach to serve in an advisory role. Their ultimate, long-term goal is to sell the farm. They believe that it has the potential to support a seasonal full time staff, which would require housing.

Because of the nature of the CSA, Joe and Terrie are interested in building seasonal housing in the form of cabins or yurts. Preparation for the season begins in January; seed selection, field mapping, and sets are started in February. The active season begins in March, when interns are hired and fieldwork commences.

However, they are zoned for one unit per forty acres and the County doesn't permit seasonal homes in the agricultural zones. These regulations will limit Marshwatch's ability to provide farmworker housing as currently proposed.

Whether they need a mobile home on the property or a few seasonal cabins, deciding what exactly is needed to support the CSA should be Marshwatch Farms first step. Preparing a rough sketch of the property with current and future planned buildings and a professional document about the farm and the needs it has, can be taken to the Planning and Zoning department in Scott County to provide a visual and reasoning behind the permit application. Marshwatch Farms must be flexible in design, location, and function as they move through the planning and zoning process.



Foggy Marshwatch Farms

Scott County's Perspective

Scott County is a southwest suburb of the Minneapolis St. Paul metropolitan. From 2000 to 2010, Scott County's population increased 45 percent, making it the fastest growing county in Minnesota (Scott County, 2013). The County is rapidly urbanizing, leaving farmland to compete with development pressures.

Recently, Scott County adjusted its ADU ordinances. Presently, the County permits mobile homes for full time farm employment and ADU that are permitted in all zoning districts. The Accessory Dwelling Units are limited to occupation by family members only. Before the addition of the ADU ordinance, people in rural areas would come in with building plans to construct an additional unit in the basement or garage; the County was unable to issue the permit because it would be considered a multi-family unit, which was strictly prohibited in rural areas. After a lot of research, looking at Iowa and Wisconsin counties for reference, they developed the present ADU ordinance.

The mobile homes for full time employment ordinance is the other option for supporting agriculture in Scott County. Unlike the ADU ordinance, there is no requirement of relation for occupancy. However, "at least one occupant of the mobile home and farm home shall work a minimum of forty hours per week in the agricultural operation"

(Scott County, 2010). Furthermore, the mobile home must be located on the same parcel as the primary dwelling unit and an affidavit must be signed stating the home is being used for agriculture and when the mobile home is no longer used for agriculture, it must be removed. This ordinance requires a parcel to be 80 acres. However, Brad Davis, Planning Manager in Scott County, says under the right circumstances, they would be willing to issue a variance to permit a mobile home on a smaller parcel. Since 2000, only a few have been given permits for mobile homes. If a trend were to arise where smaller parcels needed mobile homes, Davis is sure they would be willing to adjust those ordinances as well. An additional tool Scott County uses to preserve farmland is clustering ordinances. In certain areas, there are rural residential cluster districts that permit the clustering of development on large acre parcels.

Garden Farme City of Ramsey, Minnesota

Garden Farme's Perspective

Bruce Bacon lives on the Crandall Garden Farme his family has owned since 1913. He is the primary manager of the farm and has developed a business plan for guidance into the future.

Many things have changed since Garden Farme's founding in the



Raised Beds at Garden Farme

early 20th Century. In 1977, Garden Farme was certified organic. The farm features two acres of raised beds for herbs and leafy greens. To complement the organic greens production, the remaining acres are used for growing potted trees, mushrooms, nuts, fruits, and honeybees. Additionally, the property has 25 acres of restored prairie and 16 acres in the Conservation Reserve Program. The products from Garden Farme are sold directly to local chefs, caterers, and cooperatives. Garden Farme also hosts many special events including permaculture education, Dinner on the Farm, and others.

As Bruce ages, his concerns for continuing the family farm have grown. He does not want the 100-year farm to end with him, but his sons' careers and circumstances do not permit them to be hands-on managers of the operation. To address the problems, Bruce has taken many steps to ensure Garden Farme's continuation and ability to successfully incubate on-farm enterprises:

- A management board to guide the current and future development of the farm.
- Special events including permaculture courses, educational tours, and hosting private events like weddings and picnics.
- Creation of the Garden Farme LLC.
- Initial identification of future income streams to support a farm manager.
- Continuous communication with local officials.

His desire to continue Garden Farme extends beyond personal reasons; it is very unique to the area. It is a small scale certified organic operation with a focus on stewardship of the land. The diversity of land types on the site provides almost limitless agricultural uses, and would be an excellent location for an agricultural incubator, serving as a small regional economic generator.



Dinner on the Farme at Garden Farme

The next steps for Garden Farme will be to submit the formal application to the Planning Division. Bruce will need to bring in a formal site plan and presentation about the goals of Garden Farme and how they relate to the goals of the City (agriculture, education, open space preservation, housing, etc.). With this presentation to the Planning Division, the best way to move forward can be selected.

City of Ramsey's Perspective

Garden Farme represents a unique agricultural, education, and historical asset for the community. Additionally, many of the residents of Ramsey are aging and will need alternative housing solutions. The City of Ramsey is interested in preserving Garden Farme for these reasons but is unsure how to proceed.

The City has looked at accessory dwelling unit ordinances previously, but was unsuccessful in adopting them. The City Council was very concerned about rental enforcement issues and its potential impact on agricultural land. The City Administrator and Planning Division are looking for a way they can accommodate Garden Farme's needs while being fair and ecologically minded of the precedent they will set.

Until the City of Ramsey can develop an accessory dwelling unit ordinance, there are plenty of

opportunities for Garden Farme: a conditional use permit, rural subdivision, or a Planned Unit Development (PUD). Each of these options are possible, based on the final plan that Garden Farme can provide. A conditional use permit allows special and related uses upon approval by the planning or county commission. A rural subdivision would permit Bruce to subdivide one of the parcels and then build on each lot. A PUD is a long-term development program, which would show what the site looks like and what the site will look like into the future; it may show building design and location, open space, and infrastructure needed.

The City Administrator, Planning Division, and City Council should determine what goals they wish to achieve with an accessory dwelling unit ordinance. Is it to support agriculture? Or is it alternative housing solutions for an aging population? Preservation of open space could be achieved through densification on current developed lots. After identifying the goals, they can select whether their ordinance will support ADUs in all zones or just rural ones; have strict regulations on design, placement, size, and occupants; and how to address when the ADU is no longer used for its original purpose.

Conclusion

There is no easy answer for farm transitions; each issue is unique and requires creative solutions. To tackle the problem of accessory dwelling units, it is important for both farmers and local governments to work together.

For farmers, it is important to do the research and be prepared. No one else knows what your farm needs to succeed, and it is your job to communicate it to others. The process may be frustrating, confusing, and tedious, but with proper preparation and background research it can be smoother.

Planners and administrators are experts on land use and zoning ordinances. Understanding how impactful agriculture is on the local economy and how beneficial open space can be for the community, it is the local governments' duty to support those activities. The departments should continuously evaluate how the ordinances can support agriculture, and build in flexibility.

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Appendix A: Accessory Dwelling Units Model Ordinances

SECTION 400

NATURAL RESOURCE DISTRICTS

401 EXCLUSIVE FARM USE DISTRICT (EFU)

401.01 PURPOSE

Section 401 is adopted to implement the goals and policies of the Comprehensive Plan for Agriculture areas.

401.02 AREA OF APPLICATION

Property may be zoned Exclusive Farm Use District when the site has a Comprehensive Plan designation of Agriculture and the criteria in Section 1202 are satisfied.

401.03 DEFINITIONS

Unless specifically defined in Subsection 401.03 or in Section 202, words or phrases used in Section 401 shall be interpreted to give them the same meaning as they have in common usage and to give Section 401 its most reasonable application.

- A. Accessory Farm Dwelling: Includes all types of residential dwellings allowed by the applicable state building code and the number of dwelling units is determined by a land use decision.
- B. Agricultural Land: As defined in Oregon Administrative Rules (OAR) 660-33-0020.
- C. Commercial Farm: A farm unit with all of the following characteristics:
 - 1. The land is used for the primary purpose of obtaining a profit in money from farm use;
 - 2. The net income derived from farm products is significant; and
 - 3. Products from the farm unit contribute substantially to the agricultural economy, to agricultural processors, and to farm markets.
- D. Date of Creation and Existence: When a lot of record or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot of record or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot of record or tract.

- E. Farm Operator: A person who resides on and actively manages a “farm unit”.
- F. Farm Stand: A structure located on a part of the farm operation owned by the farm operator that is designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of the incidental items and fees from promotional activity do not make up more than 25 percent of the total sales of the farm stand; and the farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings, or public entertainment.
- G. Farm Unit: The contiguous and noncontiguous tracts within the County or a contiguous county held in common ownership and used by the farm operator for farm use.
- H. Farm Use: As defined in Oregon Revised Statutes (ORS) 215.203.
- I. Fee-based Activity to Promote the Sale of Farm Crops or Livestock: A common farm-dependent accessory activity directly related to the sale of farm crops or livestock sold at the farm stand, such as, but not limited to, hay rides, corn mazes, and educational how-to-farm workshops, but not including activities with no direct relationship to the farm crops or livestock sold at the farm stand, such as, but not limited to, quilting classes, dance lessons, jewelry making, or crafts that are only intended to bring customers to the farm stand.
- J. Golf Course: As defined in OAR 660-033-0130(20).
- K. High Value Farmland: As defined in ORS 215.710 and OAR 660-033-0020(8).
- L. Immediate Family: A spouse, children, adopted children, stepchildren, to include the long term care of grandchildren and step-grandchildren, but not to include other extended family members.
- M. Irrigated: Agricultural land watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is “irrigated” if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. An area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.
- N. Low Value Farmland: All land not defined as High Value Farmland in ORS 215.710 and OAR 660-033-0020(8).

- O. Noncommercial Farm: A parcel where all or part of the land is used for production of farm products for use or consumption by the owners or residents of the property, or which provides insignificant income.
- P. Owner: For purposes of a Lot of Record Dwelling, owner includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, stepparent, stepchild, grandparent, or grandchild of the owner, or a business entity owned by any one or a combination of these family members.
- Q. Ownership: Holding fee title to a lot of record, except in those instances when the land is being sold on contract, the contract purchaser shall be deemed to have ownership. Ownership shall include all contiguous lots of record meeting this definition.
- R. Private Park: Land that is used for low impact casual recreational uses such as picnicking, boating, fishing, swimming, camping, and hiking or nature oriented recreational uses such as viewing and studying nature and wildlife habitat and may include play areas and accessory facilities that support the activities listed above but does not include tracks for motorized vehicles or areas for target practice or the discharge of firearms.
- S. Relative: For purposes of a Temporary Dwelling for Care, relative means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin.
- T. Tract: One or more contiguous lots of record under the same ownership, including lots of record divided by a county or public road, or contiguous at a common point. Lots of record divided by a state highway are not considered contiguous.

401.04 USES AUTHORIZED

Table 401-1 identifies the uses authorized in the Exclusive Farm Use District. As used in Table 401-1:

- A. “A” means the use is allowed.
- B. “PDR” means the use is subject to Planning Director Review pursuant to Subsection 1305.02.
- C. “CU” means the use is a Conditional Use, subject to Sections 1203 and 1300.
- D. The “Subject To” column identifies any specific provisions of Subsection 401.05 to which the use is subject.
- E. “N” means not applicable.

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- F. “*NA1” means the use is not allowed except as set forth in Subsection 401.05(K)(1).
- G. “*NA2” means the use is not allowed except as set forth in Subsection 401.05(K)(1) or 401.05(K)(2) and (3).
- H. “HO” means the use must be reviewed by the Hearings Officer pursuant to Section 1300 for compliance with standards as outlined within this Ordinance or by state law.
- I. “HV” is referencing High Value Farmland as provided for in ORS 215.710 and OAR 660-033-0020(8).
- J. “LV” is referencing Low Value Farmland, lands not described in ORS 215.710 and OAR 660-033-0020(8).

Table 401-1: Uses Authorized in the Exclusive Farm Use District

	HV	LV	Use	Subject To
FARM AND FOREST USES	A	A	Propagation or harvesting of a forest product.	
	A	A	Farm use as defined in ORS 215.203	
	A	A	Other buildings customarily provided in conjunction with farm use.	
	PDR	PDR	A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.	401.05(A)(1) & (B)(1)
	CU	CU	A facility for the primary processing of forest products.	401.05(A)(1) & (B)(2)
	HV	LV	Use	Subject To
NATURAL RESOURCE USES	A	A	Creation of, restoration of, or enhancement of wetlands.	
	PDR	PDR	The propagation, cultivation, maintenance, and harvesting of aquatic species that are not under the jurisdiction of the Oregon Fish and Wildlife Commission.	401.05(A)(1) & (C)(1)
	HV	LV	Use	Subject To
RESIDENTIAL USES	A	A	Uses and structures customarily accessory and incidental to a dwelling, only if a lawfully established dwelling exists.	
	A	A	Alteration, restoration, or replacement of a lawfully established dwelling.	401.05(A)(3) & (D)(1)
	PDR	PDR	Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a County inventory as historic property and listed on the National Register of Historic Places.	401.05(A)(3)
	N	PDR	Lot of Record Dwelling on Low Value Farmland.	401.05(A)(2), (3), (4) & (D)(2)
	PDR	N	Lot of Record Dwelling on Class III or IV High Value Farmland.	401.05(A)(2), (3), (4) & (D)(3)

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RESIDENTIAL USES (cont.)	HO	N	Lot of Record Dwelling on Class I or II High Value Farmland.	401.05(A)(1), (2), (3), (4) & (D)(4)
	PDR	N	Dwelling customarily provided in conjunction with a farm use on High Value Farmland.	401.05(A)(3) & (D)(5)
	N	PDR	Dwelling customarily provided in conjunction with a farm use on Low Value Farmland.	401.05(A)(3) & (D)(6)
	PDR	PDR	Dwelling customarily provided in conjunction with a commercial dairy farm.	401.05(A)(3) & (D)(7)
	N	PDR	160 acre test for a dwelling.	401.05(A)(3), (4) & (D)(8)
	N	PDR	Capability test for a dwelling.	401.05(A)(3), (4) & (D)(9)
	PDR	PDR	A single-family dwelling not provided in conjunction with farm use; a nonfarm dwelling.	401.05(A)(3), (4) & (D)(10)
	PDR	PDR	Accessory farm dwelling for a relative.	401.05(A)(3) & (D)(11)
	PDR	PDR	Accessory farm dwelling for year-round and seasonal farm workers.	401.05(A)(3) & (D)(12)
	PDR	PDR	Temporary dwelling for care, subject to Subsection 1204.03.	401.05(A)(1), (3) & (D)(13)
	PDR	PDR	Room and board arrangements for a maximum of five unrelated persons in existing dwellings.	401.05(A)(1) & (3)
	PDR	PDR	Residential home or facility as defined in ORS 197.660, in existing dwellings.	401.05(A)(1) & (3)
HV LV Use Subject To				
COMMERCIAL USES	A	A	Family daycare provider.	
	A	A	Dog training classes.	401.05(E)(9)
	A	A	Dog testing trials.	401.05(E)(10)
	PDR	PDR	Farm stands, subject to OAR 660-033-0130(23) and ORS 215.283(1)(o).	
	PDR	PDR	Home occupations, subject to Section 822.	401.05(A)(1) & (E)(1)
	PDR	PDR	A landscape contracting business.	401.05(A)(1) & (E)(2)
	PDR	PDR	Agri-tourism single event.	401.05(A)(1) & (E)(3)
	PDR	PDR	Agri-tourism for up to 6 events or activities.	401.05(A)(1) & (E)(4)
	PDR	PDR	A winery as described in ORS 215.452 or 215.453 but not a restaurant open more than 25 days per calendar year, subject to ORS 215.452 or 215.453, whichever is applicable.	
	CU	CU	A large winery with a restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year.	401.05(A)(1), (E)(5) & (6)
	CU	CU	Home occupation to host events, subject to Section 806.	401.05(A)(1) & (E)(1)
	CU	CU	Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel that exceeds the standards of ORS 215.203(2)(b)(K) or Subsection 401.05(B)(1).	401.05(A)(1) & (E)(6)
CU	CU	Agri-tourism additional events not to exceed 18 events on a minimum of 80 acres.	401.05(A)(1) & (E)(7)	
CU	CU	An aerial fireworks display business.	401.05(A)(1) & (E)(8)	
CU	CU	Commercial dog boarding kennels.	401.05(A)(1)	

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	CU	CU	Dog training classes or testing trials that cannot be established under Subsection 401.05(E)(9) or (10).	401.05(A)(1)
	HV	LV	Use	Subject To
<u>MINERAL, AGGREGATE, OIL, AND GAS USES</u>	A	A	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 a wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	A	A	Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732(1)(a) or (b).	
	CU	CU	Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.	401.05(A)(1), (F)(1) & (F)(1)(a)
	CU	CU	Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement.	401.05(A)(1), (F)(1) & (F)(1)(b)
	CU	CU	Processing of other mineral resources and other subsurface resources.	401.05(A)(1), (F)(1) & (F)(1)(c)
	CU	CU	Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under Section 401.	401.05(A)(1), (F)(1) & (F)(1)(d)
	HV	LV	Use	Subject To
<u>TRANSPORTATION USES</u>	A	A	Climbing and passing lanes within the right of way existing as of July 1, 1987.	
	A	A	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.	
	A	A	Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.	
	A	A	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations, and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.	

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TRANSPORTATION USES (cont.)	PDR	PDR	Parking of no more than seven log trucks, subject to ORS 215.311	401.05(A)(1)
	PDR	PDR	Construction of additional passing and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels.	401.05(A)(1)
	PDR	PDR	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.	401.05(A)(1)
	PDR	PDR	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations, and rest areas, where additional property or right-of-way is required but not resulting in the creation of new land parcels.	401.05(A)(1)
	CU	CU	Roads, highways and other transportation facilities, and improvements not otherwise allowed under Section 401.	401.05(G)(1)
	CU	CU	Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance, and service facilities.	401.05(A)(1) &(G)(2)
	CU	CU	Transportation improvements on rural lands, subject to OAR 660-012-0065.	401.05(A)(1)
	HV	LV	Use	Subject To
UTILITY AND SOLID WASTE DISPOSAL FACILITY USES	A	A	Irrigation reservoirs, canals, delivery lines, and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.	
	A	A	Solar energy system.	
	A	A	Rainwater collection systems as an accessory use.	
	A	A	Electric vehicle charging stations for residents and their non-paying guests.	
	A	A	Meteorological towers.	
	A	A	Wind energy power production systems as an accessory use.	401.05(H)(1)
	A	A	Collocation of antennas on a previously approved wireless telecommunication facility, subject to Subsection 835.04(A).	
	A	A	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 are located on one or more of the following: a public right-of-way; land immediately adjacent to a public right-of-way provided the written consent of all adjacent property owners has been obtained; and/or the property to be served by the utility.	
PDR	PDR	Essential public communication services, as defined in Subsection 835.03(D). The use is subject to ORS 215.275, if it includes a transmission tower less than or equal to 200 feet in height.	401.05(A)(1)	

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UTILITY AND SOLID WASTE DISPOSAL FACILITY USES (cont.)	PDR	PDR	Collocation of wireless telecommunication facilities as identified in Subsection 835.05(A)(2), subject to Section 835, provided such facilities include a transmission tower that is over 200 feet in height.	401.05(A)(1)
	PDR	PDR	Utility facilities necessary for public service, including wireless telecommunication facilities not otherwise provided for in Section 401 and wetland waste water treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height.	401.05(A)(1) & (H)(2)
	PDR	N	Composting operations and facilities on high value farmland.	401.05(A)(1) & (H)(3)
	N	PDR	Composting operations and facilities on low value farmland.	401.05(A)(1) & (H)(4)
	*NA1	CU	Composting operations and facilities, subject to Section 834.	401.05(A)(1) & (H)(5)
	CU	CU	Transmission towers over 200 feet in height, except as otherwise provided in Section 401 for essential public communication services. Towers supporting wireless telecommunication facilities are subject to Section 835.	401.05(A)(1)
	CU	CU	Commercial utility facilities for the purpose of generating power for public use by sale, not including wind or photovoltaic solar power generation facilities.	401.05(A)(1) & (H)(6)
	CU	CU	Wind power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(37).	401.05(A)(1)
	CU	CU	Photovoltaic solar power generation facilities as commercial utility facilities for the purpose of generating power for public use by sale, subject to OAR 660-033-0130(38).	401.05(A)(1)
	*NA1	CU	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.	401.05(A)(1)
	HV	LV	Use	Subject To
PARKS, PUBLIC, AND QUASI-PUBLIC USES	A	A	Land application of reclaimed water, agricultural process or industrial process water, or biosolids for agricultural, horticultural, or forest production, or for irrigation in connection with a use allowed in the EFU zoning district, subject to the issuance of a license, permit, or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053, or 468B.055, or in compliance with rules adopted under ORS 468(B).095.	
	A	A	Onsite filming and activities accessory to onsite filming for 45 days or less.	

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PARKS, PUBLIC, AND QUASI-PUBLIC USES (cont.)	PDR	PDR	A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary.	401.05(A)(1) & (I)(1)
	PDR	PDR	Public parks and playgrounds.	401.05(A)(1), (5) & (I)(2)
	PDR	PDR	Fire service facilities providing rural fire protection services.	401.05(A)(1)
	PDR	PDR	Community centers.	401.05(A)(1), (5) & (I)(3)
	PDR	PDR	Living history museum.	401.05(A)(1), (5) & (I)(4)
	PDR	PDR	Firearms training facility as provided in ORS 197.770.	401.05(A)(5) & (I)(5)
	PDR	PDR	Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.	401.05(A)(1)
	PDR	PDR	A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.	401.05(A)(1)
	*NA1	PDR	Churches and cemeteries in conjunction with churches, consistent with ORS 215.441, which does not include private or parochial school education for prekindergarten through grade 12 or higher education.	401.05(A)(5)
	CU	CU	Operations for the extraction and bottling of water.	401.05(A)(1)
	CU	CU	Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.	401.05(A)(1)
	*NA2	CU	Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.	401.05(A)(1) & (5)
	*NA1	CU	Private parks, playgrounds, hunting and fishing preserves, and campgrounds.	401.05(A)(1), (5) & (I)(6)
*NA1	CU	Golf courses.	401.05(A)(1), (5) & (I)(7)	
	HV	LV	Use	Subject To
OUTDOOR GATHERINGS	A	A	An outdoor mass gathering or other gathering described in ORS 197.015(10)(d).	401.05(J)(1)
	CU	CU	Any outdoor gathering subject to review of the Planning Commission under ORS 433.763.	401.05(A)(1) & (J)(2)

401.05 APPROVAL CRITERIA FOR SPECIFIC USES

The following criteria apply to some of the uses listed in Table 401-1. The applicability of a specific criterion to a listed use is established by Table 401-1.

A. General Criteria

1. Uses may be approved only where such uses:

- a. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 - b. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
2. The Natural Resources Conservation Service (NRCS) Internet Soils Survey for Clackamas County shall be used to determine the soil classification and soil rating for a specific lot of record, except for purposes of approving a Lot of Record Dwelling application, the applicant may submit a report from a professional soils classifier whose credentials are acceptable to the Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and submits a statement from the Oregon Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report and finds the analysis in the report to be soundly and scientifically based.
3. The landowner for the dwelling shall sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.
4. An approval to construct a dwelling may be transferred to any other person after the effective date of the land use decision.
5. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.
 - a. Any enclosed structures or group of enclosed structures described in Subsection 401.05(A)(5) within a tract must be separated by at least one-half mile. For purposes of Subsection 401.05(A)(5), "tract" means a tract as defined by Subsection 401.03(T) that was in existence as of June 17, 2010.
 - b. Existing facilities wholly within a farm use zone may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of Subsection 401.05(A)(5).

B. Farm and Forest Uses

1. A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141 shall be located on a farm that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage, or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. 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. Any division of a lot of record that separates a processing facility from the farm operation on which it is located is prohibited.
2. A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in Subsection 401.05(B)(2), means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in Subsection 401.05(B)(2) means timber grown upon a tract where the primary processing facility is located.

C. Natural Resource Uses

1. The County shall provide notice of all applications for the propagation, cultivation, maintenance, and harvesting of aquatic species that are not under the jurisdiction of the Oregon Fish and Wildlife Commission to the Oregon Department of Agriculture. Notice shall be provided in accordance with Section 1302 but shall be mailed at least 20 calendar days prior to the issuance of the Planning Director's decision.

D. Residential Uses

1. Alteration, restoration, or replacement of a lawfully established dwelling.
 - a. A lawfully established dwelling is a single-family dwelling which has:
 - i. Intact exterior walls and roof structure;
 - ii. Indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;
 - iii. Interior wiring for interior lights; and

- iv. A heating system.
- b. In the case of replacement, the dwelling to be replaced shall be:
 - i. Removed, demolished, or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot of record. A dwelling established under Subsection 401.05(D)(1) shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot of record 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 of record. 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 Subsection 401.05(D)(1)(b) regarding replacement dwellings have changed to allow the siting of another dwelling. The Planning Director shall maintain a record of the lots of record that do not qualify for the siting of a new dwelling under the provisions of Subsection 401.05(D)(1)(b), including a copy of the deed restrictions and release statements filed under Subsection 401.05(D)(1)(b); and
 - ii. For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. 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 permit becomes void. 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. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.
- 2. Lot of Record Dwelling when determined to be located on Low Value Farmland, subject to the following criteria:
 - a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.
 - b. The lot of record has been under the continuous ownership of the present owner who either,

- i. Acquired the lot of record prior to January 1, 1985, or
 - ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.
 - c. The tract on which the dwelling will be sited does not include a dwelling;
 - d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.
 - e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.
 - f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership shall remain in common ownership as long as the dwelling remains as approved.
 - g. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. The Oregon Department of Fish and Wildlife (ODFW) suggests to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.
3. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Class III and IV Soil, subject to the following criteria:
 - a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.
 - b. The lot of record has been under the continuous ownership of the present owner who either,
 - i. Acquired the lot of record prior to January 1, 1985, or
 - ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.

- c. The tract on which the dwelling will be sited does not include a dwelling.
 - d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.
 - e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.
 - f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership land shall remain in common ownership as long as the dwelling remains as approved.
 - g. The tract is no more than 21 acres.
 - h. The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or, the tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary.
 - i. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or the impacts can be adequately mitigated so as not to interfere. Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests to the County that in the absence of impact mitigation measures, winter range is seriously considered impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet.
4. Lot of Record Dwelling when determined to be located on High Value Farmland consisting predominantly of Prime, Unique, Class I or II Soils if a Hearings Officer review pursuant to Subsection 1300 finds the following:
- a. The lot of record on which the dwelling will be sited was lawfully created prior to January 1, 1985.

- b. The lot of record has been under the continuous ownership of the present owner who either,
 - i. Acquired the lot of record prior to January 1, 1985, or
 - ii. Acquired the lot of record by devise or intestate succession from a person or persons who had continuously owned the property since January 1, 1985.
- c. The tract on which the dwelling will be sited does not include a dwelling;
- d. The lot of record on which the dwelling will be sited was not part of a tract that contained a dwelling on November 4, 1993.
- e. The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged Comprehensive Plan, this Ordinance and other provisions of law.
- f. When the lot of record on which the dwelling will be sited is part of a tract, all remaining portions of the common ownership land shall remain in common ownership as long as the dwelling remains as approved.
- g. The lot of record cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. Extraordinary circumstances include very steep slopes, deep ravines, rivers, streams, roads, railroads or utility lines or other similar natural or physical barriers that by themselves or in combination, separate the subject property from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.
- h. The dwelling will not materially alter the stability of the overall land use pattern in the area.
- i. The dwelling either will not seriously interfere with the preservation of big game winter range areas identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, or can be adequately mitigated. (Estimated impacts and appropriate mitigation measures shall be submitted by the applicant and based on the best available data and assessment methods from the appropriate agency. ODFW suggests

to the County that in the absence of mitigation measures, winter range is seriously impacted by residential densities which exceed one unit per 80 acres or one unit per 40 acres, if clustered within 200 feet).

5. Dwelling in conjunction with a farm use on High Value Farm Land: A primary farm dwelling for the farm operator may be allowed subject to the following criteria:
 - a. The subject tract is currently employed in farm use on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years;
 - b. Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.
 - c. The lot of record on which the dwelling will be sited was lawfully created;
 - d. Except as permitted in Subsection 401.05(D)(12), there is no other dwelling on the subject tract;
 - e. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;
 - f. In determining the gross income requirement, the cost of purchased livestock shall be deducted from the total gross annual income attributed to the tract.
 - g. Only gross income from land owned, not leased or rented, shall be counted.
 - h. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used again to qualify any other parcel for a primary farm dwelling.
 - i. Only a lot of record zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.

6. Dwelling in conjunction with a farm use on Low Value Farmland: A primary farm dwelling for the farm operator may be allowed on low value farmland subject to the following criteria:
 - a. The subject tract is currently employed in farm use on which the farm operator earned at least \$32,500 in gross annual income from the sale of farm products in each of the last two years or three of the last five years, or in an average of three of the last five years;
 - b. Lots or record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.
 - c. Except as permitted in Subsection 401.05(D)(12), there is no other dwelling on the subject tract;
 - d. The lot of record on which the dwelling will be sited was lawfully created;
 - e. The dwelling will be occupied by a person or persons who produced the commodities which generated the income;
 - f. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
 - g. Only gross income from land owned, not leased or rented, shall be counted.
 - h. Gross farm income earned from a lot of record which has been used previously to qualify another lot of record for the construction or siting of a primary farm dwelling may not be used.
 - i. Only lots of record zoned for farm use in Clackamas County or a contiguous county may be used to meet the gross income requirements.
 - j. An irrevocable deed restriction shall be recorded with the County Clerk's Office acknowledging that all future rights to construct a dwelling on other properties used to qualify the primary farm dwelling is precluded except for accessory farm dwellings, accessory relative farm dwellings, temporary hardship dwelling or replacement dwellings, and that any gross farm income used to qualify the primary farm dwelling cannot be used to qualify any other parcel for a primary farm dwelling.
7. A dwelling customarily provided in conjunction with a commercial dairy farm, which is a dairy operation that owns a sufficient number of

producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(3)(a) or (4)(a), whichever is applicable, from the sale of fluid milk, if;

- a. The subject tract will be employed as a commercial dairy; and
 - b. The dwelling is sited on the same lot of record as the buildings required by the commercial dairy; and
 - c. Except for a replacement of a lawfully established dwelling, there is no other dwelling on the subject tract; and
 - d. The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm; and
 - e. The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and
 - f. The Oregon Department of Agriculture has approved the following:
 - i. A permit for a “confined animal feeding operation” under ORS 468B.050 and 468B.200 to 468B.230; and
 - ii. A Producer License for the sale of dairy products under ORS 621.072.
8. 160 Acre Test, subject to the following criteria:
- a. The parcel on which the dwelling will be located is at least 160 acres.
 - b. The subject tract is currently employed in a farm use.
 - c. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock at a commercial scale.
 - d. Except as permitted in Subsection 401.05(D)(12), there is no other dwelling on the subject tract; or
9. Capability Test, subject to the following criteria:

- a. The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract.
 - b. Lots of record in Eastern Oregon shall not be used to qualify a dwelling under this criterion.
 - c. The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in Subsection 401.05(D)(9)(a).
 - d. The subject tract is currently employed for a farm use at a level capable of producing the annual gross sales required in Subsection 401.05(D)(9)(a).
 - e. The subject lot of record on which the dwelling is proposed is not less than 10 acres.
 - f. Except as permitted in Subsection 401.05(D)(12), there is no other dwelling on the subject tract.
 - g. 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.
 - h. If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by Subsection 401.05(D)(9)(a).
10. Dwelling not in Conjunction with a Farm Use: A dwelling for a nonfarm use may be allowed subject to the following criteria:
- 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 of record that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils;

- c. The dwelling will be sited on a lot of record lawfully created before January 1, 1993.
- d. The dwelling is situated upon a parcel, or a portion of a parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable trees, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A 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. A parcel is not generally unsuitable because it is too small to be farmed profitably by itself. If the parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm it is considered suitable.
- e. If the parcel is under forest deferral, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot of record is under forest deferral, the area is not generally unsuitable simply because it is too small to be managed for forest production profitably by itself. If a parcel can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not generally unsuitable.
- f. The dwelling shall not materially alter the stability of the overall land use pattern of the area. The County shall consider the cumulative impact of possible new nonfarm dwellings and on other lots of record in the area similarly situated, subject to Oregon Administrative Rules (OAR) 660-033-0130(4)(a)(D)(i) through (iii).
- g. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a “distinct agricultural area” based on topography, soils types, land use pattern, or the type of farm operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries, and the location of the subject parcel with this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area; and to the extent OAR 660-033-0130(4)(a)(D)(ii) is applicable.
- h. Determine whether approval of the proposed nonfarm dwelling together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land

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

- i. The dwelling shall comply with such other conditions as the County considers necessary.
 - j. Prior to Planning Director approval for issuance of a building or manufactured dwelling permit, the applicant shall notify the County Assessor that the lot of record is no longer being used for farmland and; request the County Assessor to disqualify the lot of record for special assessment under ORS 308.370, 308.765, 321.257 to 321.381, 321.730 or 321.815 and; pay any additional tax imposed upon disqualification from special assessment. A lot of record that has been disqualified pursuant to Subsection 401.05(D)(10)(j) shall not requalify for special assessment unless, when combined with another contiguous lot of record, it constitutes a qualifying parcel.
11. Accessory Farm Dwelling – Relative: An accessory farm dwelling for a relative, and their immediate family unless otherwise specified, of the farm operator may be allowed subject to the following criteria:
- a. The accessory farm dwelling shall be located on the same lot of record as the primary farm dwelling of the farm operator;
 - b. The accessory farm dwelling shall be located on a lawfully created lot of record;
 - c. The accessory farm dwelling shall be occupied by child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin, of the farm operator or the farm operator’s spouse, whose assistance in the management and farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.
 - d. The size, type, and intensity of the farm operation shall be used to evaluate the need for the dwelling.
 - e. The net income derived from the farm products shall be significant and products from the farm unit shall contribute substantially to the agricultural economy, to agricultural processors and farm markets.

- f. The accessory farm dwelling shall be occupied by a person or persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management of the farm use of the farm unit. 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;
 - g. There are no other dwellings on the lot of record that are vacant or currently occupied by persons not working on the subject farm unit that could reasonably be used as an accessory farm dwelling.
 - h. At any time the accessory farm dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.
 - i. Any lot of record land division or property line adjustment which results in the location of any accessory farm dwelling on a lot of record separate from the farm use property for which it has been established is prohibited.
12. Accessory Farm Dwellings – Year-round and Seasonal Farm Workers:
An accessory farm dwelling for a nonrelative, and their immediate family unless otherwise specified, of the farm operator may be allowed subject to the following criteria:
- a. The accessory farm dwelling shall be occupied by a person or persons who will be principally engaged in the farm use of the land and on other commercial farms in the area, 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 on the farm unit.
 - b. The accessory farm dwelling shall be located on a lawfully created lot of record;
 - c. The accessory farm dwelling shall be located:
 - i. On the same lot of record as the primary farm dwelling; or
 - ii. On the same tract as the primary farm dwelling when the lot of record on which the accessory farm dwelling will be sited is

consolidated into a single parcel with all other contiguous lots of record in the tract; or

- iii. On a lot of record on which the primary farm dwelling is not located, when the accessory farm dwelling is a manufactured dwelling and a deed restriction is filed with the County Clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot of record is conveyed to another party. The manufactured dwelling may remain if it is re-approved pursuant to Section 401; or
- iv. On any lot of record, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on the farm operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under Subsection 401.05(D)(12)(c)(iv) shall be removed, demolished, or converted to a nonresidential use when farm worker housing is no longer required.
- v. On a lot of record on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot of record at least the size of the applicable minimum lot size and the lot of record complies with the gross farm income requirements of Subsection 401.05(D)(12)(g) or 401.05(D)(12)(h), whichever is applicable.
- d. There are no other dwellings on lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.
- e. All multi-unit accessory dwellings shall be consistent with the intent of the Legislative Assembly as provided in ORS 215.243.
- f. The primary farm dwelling to which the proposed dwelling would be accessory shall meet one of the following:
 - g. On Low Value Farmland, the primary farm dwelling is located on a farm operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned the lower of at least \$32,500 in gross annual income from the sale of farm products or at least the midpoint of the median income range of gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon,

in each of the last two years or three of the last five years or in an average of three of the last five years, or

- h. On land identified as High Value Farmland, the primary farm dwelling is located on a farm operation that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products in each of the last two years or three of the last five years or in an average of three of the last five years.
- i. In determining the gross annual income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.
- j. Only gross annual income from land owned, not leased or rented, shall be counted.
- k. Any proposed land division or property line adjustment of a lot of record for an accessory farm dwelling approved pursuant to Subsection 401.05(D)(12) shall not be approved. If it is determined that an accessory farm dwelling satisfies the requirements for a dwelling in conjunction with a farm use under Subsection 401.05(D)(5) or (6), a parcel may be created consistent with the minimum parcel size requirements in Subsection 401.07(A).
- l. An accessory farm dwelling approved pursuant to Subsection 401.05(D)(12) shall not later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to Subsection 401.05(D)(10).
- m. At any time the dwelling is not used for farm help or the farm management plan is not implemented and maintained as approved in the land use application, the dwelling shall be removed, demolished or if not a manufactured dwelling, converted to a nonresidential accessory structure (change of occupancy permit) within 90 days.
- n. Any lot of record land division or property line adjustment which results in the location of any accessory farm dwelling on a lot of record separate from the farm use property for which it has been established is prohibited.
- o. "Farmworker", means an individual who, for an agreed remuneration or rate of pay, performs labor, temporarily or on a continuing basis, for a person in the production of farm products, planting, cultivating or harvesting of seasonal agricultural crops; or forestation or reforestation of land, including but not limited to planting, transplanting, tubing,

precommercial thinning and thinning of trees or seedlings, the clearing, piling and disposal of brush and slash and other related activities.

- p. “Farmworker Housing”, means housing limited to occupancy by farmworkers and their immediate families, and no dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.
- q. “Relative”, for the purposes of Subsection 401.05(D)(12), means an ancestor, lineal descendant, or whole or half sibling of the owner or operator or the spouse of the owner or operator.
- r. “Farmworker Housing Owner”, means a person that owns farmworker housing. It does not mean a person whose interest in the farmworker housing is that of a holder of a security interest in the housing.

13. One manufactured dwelling, residential trailer, or recreational vehicle, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling, residential trailer, or recreational vehicle shall be removed or demolished. A temporary residence approved under Subsection 401.05(D)(13) is not eligible for replacement under Subsection 401.05(D)(1). County Department of Water Environment Services on-site sewage disposal system review and removal requirements also apply.

E. Commercial Uses

- 1. The home occupation shall not unreasonably interfere with other uses permitted in the EFU zoning district and shall not be used as justification for a zone change.
- 2. 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.
- 3. A single agri-tourism or other commercial event or activity in a calendar year that is personal to the applicant and is not transferrable by sale of the tract, subject to ORS 215.239, 215.283(4)(a), and (6) and the following:
 - a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings; and

- b. “Incidental and subordinate”, as related to agri-tourism, means that the event or activity is strictly secondary and ancillary to on-site farming in terms of income generated, area occupied, and off-site impacts; and
 - c. “Agri-tourism”, means a commercial event or activity that is logically, physically, and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.
4. Agri-tourism for up to six events or other commercial events or activities in a calendar year that is personal to the applicant and is not transferrable by sale of the tract, subject to ORS 215.239, 215.283(4)(c), and (6) and the following:
- a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings; and
 - b. “Incidental and subordinate”, as related to agri-tourism, means that the event or activity is strictly secondary and ancillary to on-site farming in terms of income generated, area occupied, and off-site impacts; and
 - c. “Agri-tourism”, means a commercial event or activity that is logically, physically, and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.
5. A large winery with a restaurant in conjunction with a winery as described in ORS 215.453 that is open to the public for more than 25 days in a calendar year or the provision of private events in conjunction with a winery as described in ORS 215.453 that occur on more than 25 days in a calendar year, subject to the following:
- a. Other events and activities not included in a large winery by statute shall only include commercial activities that are in conjunction with farm use;
 - b. The commercial activities shall be essential to the practice of agriculture;
 - c. “Incidental”, as related to a winery, means that all goods and services shall be included in the 25% incidental gross sales income limit, whether provided directly by the winery or indirectly by a third party, such as but not limited to a caterer; and
 - d. Goods and services provided by a restaurant on a large winery open more than 25 days per calendar year are not included in the meaning of incidental.

6. Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel that exceeds the standards of ORS 215.203(2)(b)(K) or Subsection 401.05(B)(1). The commercial activity shall be essential to the practice of agriculture.
7. Agri-tourism for up to 18 additional events or other commercial events or activities in a calendar year that occurs more frequently or for a longer period of time, on a minimum 80 acre tract, subject to ORS 215.239, 215.283(4)(d), (5), and (6) and the following:
 - a. Agri-tourism events shall not include any mass gatherings or other outdoor gatherings, and
 - b. “Incidental and subordinate”, as related to agri-tourism, means that the event or activity is strictly secondary and ancillary to on-site farming in terms of income generated, area occupied, and off-site impacts; and
 - c. “Agri-tourism”, means a commercial event or activity that is logically, physically and/or economically connected to and supports an existing on-site farm operation and promotes the practice of agriculture.
8. An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler’s permit to sell or provide fireworks.
 - a. As part of the conditional use approval process, for the purpose of verifying the existence, continuity, and nature of the business, representatives of the business may apply to the County and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies. Alteration, restoration, or replacement of an aerial fireworks display business may be altered, restored, or replaced pursuant to Section 1206.
9. Dog training classes, which may be conducted outdoors or in preexisting farm buildings, when:
 - a. The number of dogs participating in training does not exceed 10 dogs per training class; and
 - b. The number of training classes to be held on-site does not exceed six per day.
10. Dog testing trials, which may be conducted outdoors or in preexisting farm buildings, when:

- a. The number of dogs participating in a testing trial does not exceed 60; and
- b. The number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

F. Mineral, Aggregate, Oil, and Gas Uses

1. Mineral, Aggregate, Oil and Gas Uses: Pursuant to ORS 215.298 a land use permit is required for mining more than 1000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A permit for mining of aggregate shall be issued only for a site included on an inventory acknowledged in the Comprehensive Plan for the following:
 - a. Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources, subject to ORS 215.298.
 - b. Processing as defined by ORS 517.750 of aggregate into asphalt or Portland cement; and
 - i. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.
 - c. Processing of other mineral resources and other subsurface resources.
 - d. Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under Section 401.

G. Transportation Uses

1. Roads, highways and other transportation facilities, and improvements not otherwise allowed under Section 401 may be established, subject to the adoption of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.
2. A personal-use airport means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional

basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

H. Utility and Solid Waste Disposal Facility Uses

1. Wind energy power production systems as an accessory use, provided:

- a. The system is not a commercial power generating facility;
- b. No turbine has an individual rated capacity of more than 100kW, nor does the cumulative total rated capacity of the turbines comprising the installation exceed 100 kW;
- c. The system complies with the Oregon Department of Environmental Quality noise standards otherwise applicable to commercial and industrial uses for quiet areas, measured at the nearest property line of the noise-sensitive use. This may be demonstrated through information provided by the manufacturer;
- d. The system is prohibited if tower lighting for aviation safety is required;
- e. The system will be located outside an urban growth boundary on a minimum of one acre;
- f. The system does not exceed 150 feet in height from base to the height of the tower plus one blade;
- g. The system is set back a distance not less than the tower height plus one blade from all property lines; and
- h. Roof mounted system towers shall extend no more than an additional five feet above the highest ridge of a building's roof or 15 feet above the highest eave, whichever is higher, but shall not exceed 150 feet in height from finished grade.

2. A utility facility necessary for public service may be established as provided in ORS 215.275. A facility is necessary if it must be situated in an agricultural zone in order for the service to be provided.

3. Composting operations and facilities allowed on high-value farmland, subject to OAR 660-033-130(29)(a) and the following:
 - a. Composting operations and facilities on high value farmland must:
 - i. Compost only on-farm produced compostable materials; or
 - ii. Compost only off-site materials and use all on-site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract; or
 - iii. Compost any off-site materials with on-farm produced compostables and use all on site generated compost for on-farm production in conjunction with, and auxiliary to, the farm use on the subject tract; and
 - iv. Be an accepted farming practice in conjunction with and auxiliary to farm use on the subject tract; meaning that if off-site materials are added to on-farm produced compostables, the total amount of compost generated by the operation or facility does not exceed the amount of compost reasonably anticipated to be used on the subject tract; and
 - v. Limit buildings and facilities used in conjunction with the composting operation to those required for the operation of the subject facility; and
 - vi. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060.
 - b. Excess compost from operations and facilities on high value farmland may only be sold or transported if:
 - i. The operation or facility does not use off-site materials; and
 - ii. It is sold or transported to neighboring farm operations within two and one-half miles of the subject tract; and
 - iii. It is sold or transported in bulk loads of not less than one unit (7.5 cubic yards) in size that are transported in one vehicle.
4. Composting operations and facilities allowed on low-value farmland that constitute accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, subject to Subsection 401.05(H)(3)(a) through (b).

5. Composting operations and facilities allowed on low value farmland that do not constitute accepted farming practices and are not in conjunction with and auxiliary to an on-site farm use on the subject tract shall be subject to Section 834.
6. Commercial utility facilities for the purpose of generating power for public use by sale, but not including wind power or photovoltaic solar power generation. A power generation facility shall not preclude more than 12 acres on High Value Farmland, or more than 20 acres on Low Value Farmland, from use as a commercial agricultural enterprise unless an exception is taken pursuant to Oregon Administrative Rule 660, Division 4; and
 - a. A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) (a private campground) or other statute or rule when the project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to 401.05(A)(1) and shall have no effect on the original approval. Permanent features of a power generation facility 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 OAR chapter 660, division 4.

I. Parks, Public, and Quasi-public Uses

1. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings and 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 Subsection 401.05(I)(1). The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under Subsection 401.05(I)(1). An owner of property used for the purpose authorized in Subsection 401.05(I)(1) may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in Subsection 401.05(I)(1), "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines, or design by a person on the ground.

2. Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable. A public park may be established consistent with the provisions of ORS 195.120.
3. Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under Subsection 401.05(I)(3) may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.
4. "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. As used in Subsection 401.05(I)(4), a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include 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. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.
5. Firearms training facility that predated September 10, 1995 as provided in ORS 197.770. Firearms training facilities shall not be sited within three miles of an Urban Growth Boundary.
6. Private parks, playgrounds, hunting and fishing preserves, and campgrounds. Except on a lot of record contiguous to a lake or reservoir, private campgrounds 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 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. 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. Campgrounds authorized by Subsection 401.05(I)(6) shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

- a. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by Subsection 401.05(I)(6)(b).
 - b. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if it is determined that the increase will comply with the standards described in Subsection 401.05(A)(1). As used in Subsection 401.05(I)(6), "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.
7. Golf courses, on land determined not to be high value farmland, as defined in ORS 195.300, subject to OAR 660-033-0130(20).

J. Outdoor Gatherings

1. An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer persons that is not anticipated to continue for more than 120 hours in any three-month period. Agri-tourism and other commercial events or activities may not be permitted as mass gatherings under ORS 215.283(4).
2. Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by the Planning Commission under the provisions of ORS 433.763. Outdoor gatherings may not include agri-tourism events or activities.

K. Nonconforming Uses

1. Existing facilities wholly within a farm use zone may be maintained, enhanced, or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of Subsection 401.05(A)(1) and OAR 660-033-0130(20), but shall not be expanded to contain more than 36 total holes.
2. In addition to and not in lieu of the authority in Section 1206 to continue, alter, restore, or replace a nonconforming use, a use formerly allowed pursuant to ORS 215.283(1)(a), as in effect before January 1, 2010, the effective date of 2009 Oregon Laws, chapter 850, section 14, may be expanded subject to:
 - a. The requirements of Subsection 401.05(K)(3); and
 - b. Conditional approval as provided in Subsection 401.05(A)(1).
3. A nonconforming use described in Subsection 401.05(K)(2) may be expanded if:
 - a. The use was established on or before January 1, 2009; and
 - b. The expansion occurs on:
 - i. The lot of record on which the use was established on or before January 1, 2009; or
 - ii. A lot of record that is contiguous to the lot of record described in Subsection 401.05(K)(3)(b)(i) and that was owned by the applicant on January 1, 2009.

401.06 PROHIBITED USES

Uses of structures and land not specifically permitted are prohibited.

401.07 DIMENSIONAL STANDARDS

- A. Minimum Lot Size: New lots of record shall be a minimum of 80 acres in size, except as provided in Subsection 401.09 or as modified by Section 902. For the purpose of complying with the minimum lot size standard, lots of record that front on existing county or public roads may include the land area between the front property line and the middle of the road right-of-way.
- B. Minimum Front Yard Setback: 30 feet.
- C. Minimum Side Yard Setback: 10 feet.

- D. Minimum Rear Yard Setback: 30 feet; however, accessory structures shall have a minimum rear yard setback of 10 feet.
- E. Exceptions: Dimensional standards are subject to modification pursuant to Section 900.
- F. Variances: The requirements of Subsections 401.07(B) through (D) may be modified pursuant to Section 1205.

401.08 DEVELOPMENT STANDARDS

- A. Property Line Adjustments: Property line adjustments shall be subject to Section 1107.
- B. Manufactured Dwelling Parks: Redevelopment of a manufactured dwelling park with a different use shall require compliance with Subsection 825.03.

401.09 LAND DIVISIONS

Land divisions are permitted, if consistent with one of the following options and Oregon Revised Statutes (ORS) Chapter 92. Except in the case of a conditional use division under Subsection 401.09(B), a land division is subject to Planning Director review pursuant to Subsection 1305.02.

- A. 80-Acre Minimum Lot Size Land Divisions: A land division may be approved, if each new lot of record is a minimum of 80 acres in size, as established by Subsection 401.07(A).
- B. Nonfarm Use Land Divisions: A land division creating parcels less than 80 acres in size may be approved for a fire service facility and for nonfarm uses, except dwellings, set out in ORS 215.283(2), if the parcel for the fire service facility or nonfarm use is not larger than the minimum size necessary for the use.
- C. Nonfarm Dwelling Land Divisions: Lots of record less than 80 acres in size may be approved, subject to the following criteria:
 - 1. The originating lot of record is at least 80 acres, and is not stocked to the requirements under ORS 527.610 to 527.770;
 - 2. The lot of record is composed of at least 95% Class VI through Class VIII agricultural soils, and composed of at least 95% soils not capable of producing 50 cubic feet per acre per year of wood fiber;
 - 3. The new lot of record for a dwelling will not be smaller than 20 acres; and
 - 4. No new lot of record may be created until the criteria in Subsection 401.05(D)(10)(a), (b), (f), (i), and (j) for a dwelling are satisfied.

- D. Parks/Open Space/Land Conservation Land Divisions: A land division for a provider of public parks or open space, or a not-for-profit land conservation organization, may be approved subject to ORS 215.263(10).
- E. Historic Property Land Divisions: A land division may be approved to create a parcel with an existing dwelling to be used for historic property that meets the requirements of ORS 215.283(1)(L).

401.10 SUBMITTAL REQUIREMENTS

An application for any use requiring review by the Planning Director pursuant to Subsection 1305.02 shall include:

- A. A complete Land Use Application form;
- B. An accurate site plan drawn to scale on 8.5”x 11” or 8.5”x 14” paper, showing the property and proposal;
- C. An application fee;
- D. A Supplemental Application form addressing each of the applicable approval criteria for the proposed use; and
- E. Farm dwellings requiring a justification of income shall include tax forms, farm receipts, or other appropriate documentation demonstrating the income produced from the subject property.

401.11 APPROVAL PERIOD AND TIME EXTENSION

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

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

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

- C. Subsections 401.11(A) and (B) do not apply to home occupations or conditional uses, which shall be subject to any applicable approval period and time extension provisions of Sections 822 or 1203.

[Amended by Ord. ZDO-224, 5/31/11; Amended by Ord. ZDO-230, 9/26/11; Amended by Ord. ZDO-234, 6/7/12; Amended by Ord. ZDO-241, 1/1/13]



PLANNING DEPARTMENT
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ADU ZONING REGULATIONS

TITLE 24 ZONING ORDINANCE OF THE CITY OF SANTA CRUZ CHAPTER 24.16 PART 2

24.16.100 Purpose.

The ordinance codified in this part provides for accessory dwelling units in certain areas and on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings are allowed because they can contribute needed housing to the community's housing stock. Thus, it is found that accessory units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities that are compatible with single-family development.

To ensure that accessory units will conform to General Plan policy the following regulations are established.

(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.120 Locations Permitted.

Accessory dwelling units are permitted in the following zones on lots of 5000 square feet or more:

1. RS-5A, RS-10A
2. RS-1A, RS-2A
3. R-1-10
4. R-1-7
5. R-1-56.R-L, R-T(A), (B), and (D).

(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.130 Permit Procedures.

The following accessory dwelling units shall be principally permitted uses within the zoning districts specified in Section 24.16.120 and subject to the development standards in Section 24.16.160.

1. Any accessory dwelling unit meeting the same development standards as permitted for the main building in the zoning district, whether attached or detached from the main dwelling.

2. Any single story accessory dwelling unit.

Any accessory dwelling unit not meeting the requirements above shall be conditionally permitted uses within the zoning districts specified in Section 24.16.120 and shall be permitted by administrative use permit at a public hearing before the zoning administrator, subject to the findings per Section 24.16.150 and the development standards in Section 24.16.160.

(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.150 Findings Required for Conditionally Permitted Accessory Dwelling Units.

Before approval or modified approval of an application for an accessory dwelling unit, the decision making body shall find that:

1. Exterior design of the accessory unit is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping, and other methods that conform to acceptable construction practices.
2. The exterior design is in harmony with, and maintains the scale of, the neighborhood.
3. The accessory unit does not result in excessive noise, traffic or parking congestion.
4. The property fronts on an adequate water main and sewer line each with the capacity to serve the additional accessory unit.
5. The site plan provides adequate open space and landscaping that is useful for both the accessory dwelling unit and the primary residence. Open space and landscaping provides for privacy and screening of adjacent properties.
6. The location and design of the accessory unit maintains a compatible relationship to adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties.
7. The one and one-half to two-story structure generally limits the major access stairs, decks, entry doors, and major windows to the walls facing the primary residence, or to the alley if applicable. Windows that impact the privacy of the neighboring side or rear yard have been minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.
8. The site plan shall be consistent with physical development policies of the General Plan, any required or optional element of the General Plan, any area plan or specific plan or other city policy for physical development. If located in the Coastal Zone, a site plan shall also be consistent with policies of the Local Coastal Program.
9. The orientation and location of buildings, structures, open spaces and other features of the site plan are such that they maintain natural resources including heritage or significant trees and shrubs to the extent feasible and minimize alteration of natural land forms. Building profiles, location and orientation relate to natural land forms.

10. The site plan is situated and designed to protect views along the ocean and of scenic coastal areas. Where appropriate and feasible, the site plan restores and enhances the visual quality of visually degraded areas.
11. The site plan incorporates water-conservation features where possible, including in the design of types of landscaping and in the design of water-using fixtures. In addition, water restricting shower heads and faucets are used, as well as water-saving toilets utilizing less than three gallons per flush.
(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.160 Design and Development Standards.

All accessory dwelling units must conform to the following standards:

1. **Parking.** One parking space shall be provided on-site for each studio and one bedroom accessory unit. Two parking spaces shall be provided on site for each two bedroom accessory unit. Parking for the accessory unit is in addition to the required parking for the primary residence. (See Section 24.16.180 for parking incentives.)
2. **Unit Size.** The floor area for accessory units shall not exceed five hundred square feet for lots between 5000 and 7500 square feet. If a lot exceeds 7500 square feet, an accessory unit may be up to 640 square feet and, for lots in excess of 10,000 square feet, a unit may be up to 800 square feet. In no case may any combination of buildings occupy more than thirty percent of the required rear yard for the district in which it is located, except for units which face an alley, as noted below. Accessory units that utilize alternative green construction methods that cause the exterior wall thickness to be greater than normal shall have the unit square footage size measured similar to the interior square footage of a traditional frame house.
3. **Existing Development on Lot.** A single-family dwelling exists on the lot or will be constructed in conjunction with the accessory unit.
4. **Number of Accessory Units Per Parcel.** Only one accessory dwelling unit shall be allowed for each parcel.
5. **Setbacks for Detached Accessory Dwelling Units.** The side-yard and rear-yard setback for detached single story structures containing an accessory dwelling unit shall not be less than three feet in accordance with the Uniform Building Code, and the distance between buildings on the same lot must be a minimum of 10 feet. Accessory units higher than one story shall provide side yard setbacks of five feet and rear yard setbacks of ten feet. If any portion of an accessory dwelling unit is located in front of the main building, then the front and sideyard setbacks shall be the same as a main building in the zoning district. Accessory dwelling units are not eligible for variances to setbacks.
6. **Setbacks for Attached Accessory Dwelling Units.** Attached accessory dwelling units shall meet the same setbacks as a main building in the zoning district.
7. **Other Code Requirements.** The accessory unit shall meet the requirements of the Uniform Building Code.
8. **Occupancy.** The property owner must occupy either the primary or accessory dwelling.

9. Building Height and Stories.

- a. A one story detached accessory dwelling unit shall be no more than thirteen feet in height.
- b. A one and one-half to two story detached accessory dwelling shall be no more than twenty-two feet in height measured to the roof peak.
- c. An attached accessory unit may occupy a first or second story of a main residence if it is designed as an integral part of the main residence and meets the setbacks required for the main residence.
- d. If the design of the main dwelling has special roof features that should be matched on the detached accessory unit, the maximum building height of the accessory dwelling unit may be exceeded to include such similar special roof features subject to review and approval of the Zoning Administrator.

10. Alley Orientation. When an accessory dwelling unit is adjacent to an alley, every effort shall be made to orient the accessory dwelling unit toward the alley with the front access door and windows facing the alley. Parking provided off the alley shall maintain a twenty-four foot back out which includes the alley. Fences shall be three feet six inches along the alley. However, higher fencing up to six feet can be considered in unusual design circumstances subject to review and approval of the Zoning Administrator.

11. Design. The design of the accessory unit shall relate to the design of the primary residence by use of the similar exterior wall materials, window types, door and window trims, roofing materials and roof pitch.

12. Large Home Design Permit. The square footage of an attached or detached accessory unit shall be counted with the square footage of the single family home in determining whether a large home design permit is required.

13. Open Space and Landscaping: The site plan shall provide open space and landscaping that are useful for both the accessory dwelling unit and the primary residence. Landscaping shall provide for the privacy and screening of adjacent properties.

14. The following standards apply to accessory dwelling units located outside the standard side and rear yard setbacks for the district.

The entrance to the accessory unit shall face the interior of the lot unless the accessory unit is directly accessible from an alley or a public street.

Windows which face an adjoining residential property shall be designed to protect the privacy of neighbors; alternatively, fencing or landscaping shall be required to provide screening.

15. A notice of application shall be sent to the immediately adjoining neighbors.
(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.170 Deed Restrictions.

Before obtaining a building permit for an accessory dwelling unit the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:

1. The accessory unit shall not be sold separately.
2. The unit is restricted to the approved size.
3. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence.
4. The above declarations are binding upon any successor in ownership of the property; lack of compliance shall be cause for code enforcement and/or revoking the conditional use permit.
5. The deed restrictions shall lapse upon removal of the accessory unit.
(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

26.16.180 Zoning Incentives.

The following incentives are to encourage construction of accessory dwelling units.

1. **Affordability Requirements for Fee Waivers.** Accessory units proposed to be rented at affordable rents as established by the city, may have development fees waived per Part 4 of Chapter 24.16 of the Zoning Ordinance. Existing accessory dwelling units shall be relieved of the affordability condition upon payment of fees in the amount previously waived as a result of affordability requirements, subject to an annual CPI increase commencing with the date of application for Building Permit.
2. **Covered Parking.** The covered parking requirement for the primary residence shall not apply if an accessory dwelling unit is provided.
3. **Front or Exterior Yard Parking.** Three parking spaces may be provided in the front or exterior yard setback under this incentive with the parking design subject to approval of the Zoning Administrator. The maximum impervious surfaces devoted to the parking area shall be no greater than the existing driveway surfaces at time of application. Not more than 50% of the front yard width shall be allowed to be parking area.
4. **Tandem Parking.** For a parcel with a permitted accessory dwelling unit, required parking spaces for the primary residence and the accessory dwelling unit may be provided in tandem on a driveway. A tandem arrangement consists of one car behind the other. No more than three total cars in tandem may be counted towards meeting the parking requirement.
5. **Alley Presence.** If an accessory dwelling unit faces an alley as noted in the design standards in this chapter, the limitations on rear yard coverage as specified in Section 24.16.160 (2) and/or Section 24.12.140 (5) do not apply.
(Ord. 2003-17 § 2 (part), 2003; Ord. 2003-16 § 2 (part), 2003).

24.16.300 Units Eligible for Fee Waivers.

Developments involving residential units affordable to low or very-low income households may apply for a waiver of the following development fees:

1. Sewer and water connection fees for units affordable to low and very low income households.
2. Planning application and planning plan check fees for projects that are one hundred percent affordable to low and very-low income households.
3. Building permit and plan check fees for units affordable to very-low income households.
4. Park land and open space dedication in-lieu fee for units affordable to very low income households.
5. Parking deficiency fee for units affordable to very-low income households.
6. Fire fees for those units affordable to very-low income households.
(Ord. 93-51 § 6, 1993).

24.16.310 Procedure for Waiver of Fees.

A fee waiver supplemental application shall be submitted at the time an application for a project with affordable units is submitted to the city.
(Ord. 93-51 § 6, 1993)

9. Guest house or rooms for guests in an accessory structure, but only on lots of at least two (2) acres and provided such house is without kitchen facilities, is used for the occasional housing of guests of the occupants of the principal structure and not as rental units or for permanent occupancy as housekeeping units.
10. Parking and loading spaces, off-street, as regulated by Article 7.
11. Parking of commercial vehicles/tractor trailers subject to the following limitations:
 - A. In a residential district, parking of not more than one commercial vehicle per occupant/operator shall be allowed, but not to include any tractor trailer or vehicle exceeding one and one-half (1½) ton capacity. Parking shall not be in any required front or side yard.
 - B. In the rural zoning districts, parking of not more than one commercial vehicle/tractor trailer per occupant/operator shall be allowed, except the parking of any tractor trailer or vehicle exceeding one and one-half (1½) ton capacity shall not be permitted on a parcel of one (1) acre or less. Parking also shall not be permitted in any required setback. Vehicles utilized for agriculture shall not be included in this limitation.
12. Parking of small cargo trailers and major recreational equipment in an R District including but not limited to boats, boat trailers, camping trailers, travel trailers, motorized dwellings, tent trailers, houseboats and horse vans, but subject to the following limitations:
 - A. Such equipment shall not be used for living, sleeping or other occupancy when parked, or stored on a residential lot or in any other location not approved for such use.
 - B. Such equipment six (6) feet or more in average height, not parked or stored in a garage, carport or other structure:
 - (1) Shall not be located in any required front or side yard.
 - (2) Shall be located at least three (3) feet from all buildings.
13. Porches, gazebos, belvederes and similar structures.
14. Quarters of a caretaker, watchman or tenant farmer, and his family, but only in the Rural Districts at a density not to exceed one (1) unit per fifty (50) acres.
15. Recreation, storage and service structures in a mobile home park.
16. Residence for a proprietor or storekeeper and their families located in the same building as their place of occupation.
17. Signs, as permitted by Article 8.

18. Statues, arbors, trellises, barbecue stoves, flagpoles, fences, walls and hedges. Notwithstanding the limitations of Section 6-101 of this section, a flagpole for any flag meeting the limitations of Section 8-301.6 may be located on an adjoining property under common ownership.
19. Storage outside, to include a compost pile, farm equipment and inoperable and junk vehicles on any lot as provided for in Section 2-508, provided such storage and/or vehicle in a Residential District is located on the rear half of the lot; is screened from view from the first story window of any neighboring dwelling; and the total area for such outside storage, excluding the area occupied by one (1) junk vehicle, does not occupy more than 100 square feet.
20. Storage structures incidental to a permitted use, provided no such structure that is accessory to a single family detached or attached dwelling in the Residential Districts shall exceed 200 square feet in gross floor area. Such structures exceeding 200 square feet shall not be deemed accessory structures and shall be subject to the bulk regulations for principal structures for the zoning district in which located.
21. Swimming pool and bathhouses, private.
22. Tennis, basketball or volleyball court and other similar private outdoor recreation uses.
- 23a. Wayside stands, subject to the following limitations:
 - A. Shall be permitted only on a lot containing at least 2 acres.
 - B. Structures shall not exceed 400 square feet in gross floor area.
 - C. Shall be permitted only during crop-growing season, with structures removed except during such season.
 - D. Sales shall be limited to agricultural products grown on the property and value added agricultural products produced on the property. For the purpose of this Ordinance, plants which are balled, burlapped or bedded shall not be considered as growing on the same property.
 - E. Shall not be subject to the location requirements set forth in Section 105 below, but shall be located a minimum distance of thirty (30) feet from the street line and no closer than ten (10) feet to any lot line which abuts an R District.
 - F. Shall be located so as to provide for adequate off-street parking spaces and safe ingress and egress to the adjacent street.
 - G. Notwithstanding the provisions of Article 8, a wayside stand may have one (1) building mounted sign which does not exceed ten (10) square feet in area, mounted flush against the stand.

23b. The sale of fruit and vegetables shall be allowed as an accessory use to farm supply establishments and retail nursery and greenhouses.

24. Ponds, but subject to the following limitations:

A. In addition to the regulations set forth in Subsection C below, ponds in Rural Zoning Districts shall also be subject to the following regulations:

1. Ponds, not requiring State of Virginia approval, shall be permitted in any Rural zoning district after the issuance of zoning permit.
2. Ponds requiring State of Virginia approval shall be permitted in any Rural Zoning District upon State approval and issuance of a zoning permit.

B. In addition to the regulations set forth in Subsection C below, ponds not located within a Rural zoning district shall also be subject to the following regulations:

1. Ponds of more than 1 acre-foot in volume, or with a drainage area of 20 acres or more, shall be designed and inspected by a licensed professional engineer or other professional licensed or certified by the State of Virginia to do such work. The pond plans submitted to the Department of Community Development shall contain the professional's signature and date certifying that the "Site, soil and design standards meet, at a minimum the current Virginia Natural Resources Conservation Service (NRCS) Standards and Specifications for Ponds." These will be reviewed and approved as part of the construction plan and profile approval process. An exception to this requirement is a pond located on property which is being utilized for agricultural uses as designated within Section 3-318. Only a zoning permit issuance is required, unless the threshold conditions outlined in paragraph F are achieved.
2. Ponds of less than 1 acre-foot in volume and with a drainage area of less than 20 acres shall be permitted upon the issuance of any applicable State of Virginia approval and a zoning permit.

C. All Zoning Districts: Ponds in all zoning districts shall be subject to the following regulations:

1. The pond shall be located so that the 100 year flood pool and spillway is located not less than 50 feet from an adjacent property line unless with the written consent of the owner(s) involved, is obtained and submitted with the zoning permit application.
2. No land shall be disturbed in the construction of the pond that is less than 25 feet from an adjacent property line unless with the written consent of the owner(s) involved, is obtained and submitted with the zoning permit application.

3. The property owner shall at all times comply with State and Federal requirements regarding impoundment structures.
4. Dams - The State Water Control Board regulates impounding structures which have a maximum capacity greater or equal to 50 acre-feet or a height greater than 25 feet. The design criteria presented below apply to impounding structures, which have a height greater than or equal to 15 feet and up to 25 feet. These impounding structures will be reviewed and approved by the County, and shall conform to all design criteria listed in NRCS Pond Specification Number 378, or any equivalent design criteria listed in an alternative source accepted by the County Engineer. The following supplementary criteria shall also apply:
 - a. The height of the dam (H_d) is defined as the vertical distance from the foundation to the water surface elevation plus freeboard allowance for wind setup, waves, and frost action.
 - b. A slope stability analysis will be performed to address seepage through the structure, pore water pressure within the structure, slope pressure, and slope protection.
 - c. A maintenance program will be provided in conformance to "Safety Evaluation of Small Earth Dams", 2nd Ed., Natural Resources Conversation Service, Virginia Department of Conservation and Historic Resources.
25. Yard/garage sales access to residential uses, subject to the following limitations (no Zoning Permit required):
 - A. Not more than two yard sales may be conducted on a lot in any calendar year.
 - B. A yard sale shall not continue for longer than two days which shall be consecutive.
 - C. Items offered for sale shall be used household goods or articles created or substantially processed on the premises by the residents thereof, and shall be the property of those residents.
 - D. Yard sales in excess of two (2) per year may be granted with special permit approval. In no case shall more than 6 yard sales be permitted in any calendar year.
26. Animal waste storage facility (including but not limited to a pile, storage tank or pit) subject to the following limitations:
 - A. Approval from the State Water Control Board.
 - B. Approval in writing by the John Marshall Soil and Water Conservation District to location and retention facility design.

27. The following activities shall be allowed by-right as accessory uses to agriculture:
- A. The sale of Agricultural Products produced on the property, and the sale of Value-Added Agricultural Products produced from products grown on the property. The sale of Agricultural Products includes pick-your-own operations.
 - B. On-site processing to create Value-Added Agricultural Products, provided that: (i) at least 50 percent of the Agricultural Products being processed on-site are produced on-site; (ii) on-site shall mean the specific property on which the processing occurs or on property adjacent thereto under the same ownership; (iii) produced on-site, with respect to poultry, shall mean raised on-site from hatchling to harvest and with respect to other livestock, shall mean pastured on-site for at least six (6) months or weaning to harvest; (iv) all saw mills shall be enclosed for sound attenuation purposes; and (v) all processing shall comply with all other state and federal regulations.
 - C. The sale of Agricultural Products produced at other Virginia properties; and the sale of Value-Added Agricultural Products produced from products grown in Virginia.
 - D. In the RA zoning district only, Agriculture-Related Activities that specifically promote, and are directly connected to, agricultural products or Value-Added Agricultural Products produced on the property where the activity is taking place. The number of such events is not limited, except that if such events allow customers or members of the public to utilize, or result in their utilization of, buildings or structures located on the property more than twelve (12) times per year, then such structures and buildings shall comply with the Virginia Uniform Statewide Building Code, and Site Plan and Special Exception approval shall be required pursuant to Sections 3-309.14, 15 & 16 of this Ordinance.
 - E. Sale of Incidental Farm-Related Promotional Items.
 - F. The combined percentage of Annual Farm Sales Revenue from the activities described in Sections C, D, and E above shall not exceed 50% of the Annual Farm Sales Revenue.
 - G. Notwithstanding the limitations of Section 2-302.2, any accessory use meeting the limitations above shall be allowed as an accessory use pursuant to this section, regardless of whether such use is separately listed as a primary use in Section 3-300 of the Ordinance.
28. Fundraising by local non-profit and governmental entities at governmental athletic recreation uses permitted pursuant to Section 3-311.18 of this Ordinance, if the accompanying standards are met. Fundraiser is defined as the raising of funds for the development and operation of the governmental

athletic property upon which the event is held. A no-fee administrative permit is required.

For purposes of this definition, the term “event” shall not include any sports competitions in which youth or local adults are the principle users of the facility. Fundraising shall be subject to the following performing standards.

- A. In no event shall fireworks, hot air balloons or helicopters be used for any event(s).
 - B. In no case shall attendance exceed 1,000, based upon the capacity of the facility.
 - C. The maximum number of events shall not exceed two (2) in any calendar week.
 - D. All grass areas used for parking shall be mowed and maintained as to minimize the risk of vehicle and field fires.
 - E. The non-profit or governmental entity shall provide adequate security, emergency, traffic control, sanitation, and refreshment services at every event or activity.
 - F. The applicant shall require its employees/volunteers and all invitees to strictly comply with State burning laws and copies of such laws shall be posted on site.
 - G. The applicant shall conform at all times to County Health Department regulations.
 - H. All uses under this category shall be conducted so as to meet all noise performance standards enumerated in Article 9 of the Fauquier County Zoning Ordinance.
 - I. During events with outdoor music or amplified sound, the maximum permitted sound pressure noise levels shall not exceed 60 decibels at the property line (s).
 - J. All events shall be conducted between the hours of 8:00 a. m. and 11:00 p. m. provided that all outdoor music shall cease no later than 10:00 p.m. Event preparation and breakdown shall cease by 11:00 p. m.
 - K. All lighting shall be in conformance with the Fauquier County Zoning Ordinance and positioned downward, inward and shielded to eliminate glare from all adjacent properties.
 - L. Virginia Department of Transportation approval and installation of entrance shall occur prior to any event being held.
29. Fundraising by local non-profit and governmental entities shall be permitted as an accessory use to residential uses in the Rural

Agriculture and Rural Conservation zoning districts, if the accompanying standards are met. An administrative permit is required.

Fundraising under this subsection shall be subject to the following performance standards.

- A. In no event shall fireworks, hot air balloons or helicopters be used for any event(s).
- B. In no case shall attendance exceed 1,000, based upon the capacity of the facility.
- C. The maximum number of events shall not exceed two (2) in any calendar year.
- D. All grass areas used for parking shall be mowed and maintained as to minimize the risk of vehicle and field fires.
- E. The applicant shall provide adequate security, emergency services, traffic control, sanitation and refreshment services at every event activity.
- F. The applicant shall require its employees/volunteers and all invitees to strictly comply with State burning laws and copies of such laws shall be posted on site.
- G. The applicant shall conform at all times to County Health Department regulations.
- H. All uses under this category shall be conducted so as to meet all noise performance standards enumerated in Article 9 of the Fauquier County Zoning Ordinance.
- I. During events with outdoor music or amplified sound, the maximum permitted sound pressure noise levels shall not exceed 60 decibels at the property line(s).
- J. All events shall be conducted between the hours of 8:00 a.m. and 11:00 p.m. provided that all outdoor music shall cease no later than 10:00 p.m. event preparation and breakdown shall cease by 11:00 p.m.
- K. All lighting shall be in conformance with the Fauquier County Zoning Ordinance and positioned downward, inward and shielded to eliminate glare from all adjacent properties.
- L. Virginia Department of Transportation approval and installation of entrance shall occur prior to any event being held.
- M. The applicant shall provide a copy of the local non-profit's IRC §501.c. determination letter from the Internal Revenue Code or a letter from the

governmental agency stating that the event is being held for the benefit of the governmental agency.

- N. The site shall contain a minimum of 50 acres and have a minimum of 300 feet of frontage on a road designated by the County as a major collector (or higher) in the Comprehensive Plan unless the Zoning Administrator in issuing this permit determines that the type and amount of traffic generated by the fund raising event is such that it will not cause an undue impact on the neighbors or adversely affect safety of road usage.

30. A Family Day Home for five (5) or fewer children.

31. The letting for hire of not more than two rooms to not more than two persons for periods no shorter than one month.

32. Temporary family health care unit (Unit) shall be allowed accessory to a single-family dwelling located on a lot, provided that:

- A. Only one Unit shall be permitted per lot;
- B. No more than one person shall occupy the Unit;
- C. The Unit shall not exceed 300 gross square feet in area;
- D. The Unit shall comply with the setback requirements for primary structures in the district;
- E. The Unit shall primarily be assembled at a location other than the lot on which it is to be located;
- F. The Unit shall not be placed on a permanent foundation;
- G. A physician licensed in Virginia has certified in writing that the person who occupies or intends to occupy the Unit is mentally or physically impaired because he/she requires assistance with two or more activities of daily living during more than half the year;
- H. The caregiver for the mentally or physically impaired occupant of the Unit lives in the primary residence on the lot, and is an adult related by blood, marriage, or adoption or is the legally appointed guardian of the occupant of the Unit;
- I. The Unit shall be removed within thirty (30) days of the impaired person no longer meeting the certification requirements or no longer residing within the Unit;
- J. The Unit shall not be used for, or converted to, another use;
- K. No signage advertising or promoting the existence of the Unit shall appear on the Unit or anywhere on the property;

- L. The Unit shall be required to connect to any water, sewer, and electric utilities that are serving the primary residence on the property and shall comply with all applicable codes and requirements, including permits, for such connection.
- M. A zoning permit shall be obtained pursuant to Section 13-500 prior to placement of such Unit on the lot. In conjunction with the request for the zoning permit and annually thereafter, the following shall be submitted to the satisfaction of the Zoning Administrator:
 - i. documentation of the need for care for the mentally or physically impaired person to include a letter of certification written by a licensed physician;
 - ii. documentation of the relationship of the mentally or physically impaired person and caregiver;
 - iii. permission for the Zoning Administrator or her representative to inspect, at reasonably convenient times, the Unit and the single-family dwelling on the lot to determine compliance with this section.
 - iv. any additional information deemed necessary by the Zoning Administrator to assure compliance with this section.

33. Wind Energy Systems, subject to the following limitations:

- A. A single Wind Energy System shall be allowed in the RA and RC Districts, and only on those lots containing a minimum of two (2) acres. For those lots in the RA and RC Districts containing a minimum of fifty (50) acres, an additional Wind Energy System is allowed subject to these limitations.
- B. The Wind Energy System shall be for on-site use only. A system is considered an on-site Wind Energy System only if it supplies electrical power solely for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company, in compliance with the Virginia Net Energy Metering Law (20 VAC 5-315-30) and its accompanying regulations.
- C. Wind Energy Systems up to a maximum of 45 feet in height may be approved by the Zoning Administrator with an administrative permit. However, freestanding Wind Energy Systems up to a maximum of 60 feet in height may be approved by the Zoning Administrator when located within twenty-five (25) feet of an existing structure, but only in those cases when the applicant can demonstrate that the additional height is required for optimal operation of the system. No administrative permit

shall be approved for any Wind Energy System which does not comply with every standard set forth in this Section 6-102.33.

For purposes of this section, height of a Wind Energy System shall be measured from the lowest point of the finished grade of the fixed portion of the structure to the uppermost projection of the arc of the blades on the turbine itself for freestanding systems. For roof mounted vertical access wind turbines, the height shall be measured from point of the roof where such is attached to the uppermost projection of the turbine itself.

- D. No freestanding Wind Energy System shall be located any closer to any adjacent property line than a minimum distance equal to 110% of its maximum height, as measured above. In addition, a freestanding wind energy system shall be located no closer than a minimum distance equal to 150% of its maximum height from any residential dwelling on an adjacent property. These setbacks may be reduced by notarized consent of the owner of the adjacent property whose property line or dwelling falls within a specified setback area and upon execution of a deed of easement for the benefit of the property on which the Wind Energy System is to be erected, prohibiting construction of any new structure within the specified easement.

The setback requirements for roof mounted vertical access wind turbines shall be the same as those of the structures on which they are located.

- E. No Wind Energy System shall be located as to project above a ridgeline.
- F. No lattice type towers shall be allowed for Wind Energy Systems. In addition, the base of any tower shall not be climbable for a distance of twelve (12) feet.
- G. Wind Energy Systems shall maintain a galvanized steel finish and shall be a non-obtrusive color such as white or gray. As an alternative to further reduce visible obtrusiveness, wind energy systems may be painted to better conform to the surrounding environment, as determined by the Zoning Administrator.
- H. The applicant must provide information demonstrating that the system will be used for the generation of utility power for private, on-site consumption. In addition, the applicant shall also provide evidence that the provider of electrical service to the site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the application states that the system will not be connected to the local electricity grid.
- I. No component of the wind energy system shall be artificially lighted unless required by the Federal Aviation Administration (FAA) or appropriate authority.
- J. No signs, as defined in Article 8, are permitted to be located on any component of the wind energy system.

- K. Any wind energy system that has not been operated for a continuous period of twelve (12) months shall be considered abandoned and the registered property owner shall remove the system upon receipt of notice from the Zoning Administrator.

6-103

Accessory Uses Not Permitted

1. Deleted.
2. Junkyards, scrap heaps or refuse piles except as specifically permitted in Section 102 above.

6-104

Use Limitations

1. No accessory structure shall be occupied or utilized unless the principal structure to which it is accessory is occupied or utilized.
2. All accessory uses and structures shall comply with the use limitations applicable in the zoning district in which located.
3. All accessory uses and structures combined shall cover no more than thirty (30) percent of the areas of the required rear yard.
4. All accessory uses and structures shall comply with the maximum height regulations applicable in the zoning district in which they are located, except as may be qualified in Section 2-506.
5. In residential districts the use of barbed wire fences shall not be permitted on lots less than twenty-five (25) acres in size; however, barbed wire strand(s) may be used to enclose storage areas or other similar industrial and commercial uses or swimming pools. The barbed wire strands shall be restricted to the uppermost portions of the fence and shall not extend lower than a height of six (6) feet from the nearest ground level.

6-105

Location Regulations

1. If an accessory-type building is attached to a principal building by any wall or roof construction, it shall be deemed to be a part of the principal building and shall comply in all respects with the requirements of this Ordinance applicable to a principal building.
2. Off-street parking and loading spaces shall be located in accordance with the provisions of Article 7.
3. Signs shall be located in accordance with the provisions of Article 8.
4. Wayside stands shall be located in accordance with the provisions of Paragraph 23 of Section 102 above.

5. Ponds shall be located in accordance with the provisions of Paragraph 24 of Section 102 above.
6. Barns shall not be located less than 100 feet from any property line.
7. Houses, sheds, pens and other similar structures on lots of five acres or less for the housing of livestock shall be a maximum of 150 square feet in footprint area and set back 25 feet from the side and rear lot lines and not permitted in any required minimum front yard.
8. The following regulations shall apply to the location of all accessory structures or uses except those specifically set forth in Paragraphs 1-7 above.
 - A. An accessory structure or use, no part of which exceeds seven (7) feet in height, may be located in any part of any side or rear yard, except as qualified in Section 2-505.
 - B. No accessory structure or use shall be located in any required minimum front yard, except fences which do not exceed five feet in height, statues, arbor, trellis or flagpole, gate and gate posts.
 - C. No accessory structure or use which exceeds seven (7) feet in height shall be located in any required minimum side yard except as may be expressly permitted by a variance granted in accordance with the provisions of Part 4 of Article 13.
 - D. No accessory structure or use which exceeds seven (7) feet in height shall be located closer than a distance equal to its height to any lot line in the rear yard except as may be expressly permitted by a variance granted in accordance with the provisions of Part 4 of Article 13.
 - E. On a corner lot, the rear line of which adjoins a side lot line of a lot to the rear, no accessory structure or use which exceeds seven (7) feet in height shall be located:
 - (1) Nearer to any part of the rear lot line that adjoins the side yard on the lot to the rear than a distance equal to the required minimum side yard on such lot to the rear, or,
 - (2) Nearer to the side street line than a distance equal to the required front yard on the lot to the rear.
9. Wind Energy Systems shall be located in accordance with the provisions of Paragraph 33 of Section 102 above.

PART 2

6-200

ACCESSORY SERVICE USES

6-201

Authorization

Accessory service uses, as defined in Article 15, are permitted in connection with certain principal uses as set forth below when expressly authorized in the zoning district regulations.

6-202

Permitted Accessory Service Uses

1. Accessory to a principal use of multiple family dwellings when such dwelling or dwelling complex has a minimum of 250 dwelling units:
 - A. Eating establishments.
 - B. Group day care facilities or day care centers.
 - C. Personal service establishments.
 - D. Retail sales establishments selling convenience merchandise.
2. Accessory to a principal use of offices, industrial establishments or institutional buildings in the Commercial and Industrial Districts when such principal use has a gross floor area of at least 100,000 square feet, except as qualified below:
 - A. Business service and supply service establishments.
 - B. Eating establishments.
 - C. Group day care facilities or day care centers.
 - D. Health clubs, spas, sauna and steam baths, swimming pools, indoor tennis courts, and other similar facilities but not including places for the training of athletes for competition.
 - E. Offices for professional people associated with an industrial establishment or institutional building, with no limitation on the gross floor area of the principal use.
 - F. Personal service establishment.
 - G. A single residence for a watchman, custodian, proprietor or owner whose employment or business is directly related to the principal use, with no limitation on the gross floor area of the principal use.
 - H. Retail sales establishments selling convenience merchandise.

6-203

Use Limitations

In addition to the use limitations applicable to the zoning district in which located, all accessory service uses shall be subject to the following use limitations:

1. Accessory service uses shall be designed to cater primarily to the residents or employees of the principal use with which they are associated.
2. With the exception of those uses set forth in Paragraph 3 below, all accessory service uses shall be located in the same building as the principal use, and public access to an accessory service use shall be only from an interior lobby or corridor of the building in which located.
3. Accessory service uses in the C-3 District may be located in a freestanding building separate from the principal use, and eating establishments in the I-1 District may also be located in a freestanding building; but such freestanding buildings shall be allowed only in those locations shown on an approved development plan for a planned office or industrial park. The use limitations and standards set forth in this Part shall also apply to such a freestanding accessory service use.
4. The aggregate area of all accessory service uses shall not exceed fifteen (15) percent of the total gross floor area of the principal building or buildings.
5. No accessory service use shall be located above the second floor of the building in which located, with the exception of:
 - A. The residence of a proprietor or owner which may be located on any floor.
 - B. The offices for professional people which may be located on any floor.
 - C. An eating establishment which may be located in a rooftop penthouse.
6. Signs for accessory service uses shall be regulated by the provisions of Article 8.

PART 3

6-300

HOME OCCUPATIONS

6-301

Authorization

Home occupations are permitted as an accessory use to residential use within all dwelling units subject to the following provisions and any use limitations applicable in the zoning district in which located. Except as otherwise specifically authorized in the standards set forth below, only members of the household residing on the premises may be engaged in a home occupation. More than one home occupation shall be allowed in a single residence only if the cumulative impacts of such home occupations are no more than those authorized under the standards and limits of this section.

For purposes of this ordinance, Home Occupations are grouped into two categories. Minor Home Occupations may be authorized by approval of an

administrative permit by the Zoning Administrator. Major Home Occupations require authorization by approval of a special permit by the Board of Zoning Appeals.

6-302

Minor Home Occupations Allowed by Administrative Permit

1. An administrative permit authorizing a home occupation may be issued by the Zoning Administrator for any home occupation meeting the following limitations:
 - A. The proposed home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes. In no case shall more than 25% of the gross floor area of the dwelling be utilized for a home occupation. Alternatively, the use may occupy up to 500 square feet of an accessory structure.
 - B. Other than family members living on the premises, no more than one employee who comes to the premises shall be employed in the home occupation.
 - C. All public contact related to such a use shall be limited to the period between 7:00 a.m. and 8:00 p.m.
 - D. All activities related to the home occupation shall occur indoors. There shall be no change in the outside appearance of the building or lot, nor other visible evidence of the conduct of such home occupation, including display of goods, or storage of equipment or materials outside of a fully enclosed structure. Notwithstanding the prior sentence, trailers consistent with the limitations of Section 6-102.12 may be utilized in the Home Occupation further provided the area of such trailer is counted toward the area limits of 6-302.1.A and such trailer displays no commercial signage or logo. Goods, equipment, and materials related to the Home Occupation may be stored in such trailer provided the trailer is completely enclosed.
 - E. No retail or wholesale sales shall occur unless:
 - i. No clients or customers come to the site in conjunction with the sales; all sales occur off-premises or via telephone, mail, computer, etc.; or
 - ii. The business is a "Direct Sales" type business, where customers are on the premises only by prior, individual invitation.
 - F. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood. Deliveries shall be limited to normal daily deliveries by public and private mail carriers.
 - G. Academic or other instructions may not be given to more than four persons at the same time.

- H. The applicant shall demonstrate that adequate parking area is available to serve the use. No such parking shall be located in a required front yard except within an existing driveway.
- I. No equipment or process used in such home occupation shall create noise, vibration, glare, fumes, odors, or electrical interference detectable off the lot.
- J. No commercial vehicles related to the home occupation beyond those authorized by Section 6-102 (11) shall be parked or regularly brought to the premises, nor shall any such vehicles be parked on any public or private street within ¼ mile of the premises.
- K. Signage shall be limited to that authorized by 8-1401 (1).
- L. Such uses shall not be listed in Section 6-304 or be similar thereto, as determined by the Zoning Administrator.

6-303

Major Home Occupations Allowed by Special Permit Approval

The following home occupations may be authorized as a Major Home Occupation by approval of a special permit by the Board of Zoning Appeals:

- 1. Any home occupation meeting all standards set forth in Section 5-201.
- 2. Small contracting business in the RC, RA,V, C-2, I-1 and I-2 districts, subject to the standards set forth in Section 5-202.
- 3. Auto repair garage in the RC, RA, RR-2, I-1 and I-2 districts subject to the standards set forth in Section 5-203.
- 4. Classic car sales subject to the standards set forth in Section 5-204.
- 5. Gunsmithing and the accessory sale of firearms subject to the standards set forth in Section 5-205.
- 6. Pet grooming subject to the standards set forth in Section 5-206.

6-304

Uses Not Permitted as Home Occupations

Permitted home occupations shall not in any event be deemed to include:

- 1. Retail uses except those specifically authorized by Section 5-201 (4), 6-302 (1) (E), or 6-303(5);
- 2. Funeral chapel or funeral home;
- 3. Assembly uses, including places of worship;

4. Medical or dental office, clinic, hospital, or care facility [Note: Medical/dental office uses may be authorized by special permit in the residential districts under Section 3-319];
5. Renting of trailers, equipment, vehicles, machinery;
6. Clubs, eating or drinking establishments;
7. Kennel, veterinary clinics/hospitals, pet grooming (except as specifically authorized in 6-303 (6));
8. Bed and breakfast, tourist home;
9. Abattoir;
10. Motor vehicle related uses except as specifically authorized in Section 6-303(3) & (4) above, or transportation service establishments meeting those standards for a Minor Home Occupation found in Section 6-302 above;
11. Recreation uses;
12. Adult entertainment activities/businesses;
13. Dismantling, junk, scrap or storage yards (except small contracting business as specifically authorized by 6-303(2)).

PART 4

6-400

FARM WINERIES

6-401

By-Right Accessory Uses at a Farm Winery

The following uses and activities shall be considered by-right uses accessory to the production and harvesting of grapes at a FARM WINERY, and shall be allowed at a FARM WINERY upon approval of a Zoning Permit pursuant to Section 13-500 of the Ordinance, subject to the use limitations set forth herein and in Sections 6-402 and 6-403:

1. The On-Premises sale of wine during Regular Business Hours, or if approved, during Extended Business Hours;
2. Wine Tasting and Consumption conducted On-Premises at a Farm Winery during Regular Business Hours, or if approved, during Extended Business Hours;
3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 of the Code of Virginia and regulations of the ABC Board;
4. The sale and shipment of wine to Alcoholic Beverage Control Board licensed wholesalers, and to out of state purchasers in accordance with Title 4.1 of the Code of Virginia and regulations of the ABC Board, and federal law;
5. The storage, warehousing and wholesaling of wine in accordance with Title 4.1 of the Code of Virginia and regulations of the ABC Board, as well as federal law;

6. The sale of Wine-Related Items incidental to the sale of wine during Regular Business Hours, or if approved, during Extended Business Hours;
7. Private personal gatherings held by the owner of a Farm Winery who resides at such Farm Winery (or on property adjacent thereto that is owned or controlled by such owner) where wine is not sold or marketed at such event; and further provided that such private personal gathering is not otherwise regulated pursuant to the provisions of the Zoning Ordinance;
8. Light Accompaniments served in conjunction with Wine Tasting and Consumption during Regular Business Hours, or if approved, during Extended Business Hours; and
9. Up to two times in any calendar month, activities or events that would otherwise fall within the definition of a Special Event, but which are limited to 35 invitees or ticketed attendees, and held when the Farm Winery is closed to the general public, and in any case prior to Closing Time; provided that in lieu of holding any one such authorized monthly 35-person activity or event in any month, a Farm Winery may instead serve, once in any calendar month, Catered Food to the general public in conjunction with Wine Tasting and Consumption (and not in conjunction with any ticketed or by-invitation activity or event) during Regular Business Hours, or if approved, Extended Business Hours.

6-402

General Standards and Use Limitations at a Farm Winery

The following standards and use limitations shall apply to all uses at a Farm Winery:

1. Noise: Sound generated by outdoor amplified music shall not be audible at or beyond the property line of the Farm Winery. Outdoor amplified music shall include amplified music emanating from a structure, including open pavilions and temporary structures such as tents. In addition, no noise emanating from a Farm Winery shall exceed the noise limits set forth in Section 9-700.
2. Lighting: Lighting shall be fully shielded as set forth in Section 9-1005 and shall comply with the general requirements set forth in Sections 9-1006.4 and 9-1006.7. Structures and uses requiring building permit approval because of the extent of Special Events shall be subject to all lighting limitations applying to commercial uses.
3. Setbacks: Any structure to be utilized as part of a Farm Winery where any Special Events will occur shall be located a minimum of 300 feet from all lot lines; provided that any existing Farm Winery structure for which the County has issued a Zoning Permit for operation as a Farm Winery prior to adoption of this Farm Winery Ordinance that does not meet the 300-foot setback requirement may remain in operation and may be expanded if such expansion is no closer to any lot line than the existing structure and is otherwise in accordance with all statutes, ordinances and regulations then applicable to such expansion.
4. Parking: Off-street parking areas shall be located no closer than 100 feet from any property line and shall be screened using fencing and/or landscaping materials;

provided that any existing parking area as of the date of this Ordinance that does not meet the 100 foot setback requirement may remain in use with appropriate screening as aforesaid. The setback requirement shall also apply to driveways providing the ingress and egress to such parking areas, except to the extent such driveways must necessarily intersect the setback area to reach the road.

5. No Food Establishments: In no case shall food be provided which results in a Farm Winery having to be licensed by the Health Department as a *Food Establishment* or *Temporary Food Establishment* as defined by the Virginia Administrative Code 12VAC-421-10.
6. Occupancy: No activities or events held at a Farm Winery, including Wine Tasting and Consumption and Special Events, shall result in more people being On-site than the authorized occupancy limits under such Farm Winery's Health Department septic permit, or under any other applicable statute, ordinance or regulation.
7. Closing Time: The Closing Time for any Special Event held at a Farm Winery shall be no later than 9:00 p.m. Monday through Thursday, 11:00 p.m. Friday and Saturday, and 10:00 p.m. Sunday.
8. Server Training: Every Farm Winery shall be required to cause its employees serving wine to the general public to participate in a bona fide server training program designed to educate servers on how to address potentially intoxicated patrons from a list of approved programs published from time to time by the Zoning Administrator.

6-403

Prohibited Accessory Uses at a Farm Winery

The following uses/activities are prohibited accessory uses at any Farm Winery:

1. Restaurants, Food Establishments as defined by the Health Department, or any activity which requires a Temporary Food Establishment Permit from the Health Department
2. Helicopter rides
3. Hot air balloons
4. Fireworks
5. Grocery, convenience or general stores
6. Go-kart, motorized bike or four-wheeler trails, tracks or rides
7. Amusement park rides
8. Flea markets
9. Farmers' markets
10. Bowling Alleys
11. Mini-golf
12. Personal Services, including beauty or spa type services
13. Lodging
14. Such other uses as are determined by the Zoning Administrator to be similar in nature or in impact to those listed above.

SEVERABILITY

Should any article, section, subsection, sentence, clause or phrase of the regulations constituting the “Farm Winery Ordinance,” to include the definitions set forth in Section 15-300, the provisions relating to by-right accessory uses set forth in Sections 6-400, or the provisions related to Administrative Permits or Special Exceptions for a Farm Winery set forth in Sections 5-1810.1 and 5-1810.2 be held unconstitutional, in violation of the restrictions set forth in Virginia Code Section 15.2-2288.3, or otherwise invalid by a court of law, such decision or holding shall have no effect on the validity of the remaining provisions hereof. It is the intent of the Board of Supervisors to enact or have enacted each section and provision of this Farm Winery Ordinance individually, and each such section or provision shall stand alone, if necessary, and be in force regardless of the determined invalidity of any other section or provision.