

TITLE 9

COMMUNITY DEVELOPMENT

Subtitle 2 — Land Development Code Division 5 — Conditions, Requirements, Development Standards & Criteria

CHAPTER 933

CONDITIONS OF APPROVAL AND DECISION CRITERIA CODE

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933.005 Title; short title

This Chapter, LCC 933.005 to 933.999, shall be known and cited as the “Linn County Conditions, Requirements, and Decision Criteria Code.” This Chapter may also be referred to and cited as the “Conditions, Requirements, and Decision Criteria Code.”

[Adopted 98-002 §3 eff 3/4/98; 99-121 §14 eff 6/30/99]

I. PERMIT CONDITIONS

933.100 Conditions; generally

(A) *Additional conditions.* Any land development decision resulting from a review required by the Land Development Code, may be subject to

the imposition of permit conditions. These permit conditions are those determined to be reasonably necessary to ensure compliance with the intent of the Land Development Code and the *Comprehensive Plan* and to aid in achieving compatibility with the applicable decision criteria. The permit conditions may include, but are not limited to:

(1) Limiting the manner in which the use is conducted, including restricting the time a certain activity may take place and restraints to minimize such environmental effects including, but not limited to noise, vibration, air pollution, glare and odor;

(2) Establishing a special yard or other open space or land area or dimension;

(3) Limiting the height, size or location of a building or other structure;

(4) Designating the size, number, location and nature of vehicle access points;

(5) Increasing the amount of road dedication, roadway width or improvements within the road right-of-way, including bonding for improvements;

(6) Designating the size, location, screening, drainage, surfacing or other improvements of a parking area, truck loading area and vehicle circulation area;

(7) Limiting or otherwise designating the number, size, location, height and lighting of signs;

(8) Limiting the location and intensity of outdoor lighting and requiring its shielding;

(9) Requiring diking, screening, landscaping or other improvement to protect adjacent or nearby property and designating standards for the installation and maintenance of the required improvement;

(10) Imposing the time period within which the proposed use shall be developed;

(11) Establishing the duration of uses permitted, except for uses permitted outright;

(12) Designating the size, height, location and materials for a fence;

(13) Protecting and preserving existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources;

(14) Requiring that public facilities are adequate to serve the proposed use;

(15) Requiring the recording of deed covenants;

(16) Attaching applicable city development standards, including deed covenants for annexation, development to minimum site design standards and other requirements necessary to implement urbanization policies;

(17) Such other conditions as will make possible the development of the county in an orderly and efficient manner conforming with the intent and purposes set forth in this Land Development Code and the *Comprehensive Plan*.

(B) *Permit conditions are final.* Permit conditions established as part of any decision are final and binding.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98]

933.110 Performance security

(A) A performance security required by the Land Development Code shall comply with this section.

(B) *Performance security requirements.*

(1) The performance security shall be for a sum determined by the County Engineer.

(2) The security required by paragraph (1) of this subsection must be sufficient to cover the cost the improvement for which the security is required. The costs may include such as but not limited to:

(a) creating, completing, repairing, restoring or rehabilitating roads.

(b) lagoons, public parks, playgrounds, community wells.

(c) truck route and reclamation plans.

(d) any repairs that may be required for diminished quality of existing public improvements.

(e) an additional percentage as determined by the Engineer to cover any inflationary costs which may be incurred during the period of performance.

(3) The form of the performance security may be a surety bond, cash deposit, or letter of credit.

(a) *A surety bond.* The applicant shall file the bond with the County Treasurer. The bond must be executed by a surety company authorized to transact business in the State of Oregon on a form approved by County Counsel.

(b) *A cash deposit.* The applicant shall deposit the amount determined by the County Engineer with the County Treasurer.

(c) *Other security.* A security deposit other than a bond or cash deposit shall be of a kind and filed in a manner approved by the Board.

(C) If the Board determines that the applicant has satisfied the conditions requiring the performance security, the security shall be released subject to written authorization of the County Engineer.

(D) If the Board determines that the applicant has failed to satisfy the conditions requiring the performance security, and if the county has unreimbursed costs or expenses resulting from such failure, the Board shall collect the costs created by the failure to perform as follows:

(1) if the applicant posted a bond, the Board shall collect on the bond.

(2) If the applicant made a cash deposit, not later than the 10th calendar day after the determination by the Board that the applicant has failed to perform, the County Treasurer shall pay into the general fund that portion of the deposit needed to reimburse the county for the costs. If any portion remains after the costs have been paid, the Treasurer shall refund the portion to the applicant. If the costs exceed the amount of the deposit, the applicant shall pay to the Treasurer the amount of the excess costs.

(3) If the applicant made a security deposit other than a bond or cash then, not later than the 10th day after the failure to perform, the Board shall negotiate or otherwise collect on as much of the security deposit as necessary to reimburse the County for the costs and shall pay the proceeds into the general fund of the County.

(E) If the amount of security exceeds the cost and expenses, the Board shall release the remainder of the security. If the amount of the security is less than the cost and expense incurred, the applicant shall be liable to the County for the difference.

[Adopted 98-002 §3 eff 3/4/98]

II. CONDITIONS OF APPROVAL; REQUIREMENTS

933.140 Approved septic system standards

(A) Except as provided in subsection (B) of this section, an approved septic system shall be located within the property boundaries of each proposed authorized unit of land and be located within the zoning district that allows the use being proposed.

(B) *Exceptions.*

(1) Existing off-site sewage lagoons, regulated by the Department of Environmental Quality (DEQ), may be used for development on land in commercial or industrial zoning districts.

(2) Holding tanks, regulated by DEQ, on land that cannot support an approved septic system authorized by the Environmental Health Program. A holding tank must nonetheless be located on the subject property.

(3) In the Rural Resource Zone, approval for a septic system may not be required if there is no existing development on the property and if no development is proposed for the property or if the proposed development would not contain any plumbing.

(4) Drainfield repairs for lawful, pre-existing uses may be made off-site, if the Environmental Health Program determines that repairs cannot be made on-site.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98]

933.150 Waiver of remonstrance

(A) The Director shall require as a condition of approval of a single-family dwelling, including the replacement of a lawfully established dwelling, under the Land Development Code in a farm or forest zone, that the landowner for the dwelling

sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(B) The Director shall require as a condition of approval of a use limited or prohibited within an ARO, that the owner of property seeking approval of that use first 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 mining within the ARO.

[Adopted 97-200 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98; 99-121 §14 eff 6/30/99; amd 99-156 §9 eff 6/30/99]

933.160 Compliance with ORSC and OSSC

(a) Review and decision on a single-family dwelling must comply with the *Oregon Residential Specialty Code (ORSC)* and the *Oregon Structural Specialty Code (OSSC)*.

(B) For purposes of determining a single-family dwelling, the following factors shall be considered when determining the existence of a dwelling unit. A single dwelling unit exists when there is:

(1) a single collection of one or more habitable rooms with:

- (a) cooking,
- (b) sleeping, and
- (c) sanitary facilities;

(2) designed and occupied, or is capable of being occupied; and

(3) capable of maintaining one household as a separate living quarter for the exclusive use of a single family.

(C) When considering whether more than one dwelling unit is present in a structure or on a unit of land, the following factors may be considered, such as, whether:

(1) there is any reasonable combination of rooms and facilities present that could support more than one household as separate living quarters;

(2) one or more of the rooms described in (C) (1) are shared by both areas because of the absence of those rooms in one of the areas; and

(3) there is one roof, one front door, one potable water source, one septic system, one power meter and one address.

(D) If a habitable structure, or a portion thereof, has a roof, wall or floor in common with any other portion of that structure, and both portions have a cooking facility each dwelling may constitute separate living quarters.

[Adopted 98-002 §3 eff 3/4/98; amd 12-315 §7 eff 12/12/12]

933.170 Stocking survey reports

The decision maker shall require as a condition of approval of a single-family dwelling allowed under LCC 933.720, 933.740, or 933.750 on lands zoned forestland that, if the authorized unit of land is more than 10 acres, the property owner submit a stocking survey report to the County Assessor and the Assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98]

933.180 Alteration, restoration, or replacement of a lawfully established dwelling

(A) As used in the Land Development Code, the alteration, restoration, or replacement of a lawfully established dwelling must meet the criteria in subsection (B) or subsection (C).

(B) For the alteration, restoration, or replacement of a lawfully established dwelling under LCC 928.915(B)(1), 928.615(B)(1) and 928.915(B)(2), the dwelling must have:

(1) intact exterior walls and roof structure;

(2) indoor plumbing consisting of kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(3) interior wiring for interior lights;

(4) a heating system; and

(5) the dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwell-

ing has existed for less than five years, from that time.

(C) For the alteration, restoration or replacement of a lawfully established dwelling, under LCC 928.325(B)(6), 925.625(B)(6) and 928.935(B)(3), the dwelling has, or formerly had:

- (1) intact exterior walls and roof structure;
- (2) indoor plumbing consisting of kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (3) interior wiring for interior lights;
- (4) a heating system; and
- (5) The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from that time.

(D) Notwithstanding subsections (B) and (C), if the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling was assessed as a dwelling until such time as the value of the dwelling was eliminated:

- (1) The destruction (i.e. by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or
- (2) The applicant establishes to the satisfaction of the County that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.

(E) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

- (1) Within one year after the date the replacement dwelling is certified for occupancy; or
- (2) If the dwelling to be replaced is, at the discretion of the Director, in such a state of

disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the Director that is not less than 90 days after the replacement dwelling authorization is issued; or

(3) If a dwelling is removed by moving it off the subject authorized unit of land to another location, the applicant must obtain land use approval to site the dwelling at the new location.

(F) Replacement dwellings that meet the criteria in subsection (B) may be sited on any part of the same authorized unit of land. The following siting standards apply when a replacement dwelling formerly had the features described in subsection (C) or was removed from the tax roll as described in subsection (D):

- (1) The replacement dwelling must be sited on the same lot or parcel:
 - (a) Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and
 - (b) If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.

(G) The replacement dwelling shall 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. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.

(H) The property owner must cause to be recorded in the deed records of the County a statement that the dwelling to be replaced has been removed, demolished or converted.

(I) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the property owner shall execute and cause to be recorded in the deed records of the county a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the Director, or

the Director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, chapter 462, section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

(J) 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. 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.

(K) The Director shall maintain a record of the authorized units of land that do not qualify for the siting of a new dwelling under the provisions of this subsection, including a copy of the deed restrictions and release statements filed under this section; and for which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued.

[Adopted 97-200 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98; 99-121 §14 eff 6/30/99; amd 12-315 §7 eff 12/12/12; amd 16-070 §10 eff 4/13/16]

933.190 Final use requirements

(A) The definitions set forth in LCC 939.030 apply to this section.

(B) *Final uses in areas not under an ARO.*

(1) Each mining area in an area not under an ARO shall be reclaimed to a final use set forth in paragraph (2) of this subsection and shall be accomplished:

(a) as specified in a reclamation plan approved by DOGAMI; or

(b) in compliance with conditions of operation imposed by DSL.

(2) Final uses authorized in areas not under an ARO are:

(a) The uses allowed outright in the zoning district;

(b) The uses permitted in the zoning district if approved; or

(c) Fish or wildlife habitat or management facilities.

(3) When mining is completed on property not under an ARO and reclamation activities are scheduled to begin, the operator may submit a new, proposed final use and reclamation plan for review by the decision maker. When the decision maker finds that the new proposal is more suitable, the new final use and reclamation plan may substitute for the original proposal provided the landowner, permittee, DOGAMI, DSL, and the County approve.

(C) *Final uses in areas under an ARO.*

(1) Each mining area under an ARO, shall be reclaimed to a final use as set forth in paragraph (2) of this subsection and be accomplished as specified in a DOGAMI approved reclamation plan or in compliance with the DSL conditions of operation.

(2) The uses set forth in this subsection are authorized within an ARO as a final use subject to any limitations set forth in this subsection:

(a) The uses allowed outright in the underlying zoning district;

(b) The uses permitted in the underlying zoning district if approved pursuant to the procedure for permitting such uses in the underlying zoning district; or

(c) Fish or wildlife habitat including habitat management facilities.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98; 99-156 §9 eff 6/30/99; amd 11-356 §1 eff 10/12/11]

933.195 Property used for religious purposes

(A) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed in a zoning district, the reasonable use of the property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs shall be allowed. However, this does not include private or parochial school

education for pre-kindergarten through grade 12 or higher education.

(B) The decision maker may:

(1) subject the property described in subsection (A) to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (A); or

(2) prohibit or restrict the use of property by a place of worship described in subsection (A) if it finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship.

(C) Notwithstanding any other provision of this Code, the decision maker may allow a private or parochial school for pre-kindergarten through grade 12 or higher education to be sited under applicable Code requirements.

[Adopted 02-313 §5 eff 8/21/02]

III. GENERAL CONDITIONAL USES DECISION CRITERIA

933.200 Statement of purpose

(a) All uses permitted conditionally are declared to be possessing such unique and special characteristics as to make impractical their being included as outright uses in any of the various zoning districts. Therefore the location and operation of conditional uses are subject to review and the issuance of a conditional use permit.

(B) The purpose of review shall be to determine:

(1) whether the proposed use is consistent with the purpose of this Development Code, and is compatible with the types of uses existing or proposed in the surrounding area or can be made compatible through the imposition of conditions or requirements, and

(2) what conditions may reasonably be required for a proposed use.

[Adopted 98-002 §3 eff 3/4/98]

933.220 Decision criteria

(A) Whenever a provision of this Land Development Code provides separate review criteria, the decision criteria set forth in subsection (C) shall not be applicable unless the decision criteria are included by reference.

(B) A conditional use permit, except as provided in (A) above, shall be granted if on the basis of the application, investigation, testimony, and evidence submitted, findings and conclusions show that all of the criteria set forth in subsection (C) have been met.

(C) *Decision criteria.*

(1) The use will be consistent with the affected zoning district's statement of purpose;

(2) The location, size, design and operating characteristics of the proposed development will be made reasonably compatible with and have minimal impact on the livability and appropriate development of abutting properties and the surrounding neighborhood, with consideration given to

- (a) scale, bulk, coverage and density;
- (b) availability of public facilities and utilities;
- (c) traffic generation and the capacity of the surrounding road network; and
- (d) other related impacts of the development.

(3) The proposed development site has the physical characteristics needed to support the use such as, but not limited to the following:

- (a) access;
- (b) suitability for on-site, subsurface sewage treatment system;
- (c) an adequate supply of potable water;

(d) location outside of a mapped geologic hazard area or of a 100-year flood plain unless it is demonstrated that the use can be designed and engineered to comply with accepted hazard-mitigation requirements; and

(4) The use will not have a significant adverse impact on sensitive fish or wildlife habitat.

[Adopted 98-002 §3 eff 3/4/98]

**IV. URBAN GROWTH AREA ZONE
(UGAZ) CONDITIONAL USES CRITERIA**

933.250 Statement of purpose

(A) The purpose of LCC 933.250 to 933.260 is to protect lands within urban growth areas. These lands are available for future annexation and urban development and incompatible interim uses are not allowed.

(B) LCC 933.250 to 933.260 establishes the decision criteria under which conditionally uses may be permitted.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98]

933.260 UGAZ decision criteria

(A) The location of any use described as a conditional use within the UGAZ may be permitted if, on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that all the criteria in subsection (B) have been met.

(B) *Decision criteria.*

(1) The proposed development is permitted and is consistent with the affected city's comprehensive plan map designations and the future city zoning.

(2) The location, size, design and operating characteristics of the proposed development are compatible with future development allowed by the affected city's comprehensive plan map designation.

(3) The affected city has reviewed the proposal and has not identified any substantial conflicts with its *Comprehensive Plan*, Facilities Plans or development standards.

(4) The location, design and site planning of the proposed development does not:

(a) preclude future urban development on the subject property or adjacent properties; or

(b) conflict with future location and placement of streets and services.

(5) If the proposed development has the potential to generate conflicts which have been determined to be detrimental to the public health,

safety and general welfare or to the overall livability of the neighborhood, then the development shall not be permitted without mitigations. The mitigations will be determined by the decision-maker. Potential conflicts include, but are not limited to noise, vibration, smoke, dust, odor, fumes, heat, glare or electromagnetic interference.

(6) The proposed site

(a) can support an on-site, subsurface sewage disposal system, and

(b) has an adequate supply of potable water.

(7) Traffic generated from the site can be adequately served by the road system servicing the site.

(8) Road access meets County standards as found in section 3.2 of the Linn County Transportation Element of the *Comprehensive Plan*.

(9) The proposed development site is located outside of a mapped geologic hazard area or of a 100-year flood plain unless it is demonstrated that the use can be designed and engineered to comply with accepted hazard-mitigation requirements.

[Adopted 98-002 §3 eff 3/4/98; 99-121 §14 eff 6/30/99]

**V. RRZ CONDITIONAL USES DECISION
CRITERIA**

933.300 Statement of purpose

The purpose of LCC 933.300 to 933.999 is to establish decision criteria to carry out the policies in LCC Chapter 928 (Rural Resource Zone Code).

[Adopted 98-002 §3 eff 3/4/98]

933.310 RRZ conditional uses; generally

(A) Conditional uses permitted in LCC 928.320 to 928.336, 928.620 to 928.636 and 928.920 to 928.936, or a partition authorized under LCC 924.500 to 924.800, may be permitted in the Rural Resource Zone, provided the decision criteria in subsection (B), any additional criteria that may be specified in this section, and other requirements of law are met.

(B) *Decision criteria.*

(1) The development site has physical characteristics needed to support the use. Those characteristics include, but are not limited to, suitability for a sewage treatment system and an adequate supply of potable water.

(2) The development will not be located within a mapped geologic hazard area or within a 100-year floodplain unless it is demonstrated that the proposal can be designed and engineered to comply with accepted hazard mitigation requirements.

(3) The proposal will not have a significant adverse impact on sensitive fish or wildlife habitat.

(4) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(5) If in the forest area of the F/F or in the FCM zoning districts, the proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

(6) The location, size, design and operating characteristics of the proposed development will be made reasonably compatible with and have minimal impact on the livability and appropriate development of nearby property. The proposed use will be reviewed with respect to scale, bulk, coverage, density, the availability of necessary public facilities and utilities, traffic generation, road capacity and safety and to other related impacts of the proposal.

(7) If in the forest area of the F/F or in the FCM zoning districts, a written statement recorded with the deed or written contract with the county is obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for the following uses.

- (a) parks and campgrounds;
- (b) reservoirs and impoundments;
- (c) medical hardship dwellings;
- (d) home occupations; and

(e) private accommodations for fishing.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98]

933.320 RRZ conditional uses subject to additional decision criteria

(A) The following conditional uses (permitted in LCC 928.320 to 928.336, 928.620 to 928.636 and 928.920 to 928.936, or a partition authorized under LCC 924.500 to 924.800) may be permitted in the RRZ provided the decision criteria in subsection (B) and other applicable decision criteria and requirements of law are met:

- (1) schools;
- (2) churches and cemeteries in conjunction with churches;
- (3) private parks, playgrounds, hunting and fishing preserves;
- (4) campgrounds, public parks and playgrounds;
- (5) community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for the residents of the local rural community;
- (6) golf courses on non-high-value farmland;
- (7) living history museum; and
- (8) firearms training facility.

(B) Decision criteria.

(1) The criteria in LCC 933.310(B)

(2) 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.

(3) Any enclosed structures or group of enclosed structures described in subsection (2) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS

215.010(2) that is in existence as of June 17, 2010.

(4) 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 this section.

[Adopted 12-315 §7 eff 12/12/12]

933.330 RRZ conditional use for utility facility necessary for public service decision criteria

(A) Conditional uses permitted in LCC 928.320(B)(5), may be permitted in the Rural Resource Zone, provided the decision criteria in subsection (B), any additional criteria that may be specified in this section, and other requirements of law are met.

(1) A utility facility that is necessary for public service.

(a) The approval criterion for this use is limited to a finding that the utility is necessary for public service and the approval is not subject to LCC 933.310.

(b) “Necessary for public service,” as that term is used in this paragraph, means that a utility facility must be situated in the EFU zoning district in order to provide the public service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(i) Technical and engineering feasibility;

(ii) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of available urban and nonresource lands;

(iv) Availability of existing rights of way;

(v) Public health and safety; and

(vi) Other requirements of state and federal agencies.

(c) Costs associated with any of the factors listed in subparagraph (b) of this paragraph may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(d) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(e) The director shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(f) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR the EFU zone or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment

request shall have no effect on the original approval.

(g) In addition to the provisions in subparagraphs (b) through (f) of this paragraph, the establishment or extension of a sewer system as defined by OAR 660-011-0060 (1) (f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(h) The provisions of subparagraphs (b) through (f) of this paragraph do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(2) An associated transmission line is necessary for public service upon demonstration that the associated transmission line meets either the following requirements of Subsection (a) or Subsection (b) of this Subsection.

(a) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;

(ii) The associated transmission line is co-located with an existing transmission line;

(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or

(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

(b) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to Subsections X.07 O(2)(c) and (d), two or more of the following criteria:

(i) Technical and engineering feasibility;

(ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable

land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;

(iv) Public health and safety; or

(v) Other requirements of state or federal agencies.

[Adopted 16-070 §10 eff 4/13/16]

933.400 Dwellings in conjunction with farm use

A dwelling may be considered customarily provided in conjunction with farm use in the EFU or in a farm area of the F/F zoning district if it meets the criteria set out in this section and the criteria found in LCC 933.310 (B) (1) to (3).

(A) *Property Size Test.* On land identified as non-HVFL, a dwelling may be considered customarily provided in conjunction with farm use if the criteria and requirements for the size test in this subsection are met.

(1) The authorized unit of land on which the dwelling will be located is at least 160 acres;

(2) The tract is currently employed for farm use as defined in ORS 215.203;

(3) 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; and

(4) Except for an accessory farm dwelling, there is no other dwelling on the subject tract.

(B) *Income test for non-HVFL.* On land identified as non-HVFL, a dwelling may be considered customarily provided in conjunction with farm use if the criteria set forth in this subsection are met.

(1) The subject tract is currently employed for the farm use, as defined in ORS 215.203, and the tract has produced in each of the last two years, or three of the last five years, or in an average of the best three of the last five years, the lower of subparagraph (a) or (b).

(a) At least \$40,000 in gross annual income from the sale of farm products; or

(b) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon.

(2) Except for an accessory farm dwelling, there is no other dwelling on lands zoned for farm or forest use owned by the farm or ranch operator or on the farm or ranch operation.

(3) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in this subsection (OAR 660-033-0135 (3) (a)).

(4) In determining the gross income required in paragraph (1) of this subsection;

(a) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(b) Only gross income from land owned, not leased or rented, shall be counted; and

(c) Gross farm income earned from a unit of land which has been used previously to qualify another unit of land for the construction or siting of a primary farm dwelling may not be used.

(C) *Income Test for HVFL.* On land identified as HVFL, a dwelling may be considered customarily provided in conjunction with farm use if the criteria set forth in this subsection are satisfied.

(1) The subject tract is currently employed for the farm use, as defined in ORS 215.203, and the tract has produced 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 the best three of the last five years; and

(2) In determining the gross income in paragraph (1) of this subsection:

(a) the cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation.

(b) Only gross income from land owned, not leased or rented, shall be counted; and

(c) Gross farm income earned from a unit of land which has been used previously to qualify another unit of land for the construction or siting of a primary farm dwelling may not be used.

(3) Except as permitted in ORS 215.283 (1) (p) (1999 edition), there is no other dwelling on lands zoned for farm or forest use owned by the farm or ranch operator or on the farm or ranch operation.

(4) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in this subsection (OAR 660-033-0135 (4) (a)).

(D) A dwelling may be considered customarily provided in conjunction with a commercial dairy farm if:

(1) The subject tract will be employed as a commercial dairy as defined in this Code; and

(2) The dwelling is sited on the same authorized unit of land as the buildings required by the commercial dairy; and

(3) Except as permitted by ORS 215.283 (1) (p) (1999 edition), there is no other dwelling on the subject tract; and

(4) 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

(5) 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

(6) The Oregon Department of Agriculture has approved the following:

(a) A permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and

(b) A Producer License for the sale of dairy products under ORS 621.072.

(E) A dwelling may be considered customarily provided in conjunction with farm use if:

(1) Within the previous two years, the applicant owned and operated a farm or ranch

operation that earned the gross farm income in the last five years or four of the last seven years as required by LCC 933.400 (C) (1) (a) or (b), or 933.400 (D) (1), whichever is applicable;

(2) The authorized unit of land on which the dwelling will be located is:

(a) Currently employed for the farm use, as defined in this Code, that produced in the last two years or three of the last five years, the gross farm income required by LCC 933.400 (C) (1) (a) or (b), or 933.400 (D) (1), whichever is applicable; and

(b) At least 80 acres in size.

(3) Except as permitted in ORS 215.283 (1) (p) (1999 edition), there is no other dwelling on the subject tract; and

(4) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income required in paragraph (1) of this subsection;

(5) In determining the gross income required in paragraphs (1) and (2) of this subsection:

(a) The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and

(b) Only gross income from land owned, not leased or rented, shall be counted.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; 99-121 §14 eff 6/30/99 (ref. ORS 215.283 (1) (f), OAR 660-033-0135)); amd 02-313 §5 eff 8/21/02; amd 12-315 §7 eff 12/12/12; amd 16-070 §10 eff 4/13/16]

933.410 Accessory farm dwellings

(A) An accessory farm dwelling may be considered customarily provided in conjunction with farm use in the EFU and in the farm area of the F/F zoning districts if it meets all of the requirements set forth in subsection (B) and LCC 933.310 (B) (1) to (3).

(B) *Decision criteria.*

(1) An accessory farm dwelling approved pursuant to this section will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing

or caring for livestock, is or will be required by the farm operator.

(2) The accessory farm dwelling will be located:

(a) On the same authorized unit of land as the primary farm dwelling; or

(b) On the same tract as the primary farm dwelling when the authorized unit of land on which the accessory farm dwelling will be sited is consolidated into a single authorized unit of land with all other contiguous authorized units of land in the tract; or

(c) On an authorized unit of land on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only 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 authorized unit of land is conveyed to another party. The manufactured dwelling does not have to be removed if it is reapproved under the applicable rules; or

(d) On an authorized unit of land on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch 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 this section shall be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

(e) On an authorized unit of land on which the primary farm dwelling is not located, when the accessory farm dwelling is located on an authorized unit of land at least 80 acres in size and the authorized unit of land complies with the gross farm income requirements in LCC 933.400 (C) (1) (a) or (b), or 933.400 (D) (1), whichever is applicable; and

(3) There is no other dwelling on lands owned by the farm operator that is vacant or

currently occupied by persons not working on the subject farm or ranch that could reasonably be used as an accessory farm dwelling; and

(4) *Income Test*. The primary farm dwelling to which the proposed dwelling would be accessory meets one of the following.

(a) *Non-HVFL*. On land identified as non-HVFL, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, on which in each of the last two years, or three of the last five years, or in the average of the best three of the last five years, the farm operator earned the lower of subparagraphs (a) or (b).

(a) At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(b) *HVFL*. On land identified as HVFL, the primary farm dwelling is located on a farm or ranch 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 the best three of the last five years.

(i) At least \$80,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In

determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(c) It is located on a commercial dairy farm as defined in this Code; and

(a) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

(ii) The Oregon Department of Agriculture has approved a permit for a “confined animal feeding operation” under ORS 468B.050 and ORS 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(5) The County shall not approve any proposed partition under LCC Chapter 924 (Partitioning Code) for an accessory farm dwelling unless that dwelling has been requalified as a dwelling in conjunction with farm use and the proposed parcels meet the minimum property size requirement of LCC 924.500 (B) (OAR 660-033-0100).

(6) An accessory farm dwelling cannot later be used to satisfy the requirements for a non-farm dwelling pursuant to OAR 660-33-130 (4).

(7) For purposes of this section, “**accessory farm dwelling**” includes all types of residential structures allowed by the applicable state building code.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98 (ref. OAR 660-033-0130 (24)); amd 02-313 §5 eff 8/21/02; amd 12-315 §7 eff 12/12/12]

933.420 Farm-relative dwellings

(A) *Farm-relative dwelling*. A farm-relative dwelling may be permitted on an authorized unit of land in the EFU and in the farm area of the F/F zoning districts if the criteria and requirements of subsection (B) are met through a Type IIA review.

(B) The dwelling shall be:

(1) for the relative of a farm operator,
(2) on property used for farm use;
(3) located on the same authorized unit of land as the dwelling of the farm operator,.

(4) occupied by a child, parent, stepparent, grandchild, grandparent, stepgrandparent,

sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse;

(5) be occupied by 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 and farm use of the farm.

(6) The criteria in LCC 933.310 (B) (1) to (3); and

(7) *Requirement*. No land division shall be permitted until the farm-relative dwelling is removed or otherwise authorized through another land use action.

(8) If the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(9) For purposes of this section, "**foreclosure**" means only those foreclosures that do not meet the definition of partition under ORS 92.010 (7) (a).

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; amd 02-313 §5 eff 8/21/02 (ref. ORS 215.283 (1) (e))]

933.500 Class-IV or worse dwellings

(A) *Class IV-or worse non-farm dwelling*. A single-family, Class-IV or worse dwelling not provided in conjunction with farm use may be permitted on an authorized unit of land in the EFU and in the farm area of the F/F zoning districts, if the criteria and requirements of subsection (B) are met through a Type IIA review.

(B) *Decision criteria*.

(1) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.

(2) The dwelling will be sited on an authorized unit of land that is predominantly composed of Class IV through Class VIII soils

that would not, when irrigated, be classified as prime, unique, Class I or Class II soils.

(3) The dwelling will be sited on an authorized unit of land created before January 1, 1993.

(4) The dwelling will not materially alter the stability of the overall land use pattern of the area.

(a) In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, the hearing authority shall consider the cumulative impact of possible new non-farm dwellings and parcels on other authorized units of land in the area similarly situated.

(b) To address this standard, the hearing authority shall:

(a) Identify a study area for the cumulative impacts analysis.

(I) The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas.

(II) Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993, and determine the potential number of non-farm dwellings and pre-85 dwellings that could be approved under LCC 933.706 and 933.707 and LCC 933.500, including identification of predominant soil classifications, the authorized units of land created prior to January 1, 1993 and the units larger than the minimum property size that may be divided to create new units for non-farm dwellings under LCC 933.510.

(iii) Make findings that describe:

(I) the study area;

(II) its boundaries;
(III) the location of the subject authorized unit of land within this area;

(IV) why the selected area is representative of the land use pattern surrounding the subject unit and is adequate to conduct the analysis required by this standard;

(V) the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph; and

(VI) whether approval of the proposed non-farm dwellings and pre-85 dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(5) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(6) If a single-family dwelling is established on an authorized unit of land as set forth in LCC 933.705 to 933.750, no additional dwelling may later be sited under this section.

(7) The property meets decision criteria in LCC 933.310 (B) (1) to (4).

(8) *Requirement.* The property shall be disqualified from special assessment pursuant to ORS 215.236.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; 99-121 §14 eff 6/30/99 (ref. ORS 215.284 (1), OAR 660-033-0139=0 (4)); 00-498 §1 eff 9/6/00; amd 12-315 §7 eff 12/12/12]

933.510 Class-VI or worse dwellings

(A) *Class-VI or worse non-farm dwelling.* A new parcel for a single-family Class-VI or worse dwelling not provided in conjunction with farm

use may be permitted on an authorized unit of land the EFU and in the F/F zoning districts, if the criteria and requirements of this subsection are met through a Type II review.

(B) *Decision criteria.*

(1) The originating parcel must have been created before January 1, 1993.

(2) The originating authorized unit of land is:

(a) Equal to or larger than 100 acres; and

(b) Is not stocked with trees to the requirements under ORS 527.610 to 527.770; and

(c) Is composed of at least 95 percent Class VI through Class VIII soils as determined in the *Soil Survey* or as determined by an acceptable soils report submitted in accordance with OAR 603-080-0040 by a soil scientist with acceptable credentials as identified in OAR 603-080-0030; and

(d) Is composed of at least 95 percent soils not capable or producing 50 cubic feet per acre per year of wood fiber.

(3) Any parcel to be created for a dwelling from the originating authorized unit of land described in paragraph (1) of this subsection will not be smaller than 20 acres.

(4) The dwelling or activities associated with the dwelling allowed under this subsection 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.

(5) The dwelling will not materially alter the stability of the overall land use pattern of the area.

(a) In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, the hearing authority shall consider the cumulative impact of possible new non-farm dwellings and parcels on other authorized units of land in the area similarly situated.

(b) To address this standard, the hearing authority shall:

(i) Identify a study area for the cumulative impacts analysis.

(I) The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas.

(II) Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993, and determine the potential number of non-farm dwellings and pre-85 dwellings that could be approved under LCC 933.706 and 933.707 and LCC 933.500, including identification of predominant soil classifications, the authorized units of land created prior to January 1, 1993 and the units larger than the minimum property size that may be divided to create new units for non-farm dwellings under LCC 933.510.

(iii) make findings that describe:

(I) the study area;
(II) its boundaries;
(III) the location of the subject authorized unit of land within this area;

(IV) why the selected area is representative of the land use pattern surrounding the subject unit and is adequate to conduct the analysis required by this standard;

(V) the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph; and

(VI) whether approval of the proposed non-farm dwellings and pre-85 dwellings together with existing non-farm dwellings will materially alter the stability of the land

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

(6) The dwelling allowed under this subsection complies with such other conditions as the governing body or its designate considers necessary.

(7) No final approval of a non-farm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(8) If a single-family dwelling is established on an authorized unit of land as set forth in LCC 933.705 to 933.750, no additional dwelling may later be sited under this section.

(9) The criteria and requirements in LCC 933.310 (B) (1) to (4) are met.

(10) The partitioning criteria in LCC 924.005 to 928.460 (General Partitioning) are met.

(11)The Director shall not approve a subdivision or series partition for a dwelling under this section. The provisions of this paragraph regarding a series partition apply only to applications for a land division submitted after July 1, 1997. For purposes of this paragraph, “series partition” shall have the meaning given that term in ORS 92.305.

(12) *Requirement.* The property shall be disqualified from special assessment pursuant to ORS 215.236.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; 99-121 §14 eff 6/30/99 (ref. ORS 215.284 (4), OAR 660-033-0100 (11)); 00-498 §1 eff 9/6/00]

933.705 Pre-85 single-family dwellings; generally

(A) Definitions.

(1) For purposes of LCC 933.705 to 933.708, the following definitions apply.

(a) “**Owner**” includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

(b) “**Tract,**” means only those units of land and parts of any unit of land of a tract, as that term is defined in LCC 920.100, that lie within the Rural Resource Zone when:

(i) the tract, as that term is defined in LCC 920.100, is split-zoned into resource-zoned and non-resource zoned property, and

(ii) at least one authorized unit of land is wholly within the Rural Resource Zone.

(B) *General decision criteria for dwellings authorized under LCC 933.705 to 933.720.* The criteria in this subsection apply to the establishment of a single-family dwelling authorized under the provisions of LCC 933.705 to 933.720.

(1) The authorized unit of land on which the dwelling will be sited was lawfully created and was acquired and was owned continuously by the present owner:

(a) Since prior to January 1, 1985;
or

(b) By devise or by intestate succession from a person who acquired and had owned continuously the authorized unit of land since prior to January 1, 1985.

(2) The tract on which the dwelling will be sited, as the tract existed on November 4, 1993, does not include a dwelling.

(3) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law.

(4) The authorized unit of land on which the dwelling will be sited, if in the EFU or in the farm area of the F/F zoning district, is on:

(a) non-HVFL as described in LCC 933.706; or

(b) HVFL-2 as described in LCC 933.707; or

(c) HVFL-1 as described in LCC 933.708.

(5) The authorized unit of land on which the dwelling will be sited, if in the forest area of the F/F zoning district, is sited as described in LCC 933.720.

(6) When the authorized unit of land on which the dwelling will be sited lies within an area designated in the *Comprehensive Plan* as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the *Comprehensive Plan* and the Land Development Code intended to protect the habitat are based.

(7) When the authorized unit of land on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single authorized unit of land when the dwelling is allowed.

(C) When the decision maker approves an application for a single-family dwelling under the provisions of this section, the application may be transferred by a person who has qualified under this section to any other person after the effective date of the land use decision.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; 99-121 §14 eff 6/30/99 (ref. ORS 215.705), OAR 660-033-0130 (3)]

933.706 Pre-85 non-HVFL dwellings

(A) A dwelling may be sited in the EFU or in the farm area of the F/F zoning district when the authorized unit of land on which the dwelling will be sited meets the criteria in subsection (B) and the requirement in subsection (C).

(B) *Decision criteria.*

(1) The authorized unit of land is non-HVFL.

(2) The criteria of LCC 933.705 are met.

(3) The criteria of LCC 933.310 (B) (1) to (3).

(C) *Requirement.* The decision maker shall notify the County Assessor that it intends to allow the dwelling.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98 (ref. ORS 215.705 (1) (d), OAR 660-033-0130 (3))]

933.707 Pre-85 HVFL-2 dwellings

(A) A single-family dwelling not in conjunction with farm use may be sited on HVFL-2 in the EFU or in the farm area of the F/F zoning district if it meets the criteria of subsection (B) and the requirement in subsection (C) of this section.

(B) *Decision criteria.*

(1) The criteria of LCC 933.705 are met.

(2) The tract on which the dwelling will be sited is:

- (a) Identified as HVFL-2;
- (b) Not protected as HVFL-1; and
- (c) Twenty-one acres or less in size.

(3) The tract:

(a) 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 them on January 1, 1993; or

(b) is not a flaglot and 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 the urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(c) is a flaglot and 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 and on the same side of the public road that provides access to the subject tract. The director must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within the urban growth boundary, but only if the subject tract abuts an urban growth boundary.

(4) As used in paragraph (3) of this subsection:

(a) “**Flaglot**” means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(b) “**Geographic center of the flaglot**” means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of the flaglot, at a 90-degree angle to that side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(5) The criteria of LCC 933.310 (B) (1) to (3).

(C) *Requirement.* The decision maker shall notify the County Assessor that it intends to allow the dwelling.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98 (ref. ORS 215.705 (2), OAR 660-033-0130 (3)); amd 02-313 §5 eff 8/21/02]

933.708 Pre-85 HVFL-1 dwellings

(A) A single-family dwelling not in conjunction with farm use may be sited on HVFL-1 in the EFU or in the farm area of the F/F zoning district if it meets the criteria of subsection (B) and the requirement of subsection (D) of this section.

(B) *Decision criteria.*

(1) The criteria of LCC 933.705 are met;

(2) The authorized unit of land is protected as HVFL-1 as described under ORS 215.710 (1); and

(3) The Commission determines that:

(a) The authorized unit of land 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.

(i) For the purposes of this section, this criterion asks whether the subject unit of land can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a unit of land’s limited economic potential demonstrate that a unit of land cannot be practicably managed for farm use.

(ii) Examples of “extraordinary circumstances inherent in the land or its physical setting” include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by

themselves or in combination separate the subject unit of land from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms.

(iii) An authorized unit of land 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.

(b) The dwelling will comply with the provisions of LCC 933.310 (B) (1).

(c) The dwelling will not materially alter the stability of the overall land use pattern in the area.

(i) In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, the hearing authority shall consider the cumulative impact of possible new non-farm dwellings and parcels on other authorized units of land in the area similarly situated.

(ii) To address this standard, the hearing authority shall:

(I) Identify a study area for the cumulative impacts analysis.

1) The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas.

2) Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.

(II) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993, and determine the potential number of non-farm dwellings and pre-85 dwellings that could be approved under LCC 933.706 and 933.707 and LCC 933.500, including identification of predom-

inant soil classifications, the authorized units of land created prior to January 1, 1993 and the units larger than the minimum property size that may be divided to create new units for non-farm dwellings under LCC 933.510.

(III) Make findings that describe:

1) the study area;
2) its boundaries;
3) the location of the subject authorized unit of land within this area;

4) why the selected area is representative of the land use pattern surrounding the subject unit and is adequate to conduct the analysis required by this standard;

5) the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph; and

6) whether approval of the proposed non-farm dwellings and pre-85 dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

(4) The criteria of LCC 933.310 (B) (1) to (4).

(C) The Director shall provide notice of all applications for dwellings allowed under this section to the State Department of Agriculture. Notice shall be provided in accordance with LCC 921.370 but shall be mailed at least 20 calendar days prior to the public hearing before the Commission under this section.

(D) *Requirement.* The decision maker shall notify the County Assessor that it intends to allow the dwelling.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; 99-121 §14 eff 6/30/99; amd 02-313 §5 eff 8/21/02 (ref. ORS 215.705 (3), OAR 660-033-0130 (3)); amd 16-070 §10 eff 4/13/16]

933.720 Pre-85 forestland dwelling

(A) A dwelling authorized under LCC 928.628 (B) (1) may be permitted in the forest area of the F/F zoning district only if the decision criteria set forth in subsection (B) are met.

(B) *Decision criteria.*

(1) The predominate use of the land was forestry on January 1, 1993.

(2) The criteria of LCC 933.705 are met;

(3) The criteria of LCC 933.310 (B) (1) to (3) and (5) are met;

(4) The tract on which the dwelling will be sited is

(a) composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species, and

(b) located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock and shall not be:

(i) a United States Bureau of Land Management road; or

(ii) a United States Forest Service road unless:

(I) the road is paved to a minimum width of 18 feet,

(II) there is at least one defined lane in each direction, and

(III) a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government, or a state agency.

(C) A new dwelling authorized under this section must satisfy the requirements of LCC 933.170 and 934.590.

(D) If the authorized unit of land is more than 10 acres, the property owner shall comply with LCC 933.170.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; 99-121 §14 eff 6/30/99 (ref. ORS 215.720), OAR 660-006-0027)]

933.740 Large tract forestland dwelling

(A) A dwelling authorized under LCC 928.617 (B) (3) may be permitted in the forest area of the F/F zoning district if it complies with other provisions of law and is sited on a tract of at least 160 contiguous acres of forest tree species.

(B) A new dwelling authorized under this section must satisfy the requirements of LCC 933.170 and 934.590.

(C) If the authorized unit of land is more than 10 acres, the property owner shall comply with LCC 933.170.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98 (ref. ORS 215.740), OAR 660-006-0027)]

933.750 Alternative forestland dwellings

(A) **Definitions.** For purposes of this section the following definitions apply

(1) **“Tract,”** means only those units of land and parts of any unit of land of a tract, as that term is defined in LCC 920.100, that lie within the Rural Resource Zone when:

(a) the tract, as that term is defined in LCC 920.100, is split-zoned into resource-zoned and non-resource zoned property, and

(b) at least one authorized unit of land is wholly within the Rural Resource Zone.

(B) One single-family dwelling authorized under LCC 928.628 (B) (2) may be permitted on an authorized unit of land containing less than 160 acres in the forest area of the F/F zoning district subject to the requirements and criteria in subsections (C) to (J).

(C) *Decision criteria.*

(1) The authorized unit of land is predominantly composed of soils that are:

(a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

(i) All or part of at least three other authorized units of land that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993, and continue to exist, on the other authorized units of land;

(b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(i) All or part of at least seven other authorized units of land that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993, and continue to exist, on the other authorized units of land; or

(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(i) All or part of at least 11 other authorized units of land that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(ii) At least three dwellings existed on January 1, 1993, and continue to exist, on the other authorized units of land.

(2) The criteria of LCC 933.310 (B) (1) to (3) and (5).

(D) Authorized units of land within urban growth boundaries shall not be used to satisfy the eligibility requirements under paragraph (1) of subsection (C) of this section.

(E) A proposed dwelling under this section is not allowed:

(1) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law.

(2) Unless it complies with the requirements of LCC 933.170 and 934.590.

(3) If the tract on which the dwelling will be sited includes a dwelling.

(F) Except as described in subsections (G) and (H) of this section, if the tract under this section abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.

(G) If a tract 60 acres or larger described under this section abuts a road or perennial stream, the measurement shall be made in accordance with subsection (F) of this section. However, one of the three required dwellings shall be

on the same side of the road or stream as the tract and:

(a) Be located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is, to the maximum extent possible, aligned with the road or stream; or

(b) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.

(H) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.

(I) If the authorized unit of land is more than 10 acres, the property owner shall comply with LCC 933.170.

(J) The alternative forestland dwelling is subject to siting standards described in LCC 934.590.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; 99-121 §14 eff 6/30/99 (ref. ORS 215.750, OAR 660-006-0027)]

933.760 Small forest homestead dwellings

(A) When permitted in the forest area of the F/F or FCM zoning district, a small forest homestead must be created pursuant to LCC 924.728.

(B) The decision criteria in LCC 933.310 (B) (4) must be met.

(C) The existing dwelling on the originating parcel becomes, by a partitioning authorized under LCC 924.728, a small forest homestead dwelling.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98 (ref. ORS 215.780 (2) (b) and (c))]

933.770 Forest resource dwellings

(A) When permitted in the forest area of the F/F or FCM zoning district, a forest resource dwelling must be created pursuant to LCC 924.729.

(B) The decision criteria in LCC 933.310 (B) (4) must be met.

(C) The existing dwelling on the originating parcel becomes, by a partitioning authorized under LCC 924.729, a forest-resource dwelling.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 eff 10/21/98 (ref. ORS 215.780 (2) (d))]

933.780 Caretaker residences in the F/F

(A) A caretaker residence is permitted in the forest area of the F/F zoning district for the following purposes, subject to meeting the decision criteria in subsection (B) of this section:

- (1) Public parks.
- (2) Public fish hatcheries.

(B) The decision criteria in LCC 933.310 (B) (1) to (5) must be met.

[Adopted 98-432 §2 eff 10/21/98 (ref. ORS 215.755 (3))]

933.790 Wildlife management dwelling

(A) One single-family residential dwelling in conjunction with a wildlife habitat conservation and management plan may be established upon findings:

(1) that the management plan has been approved by the State Department of Fish and Wildlife; and

(2) that the proposed dwelling:

- (a) Is not situated on HVFL-1 soil;
- (b) Is situated on an authorized unit

of land existing on November 4, 1993, that qualifies for a farm or non-farm dwelling under LCC 933.400 or 933.500;

(c) Complies with LCC 933.500 (B)

(1); and

(d) Is the only dwelling situated on

the affected unit of land.

[Adopted 99-121 §14 eff 6/30/99]

933.800 Medical hardship dwellings

(A) An application for a medical hardship dwelling shall be reviewed and decided pursuant to the procedures established in LCC Chapter 921 (Land Development Administration Code) and to the applicable decision criteria of subsections (A) to (D) of this section.

(1) Approval from the EHP for connection of the medical hardship dwelling to the sewage treatment system serving the existing residence or a statement from the EHP saying that such connection is not feasible and recommending a possible alternative.

(2) A written statement required by LCC 932.880 (B) (2); or

(3) The documentation required in LCC 932.880 (B) (3).

(4) Where a zoning district permits, one medical hardship dwelling may be established on an authorized unit of land, if the criteria and requirements of this subsection and the applicable provisions of subsections (B) to (D) are met through a Type IIA review.

(a) the medical hardship dwelling must be:

(i) used in conjunction with an existing dwelling;

(ii) used as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident; and

(iii) the provisions of LCC 932.860 to 932.895 are met.

(5) In the RRZ: the requirements and decision criteria set forth in LCC 933.310 are met.

(6) In the RDZ, the decision criteria set forth in LCC 933.220 are met.

(7) In the UGAZ, the decision criteria of LCC 933.260 are met.

(B) *Park trailer*. If the applicant is seeking approval of a park trailer as the medical hardship dwelling, the application must meet the criteria in subsection (A) and in this subsection.

(1) Park trailers unlike other recreational vehicles, are required by the *Specialty Code* to be leveled, blocked and connected to services.

(2) Placement permits and other development permits for park trailers will be issued only for authorized units of land for which a single-family residence is authorized and for which a medical hardship dwelling conditional use permit exists and for which a septic system permit has been issued.

(3) Placement of a park trailer shall conform to the development standards of the applicable zoning district.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98; 99-121 §14 eff 6/30/99 (ORS 215.283 (2) (k))]

933.900 Transportation improvements

(A) For transportation uses listed in LCC 928.320 (B) (8) (b); 928.620 (B) (18) (b); 928.920 (B) (19) (b), in addition to the decision criteria in

LCC 933.310, the decision criteria set forth in subsection (B) of this section are also applicable in the Rural Resource Zone.

(B) *Decision criteria.*

(1) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology.

(2) Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to authorized units of land created on farm and forest lands; and

(3) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.

[Adopted 98-002 §3 eff 3/4/98]

933.910 Soil classifications; changing

(A) The soil classifications or other soil designations used in this Chapter are those identified in *Soil Survey of Linn County Area Oregon*.

(B) For purposes of approving a land use application in the EFU or in the farm area of the F/F zoning district under LCC 928.326 (B) (5) and (6) 928.336 (B), 928.626 (B) (5) and (6), or 928.636 (B), the soil classification or other soil designation of a specific authorized unit of land may be changed if:

(1) The property owner submits a statement of agreement from the Natural Resources Conservation Service (formerly SCS) of the United States Department of Agriculture that the soil classification or other soil designation should be adjusted based on new information; or

(2) The property owner:

(a) Submits a report from a soils scientist whose credentials are acceptable to the State Department of Agriculture that the soil class, soil rating or other soil designation should be changed, and

(b) Submits a statement from the State Department of Agriculture that the Director of Agriculture or the Director's designee has reviewed the report described above and finds the analysis in the report to be soundly and scientifically based.

(C) For purposes of approving a land use application in the EFU or in the farm area of the F/F zoning district under LCC 928.326 (B) (3) and (4) or 928.626 (B) (3) and (4) the soil classification or other soil designation of a specific authorized unit of land may be changed if:

(1) The provisions of OAR 660-033-0030(5) are met; and

(2) The provisions of OAR 660-033-0045 are met.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98 (ref. ORS 215.710 (5); 00-498 §1 eff 9/6/00; amd 12-315 §7 eff 12/12/12)]

933.920 Soil classifications; NRCS edition

Soils information for reviewing pre-85 dwellings must be from the most recent Natural Resource Conservation Service (NRCS) publication prior to November 4, 1993. For other non-farm uses, the most recent NRCS soils information may be used. excluding dwellings, the most recent NRCS soils information may be used. For non-farm dwellings, the most recent NRCS soils information or an acceptable soils report from a soil scientist having acceptable credentials as identified in LCC 933.910 (C) may be used.

[Adopted 99-121 §14 eff 6/30/99; 00-498 §1 eff 9/6/00]

Statutory References and Other Authorities:
ORS 197; 203; 215

Legislative History of Chapter 933:

Adopted 98-002 eff 3/4/98

Amendments to 98-002

- #1 98-432 eff 10/21/98
- #2 99-121 §14 eff 6/30/99
- #3 99-156 §9 eff 6/30/99
- #4 00-498 §1 eff 9/6/00
- #5 02-313 §5 eff 8/21/02
- #6 11-356 §1 eff 10/12/11
- #7 12-315 §7 eff 12/12/12

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