

# CHAPTER 3. APPLICATION REVIEW AND DECISION

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## **CHAPTER 3.<sup>1</sup> APPLICATION REVIEW AND DECISION**

### **3.1 LAND USE PERMITS/DECISIONS**

#### **3.1.1 General Provisions**

A) ***Land Use Permits Required***

Before establishing any land use regulated by this Ordinance, other than a Type 1 use, an application for a Land Use Permit will be filed with the Department. Approval criteria applicable to each permit type are specified below. All uses, regardless of permit type, will comply with any applicable standards set forth in Chapters 4 through 8, and with the general development standards set forth in Chapter 9.

B) ***Effect of Approval***

The Department will issue a Land Use Permit only when the development is in compliance with all applicable procedures and standards of this Ordinance, subject to the expiration provisions in Section 2.6.8. A Land Use Permit will run with the land, unless otherwise expressly provided in its terms or conditions, and the rights and responsibilities conferred by it will vest jointly and severally in the applicant, as defined in this ordinance, and person(s) holding legal and/or equitable title to the property and their successors or assigns. Compliance with the obligations imposed by its conditions is the responsibility of all the owners and successive owners of the land, and any other person who conducts or permits the use authorized by the permit.

C) ***Zoning Information Sheet***

Zoning Information Sheets (a.k.a., Zoning Clearance Sheets) are used to: (1) provide information regarding the status of development; (2) ensure compliance with all standards and procedures of this Ordinance; and, (3) to authorize Type 1 uses. However, other approvals may be necessary for specific developments, such as, but not limited to, building and septic permits. Such other approvals are addressed in other sections of the County Code. When a Zoning Information Sheet is used to authorize development, the authorization will be valid for a maximum of two (2) years from the date of issuance, provided there has been no change in applicable regulations or laws.

#### **3.1.2 Type 1 Land Use Authorizations, Permits and Zoning Information Sheet<sup>2</sup>**

Type 1 uses are authorized by right, requiring only non-discretionary staff review to demonstrate compliance with the standards of this Ordinance. A Zoning Information Sheet may be issued to document findings or to track progress toward compliance. Type 1 authorizations are limited to situations that do not require interpretation or the exercise of policy or legal judgment. Type 1 authorizations are not land use decisions as defined by ORS 215.402.

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<sup>1</sup>Ordinance 2006-10, effective 2-18-07, amended Ordinance 2009-1, effective 8-16-2009; Ordinance 2010-9, effective 2-13-2011, Ordinance 2016-3, effective 6-19-2016

<sup>2</sup> Ordinance 2009-1, effective 8-16-2009 Ordinance 2010-4, effective 8-2-2010

### 3.1.3 Type 2 Land Use Permits

Type 2 uses are subject to administrative review. These decisions are discretionary and therefore require a notice of decision and opportunity for hearing.

A) **Procedures**

Applications for a Type 2 Land Use Permit will follow the applicable review procedure set forth in Section 2.7 as identified in Table 2.7-1.

B) **Approval Criteria**

A site development plan may be required pursuant to Section 3.2.4. If a site development plan is required, it shall comply with Section 3.2 and all other applicable provisions of this Ordinance.

### 3.1.4 Type 3 Land Use Permits

The purpose of the Type 3 Land Use Permit is to allow the development of uses that may be suitable only in specific locations or if the site is regulated in a particular manner. Uses that require a Type 3 Permit may be allowed subject to findings of compliance with applicable approval criteria and development standards, and submission of a site development plan (Section 3.2.4) when physical development is proposed as part of the permit. Type 3 decisions require a notice of decision and opportunity for hearing.<sup>3</sup>

A) **Procedures**

Applications for a Type 3 Land Use Permit will follow the applicable review procedure set forth in Section 2.7 as identified in Table 2.7-1.

B) **Approval Criteria**

- 1) The County may issue Type 3 and 4 Permits only upon finding that the proposed use is in conformance with any applicable development approval criteria and standards contained in the Comprehensive Plan, applicable standards of this Ordinance, and that all the following criteria have been met:
  - a) The proposed use will cause no significant adverse impact on existing or approved adjacent uses in terms of scale, site design, and operating characteristics (e.g., hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts). In cases where there is a finding of overriding public interest, this criterion may be deemed met when significant incompatibility resulting from the use will be mitigated or offset to the maximum extent practicable;
  - b) Adequate public facilities (e.g., transportation) are available or can be made available to serve the proposed use;
  - c) The proposed use is not a conflicting use certified in an adopted Goal 5 ESEE applicable to the parcel, or if an identified conflicting use, one that can be mitigated to substantially reduce or eliminate impacts;

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<sup>3</sup>Ordinance 2004-12, effective 2-6-2005

- d) The applicant has identified and can demonstrate due diligence in pursuing all Federal, State, and local permits required for development of the property; and
  - e) On land outside urban growth boundaries and urban unincorporated communities, the proposed use will either provide primarily for the needs of rural residents and therefore requires a rural setting in order to function properly, or else the nature of the use (e.g., an aggregate operation) requires a rural setting, even though the use may not provide primarily for the needs of rural residents. Schools however are not subject to this criterion.
- 2) In order to ensure that certain land use actions will not result in land uses that are incompatible with public transportation facilities, compliance with criteria a, b, c and d below must be satisfied through completion of a Transportation Impact Study (TIS) completed by a registered professional engineer with expertise in transportation. These criteria will be considered sufficient to demonstrate compliance with the Transportation Planning Rule requirements under OAR 660-012-0060. The requirement for a TIS may be waived if the Planning Director and the Roads and Parks Director administratively concur in writing that sufficient evidence exists to show that the cumulative effect of approving the proposed land use action, along with the potential for similar approvals on similarly situated parcels within 2 miles (.75 miles in an MPO area) of the subject parcel (or portion of the parcel that is requesting the land use change or permit), will not significantly affect a transportation facility identified in State, regional or local transportation plans.<sup>4</sup>
- a) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in an MPO area) of the subject parcel would not change the functional classification of an existing or planned transportation facility nor would it change standards implementing the functional classification system (unless the change can be made in conjunction with a TSP amendment, pursuant to an applicable policy within the Jackson County TSP).
  - b) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in an MPO area) of the subject parcel would not allow types or levels of land uses that would result in levels of travel or access inconsistent with the functional classification of a transportation facility (unless a functional class change is made pursuant to an applicable policy within the Jackson County TSP).
  - c) Approval of the proposed land use action and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in an MPO area) of the subject parcel would not cause a facility to exceed the adopted performance standards for facilities used by the subject parcel. A facility used by the subject parcel is

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<sup>4</sup> Ordinance 2017-5, Effective 5-28-2017

defined as any facility where approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in an MPO area) of the subject parcel would increase traffic on a facility by more than 3% of the total capacity for collectors and/or 2% of the total capacity for arterials and state highways. ODOT may determine that the subject parcel, beyond this definition and in accordance with the Oregon Highway Plan, will use additional state facilities.

- d) Regardless of whether adequate capacity exists, changes in land use and new or expanded development proposals will not be approved if they will create, or would worsen, a safety problem on a public transportation system or facility. If a problem would be created or worsened without mitigation, then a mitigation plan that resolves the safety concern must also be approved and included in the proposal in order for the land use change and/or development proposal to be approved. Where a safety concern exists, study by a registered professional engineer with expertise in transportation will be considered to determine if a problem would be created or worsened.

- 3) In addition, in the Exclusive Farm Use zone the use may be approved only where it:

- 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.

The applicant may demonstrate that the standards set forth in this Section will be satisfied through the imposition of conditions. Any conditions so imposed must be clear and objective. [ORS 215.296; OAR 660-033-030(5)]

- 4) In addition, in forest zones the use may be approved only when the following findings can be made:

- a) The use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- b) The proposed use will not significantly increase fire hazard, significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel. Further, it must be demonstrated that the use will comply with the fire safety requirements in Chapter 8; and
- c) A written statement recorded with the deed or written contract with the county or its equivalent 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. [OAR 660-006-0025(5)(c)]

**3.1.5 Type 4 Land Use Permits** (See Section 3.7 for Comprehensive Plan and Zoning Map Amendments)

A Type 4 Permit requires review by the Planning Commission and the Board of Commissioners, as applicable to ensure the proper integration of uses that may be suitable only in specific locations. Approval of a Type 4 Permit to allow a specific use requires review and approval of a site development plan pursuant to Section 3.2.4 when physical development is proposed, as part of the Type 4 permit review.<sup>5</sup>

A) **Procedures**

Applications for a Type 4 land use permit will follow the applicable review procedure set forth in Section 2.7 as identified in Table 2.7-2.

B) **Approval Criteria**

The County may issue Type 4 Permits only upon finding that all of the applicable approval criteria set forth in Section 3.1.4(B) have been met.

**3.2 SITE DEVELOPMENT PLANS<sup>6</sup>**

**3.2.1 Purpose**

The purpose of the site development plan review process is to ensure compliance with the standards of this Ordinance, while encouraging quality development in the County reflective of the goals and policies found in the Comprehensive Plan. This process is implemented through zoning permit review, and thus does not address every building, fire, or life safety requirement.

**3.2.2 Applicability<sup>7</sup>**

New uses, substantial expansions or significant changes to multi-family, commercial, industrial or public/quasi-public uses or development require a site plan review to verify compliance with the applicable development standards of this Ordinance except as provided by Section 3.2.2(A) below.

This section does not apply to single family residential development projects or destination resorts reviewed under Section 6.3.8 or uses identified in ORS 215.283(1).

A) **Exemptions**

The following are exempt from site plan review.

- 1) A change in use is exempt from site plan review provided all of the following conditions are met:
  - a) The development is in compliance with a site plan on record at the County;
  - b) The impacts from the change in use are less than or proportionate with those of the site plan of record.

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<sup>5</sup>Ordinance 2004-12, effective 2-6-2005

<sup>6</sup> Ordinance 2013-3, effective 7-21-2013

<sup>7</sup>Ordinance 2004-12, effective 2-6-2005



- (i.e. a Type 2 use to a Type 2 use or a Type 3 use to a Type 2 use);
- c) The change in use does not require administrative review as stipulated by this Ordinance; and
  - d) The thresholds of Section 3.2.3(A) are not exceeded.

An on-site field inspection is required to demonstrate compliance with the site plan of record. When a field inspection has been approved within the last 24 months an inspection is not required.

### **3.2.3 Required Review**

Site development or a change in use subject to this Section shall be evaluated through a Type 1- 4 review process.

The review procedure for site development in a resource zoning district is based on the table of permitted uses set forth in Chapter 4 and those allowed in overlay districts as set forth in Chapter 7.

In base zoning districts the review procedure for site development is based on the list of permitted uses in Table 6.2-1. When a "1/2" is indicated in the table such reviews may be either ministerial (Type 1 permit), or part of an administrative review (Type 2-4 permits). A ministerial review is appropriate when the application can show all the development standards are met and this Ordinance does not require a higher level review. Development subject to discretionary review pursuant to Chapters 7 through 10 of this Ordinance requires an administrative review with opportunity for appeal. If two (2) applications are necessary, the applications may either be combined in accordance with Section 2.6.5, or reviewed separately.

When the proposal intensifies the use of the property (i.e. from a Type 2 use to a Type 3 use) the review procedure will be in accordance with the permit type identified in Table 6.2-1. The use is also subject to all other provisions of this Ordinance.

- A) A discretionary site plan review is required, subject to Section 3.2.4, if the proposed development exceeds one or more of the thresholds listed below:
  - 1. The change in use will result in an increase in traffic of more than 100 average daily trips (ADT) as a result of increased employees, customers or a combination of both as determined by the ITE Manual. In the case the ITE Manual does not provide appropriate use data, evidence from an Oregon registered professional Engineer that the change in use will not result in more than 100 ADT shall be submitted;
  - 2. The change in use will result in a new paved area greater than 10,000 square feet;
  - 3. Any new development of 20,000 square feet or more gross floor area, or any addition to an existing use results in an increase of gross floor area of 20,000 square feet or more; or

4. The development does not meet general development regulations of Chapter 9.

### 3.2.4 Approval Criteria

A site development plan reviewed under a Type 2-4 procedure may only be approved if affirmative findings can be made for all the criteria set forth below. The County will require adherence to sound planning principles, while allowing for design flexibility in the administration of these criteria:

- A) The site development plan fully complies, or in the case of a lawful nonconformity complies to the maximum extent feasible, with all applicable requirements of this Ordinance, including the general development regulations of Chapters 8 and 9 and the dedications and improvement requirements of Chapter 10;
- B) On properties that are not zoned for farm or forest use, the site development plan adequately protects other property from the potential adverse effects of nonresidential uses;
- C) The site design promotes a proper relationship between existing and proposed streets and highways within the vicinity in order to assure the safety and convenience of pedestrian and vehicular traffic; to ensure efficient traffic flow and control; to ensure easy access in cases of fire, catastrophe, and emergency; and so as not to create or contribute to undue traffic congestion on abutting public streets. An assessment of traffic impacts and identification of traffic impact mitigation measures may be required to demonstrate compliance with this criterion;
- D) The property owner and applicant have agreed to record in the County Clerk's Office a deferred improvement agreement against the property for any future public road improvements that will be required as a result of the proposed development. Deferral of frontage improvements will be required under the following circumstances: (1) the land served by an existing road is zoned for more intensive development; and (2) only a minor part of potential traffic on the road would be generated by the proposed development. In both cases it will be necessary to obtain a binding commitment to make needed road improvements when warranted;
- E) The site is served by sewer or septic, water, fire protection and access sufficient to meet the needs for the use as determined by local service providers.
- F) The development promotes a design that maintains pre-development flow rates (based on a 10-year, 24-hour rainfall level of 3.0 inches), reducing the impacts on the quality of surface and groundwater. To ensure that pre-development flows are maintained, planters, swales, or other vegetated surfaces or mechanical facilities are required to naturally control the flow at the point of discharge. Stormwater facilities shall be sufficient to maintain peak flow rates at their pre-development levels. An assessment, prepared by an Oregon registered professional Engineer, certifying that the stormwater management system proposed is in compliance with this section shall be submitted as part of the application. A Final design of the stormwater management system prepared by an Oregon registered professional Engineer shall be submitted prior to the

authorization of building permits.

Development within the Rogue Valley Sewer Services (RVS) Phase II boundary or those that require an approved Stormwater Pollution Control Plan and NPDES permit are subject to Section 8.8 of this Ordinance.

### **3.2.5 General Submittal Requirements**

In order to properly and efficiently evaluate a site plan review application, the applicant shall submit an application that consists of the proper application form, maps that show the proposed development layout, and all other related information.

### **3.2.6 Effect and Duration of Approval**

- A) Upon approval by the review authority, the site development plan will act as the official plan of development for the parcel. Grading, excavating, or filling in mapped floodplain areas, construction (e.g., parking, detention/retention), or any building(s) or uses(s) to occur on the site must be in strict compliance with the approved plan.
- B) Approval of a site development plan authorizes the applicant to proceed with any application for land use permits, building permits, or other permits and approvals that may be required in order to develop the property in conformity with the approved site development plan. A permit or other approval may be issued by the County only if it conforms to the approved plan.
- C) Once approved, a site development plan will remain in effect in accordance with Section 2.6.8.

### **3.2.7 Completion of Improvements**

- A) Any and all site improvements are the joint and several responsibility of the applicant, the person(s) holding legal and/or equitable title, and their successors or assigns. Improvements include the construction of roads, obtaining inspections of public roads from Roads and Parks Services, and inspection of private roads by the applicant's Oregon-registered professional engineer or engineering geologist.
- B) Except for required landscaping, or when the conditions of approval for the development specifically state otherwise, the County will not approve any associated final plat nor will it finalize a building permit until the improvements have been completed and accepted by the applicable agency or department, or unless the applicant posts a performance bond or provides a letter of credit as provided in Chapter 10.
- C) If inclement weather conditions do not allow immediate installation of landscaping, installation may be deferred but never for more than six (6) months. In this instance, a temporary certificate of occupancy may be issued prior to the installation of all required landscaping. In any event, required landscaping must be installed prior to issuance of a final certificate of occupancy.
- D) All streets and roads for public use must be dedicated without any reservation or restrictions other than reversionary rights upon vacation and easements for public utilities.

- E) The property owner or applicant shall record a development agreement, agreeing to complete all conditions of approval either prior to issuance of any building permits or within the time period specified in the final land use decision.

### **3.2.8 Inspection for Compliance with Approval Conditions**

It will be the joint and several responsibility of the applicant to contact the Department prior to issuance of the Certificate of Occupancy for an inspection to determine compliance with the conditions imposed by the Department. A subsequent landscaping inspection will be required after the first year of operation and will occur during the growing season to determine if plant materials have survived. In the case of an approved site development plan where no building permits are issued, inspections will occur prior to operation of the new use and one (1) year thereafter.

### **3.2.9 Minor Alteration or Expansion of Public Parks not Subject to a JCPP Overlay**

This Section is for existing parks that were not developed under a Parks Master Plan, and does not apply to lands within the Jackson County Public Park Overlay. This Section is used as the sole basis to consider minor alterations or minor expansions of existing public parks. The uses and procedures of any other overlay affecting the park, such as Section 7.1.2, Floodplain Overlay, continue to govern with respect to allowable uses and activities, and the procedures for their authorization.

#### **A) *Authorization and Applicable Substantive Criteria***

Minor alteration or expansion of public parks existing prior to January 1, 1991 is allowed provided: (1) the alteration will not result in significant impacts beyond the boundaries of the existing park; or (2) in the event of a minor park expansion, beyond the expanded boundaries of the park. Minor park expansions, which are not located on high value farm land, may increase the total acreage by up to 20% or five (5) acres, whichever is less, subject to the review procedures described in this Section and the requirements of Chapter 4.

#### **B) *Procedure***

The method used by the County to consider minor alterations of existing public parks will be as follows:

- 1) A site plan and written narrative outlining the proposed alteration or expansion will be prepared by the Parks Division. Authorized representatives of the Planning Staff and the County Parks Division will hold a pre-application conference to discuss the proposed alteration or expansion. Following the meeting, the Planning Staff may require submission of a site development plan and written application covering any or all of the elements described in the User's Guide requirements for submission of a public park master plan under Section 3.7.4.
- 2) Based on the site plan and narrative, the Director will make a written determination of impacts and prepare findings regarding whether the proposed alteration or expansion is major or minor as

described above. If the alteration or expansion is found to be major in nature, the project review will proceed in accordance with the requirements for a site development plan review under Section 3.2.

- 3) If the alteration or expansion is found to be minor, the written determination and findings of the Director will be considered a final land use decision unless appealed under Section 2.7.5(D). Notice of the action will be mailed to affected property owners in conformance with Type 2 noticing requirements.

### 3.3 LAND DIVISIONS

#### 3.3.1 General Provisions

A) ***Purpose and Authorization***

The purpose of these regulations is to establish procedures to be followed in the development and approval of land divisions, related maps, and plats. Authorization and minimum standards for this Ordinance are provided by Oregon Revised Statutes (ORS) Chapters 92 and 215. See Chapter 10.

B) ***Applicability***

These land division regulations apply to all divisions of land located within the political boundaries of Jackson County, exclusive of the corporate limits of any city except expedited land divisions as described in (C), below. The specific types of land division are:

1) ***Subdivisions***

A subdivision is the act of subdividing an area, parcel, or tract of land into four (4) or more lots within a calendar year.

2) ***Partitions***

A partition is a division of land within a calendar year.

- 3) None of the following acts constitute a division of land for purposes of authorizing development of a previously divided lot or parcel [ORS 92.010]:

- a) Adjustment of a property line by the relocation of a common lot or parcel boundary. (See Section 3.4).
- b) Creation of cemetery lots.
- c) Creation or recording of a condominium plat.
- d) Lien foreclosures and foreclosure of recorded contracts for the sale of real property.
- e) Surveying of or recording a deed description of a tract of land in order to define a mining claim or to describe agricultural or forestry or aggregate tracts for resource use.
- f) Issuance of a mining patent or other lot created by the federal government.
- g) A sale or grant by a person to a public agency or public body for state highway, county road, city street, or other right-of-way purposes, provided that such road or right-of-way complies with the Comprehensive Plan and ORS 215.283(2) (q) to (s). Any property divided by such sale or

grant of property will continue to be considered a single unit of land until such time as the property is further subdivided or partitioned. [ORS 92.010(7)(d)]

- h) A sale or grant by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets, or other right-of-way purposes when the sale or grant is part of a property line adjustment incorporating the excess right-of-way into adjacent property. The property line adjustment must be approved or denied by the County. If the property line adjustment is approved, it will be recorded in the County deed records. [ORS 92.010(7)(e)]

C) ***Expedited Land Divisions***

Applications for expedited land divisions to partition residentially zoned land inside an urban growth boundary will be processed according to the standards and procedures in ORS 197.360 through 197.380 rather than this Ordinance.

### 3.3.2 Procedures

Applications for subdivisions, planned unit developments, and creation of public roads or streets are processed as a Type 4 procedure, partitions which include the creation of a private road or street are processed as a Type 3 procedure, and partitions which do not include creation of a road or street are processed as a Type 2 procedure, pursuant to Section 3.1.3 with the following modifications and additions:

A) ***Pre-Application Conference***

Pre-application conferences are required for all subdivision tentative plan applications.

B) ***Tentative Plan Application***

Applications will include the following:

- 1) A tentative subdivision or partition plan that conforms to the requirements of this Ordinance. The tentative plan must be to scale, complete, and accurate, and may be prepared by other than an Oregon registered land surveyor;
- 2) A Subdivision/Partition Title Report and exception documents for proposed road area(s), if any. The report will be based on research going back in time without limitation, indicating all easements and encumbrances of record that affect the property, and will include any graphic depictions of such easements and encumbrances that are of record; and
- 3) Information indicating the proposed method of obtaining a potable water supply, sanitation and utilities consistent with Section 10.4.2.

C) ***Tentative Plan Procedures***

- 1) ***Partitions, Subdivisions and Planned Unit Developments***  
Applications for tentative plan approval for partitions not including

creation of a road will be processed under the Type 2 procedure. Applications for tentative plan approval for partitions that also create a road and subdivisions will be processed under the Type 3 or 4 procedure, as applicable. County approval, approval with conditions, or denial of the tentative plan application will be set out in a written decision, and will be based on compliance with the approval criteria set forth in Section 3.3.3. Upon approval of the tentative plan, the applicant will comply with the standards and conditions set forth by the County in the approval and will prepare a final plat according to the procedures set forth below.

- 2) *Validity, Duration and Extension of Tentative Plan Approval:* An approved tentative plan will become void 24 months after the date of the final decision approving the tentative plan if the final plat has not been prepared and submitted to the Department for review. For the purposes of this section “date of the final decision” shall mean the date the final County decision approving the tentative plan is signed or, if the final County decision is appealed, the date the final appellate body affirms the County decision or the appeal is dismissed.
  - a) Notwithstanding Section 2.6.8, a time extension of not more than 12 additional months may be granted by the Director, for good cause, based upon a written request from the applicant made prior to the expiration of the original 24 months, or within 30 days after that expiration date in accordance with Section 2.6.8(A) and (B). The application may be granted where all of the standards of Section 2.6.8(A) through (D) are met.
  - b) An additional extension of 12 months may be granted by the Director upon a written request as specified in Section 3.3.2(C)(2)(a) provided that it must be submitted prior to the expiration of the extension granted under that subsection or within 30 days thereafter. The application may be granted where all of the standards of Section 2.6.8(A) through (D) are met.
  - c) In any event, the total time period within which to submit a final plat will not exceed four years after the date of the final decision approving the tentative plan.
  - d) No extension of the validity of a tentative plan pursuant to Section 3.3.2(C)(2)(a) or (b) shall be granted if the Director determines that the tentative plan is not consistent with changes in a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance that has been adopted after the date of the final decision approving the tentative plan. In that event, a new application must be submitted for the tentative plan.

D) ***Final Plat Procedures***

Regardless of the type of approval process required for the tentative plan, the Director will review the final plat for consistency with the approved tentative plan as a Type 1 review procedure. If the Director determines that the final plat complies with the requirements of paragraphs (1) and (2) of this Section, the Director will so certify and sign the final plat. No additional conditions will be imposed on the final plat. If the Director

determines the final plat does not comply with the requirements of paragraphs (1) and (2) of this Section, it will be returned to the developer to correct the deficiencies and must be resubmitted for approval within the time established through the tentative plan approval.

1) *Requirements for Final Plat Approval*

- a) The final plat conforms to the tentative plan as approved by the County, including compliance with any conditions imposed or modifications required by the County at the time of tentative plan approval;
- b) The final plat is prepared according to specifications established in ORS Chapter 92 (see User's Guide). The developer is required to consult with the County Surveyor prior to submitting the final plat for approval by the Director; and
- c) When publicly dedicated land will be created, a signature line for the Board of Commissioners is provided. See Section 10.5.2.

2) *Required Documents for Land Divisions That Include Creation of a Road:* Final plats that include creation of a road will be accompanied by:

- a) Any written certificates pertaining to improvement assurances or responsibilities, such as a road maintenance agreement prepared consistent with the requirements of this Ordinance;
- b) A partition title report; and
- c) The location of all existing improvements, including dwellings and other structures, wells, and installed septic systems as necessary to show conformance with setbacks or other requirements of approval, will be identified on a copy of the original plat.

E) ***Phased Developments***<sup>8</sup>

1) *Generally.*

- a) In a phased development the applicant secures final plat approval in phases that are composed of a portion of the land for which the tentative plan approval was granted. Each stage requires the satisfaction of all conditions of approval for the portion of land which is being developed.
- b) The phases to be developed must be clearly set out on the tentative plan together with the order of their development. Each phase must be designed to be independent of all later phases so that each phase stands on its own, even if later phases are not developed.
- c) Any alteration in the order of development of the phases requires approval for an amendment to the tentative plan.

2) *Validity, Duration and Extensions of Tentative Plan Approval:* An

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<sup>8</sup> Ordinance 2009-1, effective 8-16-2009



approved tentative plan for a phased development shall become void 24 months after the date of the final decision approving the tentative plan, subject to the following provisions. For the purposes of this section the “date of the final decision” shall mean the date the final County decision approving the tentative plan is signed or, if the final County decision is appealed, the date the final appellate body affirms the County decision or the appeal is dismissed.

- a) A time extension of not more than 12 additional months may be granted by the Director based upon a written request from the applicant made prior to the expiration of the original 24 months, or within 30 days after that expiration date in accordance with Section 2.6.8(A) and (B). The request may be granted where all of the standards of Section 2.6.8(A) through (D) are met.
  - b) An additional extension of 12 months may be granted by the Director upon a written request as specified in Section 3.3.2(C)(2)(a) provided that it must be submitted prior to the expiration of the extension granted under that subsection or within 30 days thereafter. The request may be granted where all of the standards of Section 2.6.8(A) through (D) are met.
  - c) The other provisions of Sections 3.3.2 notwithstanding, the Planning Commission shall have the discretion to allow extensions to the validity of a tentative plan approved for a phased development to be for a different period or periods, provided that the total period of validity may not exceed the maximum allowed by the applicable provisions of the Oregon Revised Statutes. Any such approval must be based on specific findings related to the phased development which justify the different periods of validity
  - d) Except as provided in Section 3.3.2(E)(2)(c), in no event shall the total time period within which to submit the final plat for the last phase designated on the approved tentative plan exceed five years after the date of the final decision approving the tentative plan.
  - e) The granting of any extension pursuant to Sections 3.3.2(E)(2)(a), (b) or (c) is subject to the limitation of Section 3.3.2(E)(3).
- 3) Changes in the State or County criteria: No extension of the validity of a tentative plan pursuant to Section 3.3.2(E)(2)(a), (b) or (c) shall be granted if the Director determines that the tentative plan is not consistent with changes in a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance that has been adopted after the date of the final decision approving the tentative plan. In that event, a new application must be submitted for the tentative plan.

**F) *Completion of Improvements, Bonding, Other Assurances***

- 1) Any and all improvements will be the responsibility of the applicant prior to submittal of a final plat. Improvements include the construction of roads, inspection of County roads by the Roads Division, and the inspection of private roads by the applicant's

Oregon-registered professional engineer or engineering geologist. Unless specifically stated otherwise in the conditions of approval for the development, the County will not approve the final plat or issue building permits until the improvements have been completed and certified as acceptable by the Road Division or applicant's engineer, unless adequate bonding, consistent with Section 10.6, exists to ensure installation of the improvements.

- 2) All streets and roads for public use must be dedicated without any reservation or restrictions other than reversionary rights upon vacation of any such street or road and easements for public utilities.

G) ***Documents to be Recorded and Filed***

Approval of the final plat by the Director as provided by this regulation will be conditioned on its prompt recording. The developer will, without delay, submit the final plat for signatures of other public officials required by law. Approval of the final plat will be null and void if the plat is not recorded within 90 days after the date the last required approving signature has been obtained.

H) ***Replats***

- 1) The Department will review all proposed replats for compliance with the approval criteria set forth in Section 3.3.3.
- 2) All replats will be processed in the same manner as an application for a division occurring on lands not previously platted.
- 3) A replat will occur only as allowed under ORS Chapter 92.180 through 92.190. A property line adjustment between subdivision lots is not a replat.

I) ***Plat Amendment***

Any plat of a subdivision or partition properly filed and recorded under provisions of law may be amended by an affidavit of correction pursuant to ORS Chapter 92.

J) ***Vacation of Undeveloped Subdivisions***

Undeveloped subdivisions may be vacated according to the procedures established under ORS 92.205 through 92.245.

### **3.3.3 Approval Criteria**

The County may approve applications for division of land only upon finding that the proposed division will comply with all applicable standards of the zoning district and development standards contained in Chapters 7 through 10. (See Section 10.3)

## **3.4 Property Line Adjustments**

### **3.4.1 Purpose and Scope**

Property line adjustments allow the relocation of all or a portion of a common boundary line between abutting properties without creating additional lots or

parcels. Property line adjustments may be permitted in any zoning district or across zoning districts, or between subdivision lots. Properties located within zoning districts with no minimum parcel size requirements (e.g., RR-00, commercial or industrial zones), are eligible for property line adjustments subject to the procedure and criteria of this Section. Boundary line agreements, as defined, are not subject to the requirements of this Section. A property line adjustment is not required for a boundary line agreement establishing the physical location of an existing lawful property boundary.

### 3.4.2 Procedure

Applications for property line adjustments comprised of entirely non-resource lands will be processed as Type 1 permits. Applications for property line adjustments involving any resource lands will be processed under the Type 2 procedure of Section 3.1.3. Both the Type 1 and Type 2 permits are subject to the following:

- A) A scaled plot plan will be submitted that shows: (1) all existing property lines; (2) the proposed location of the adjusted property line; (3) the location of existing above ground structures; (4) septic systems and wells and their distances from existing and proposed property lines and easements; and (5) the amount of land area in square footage or acres being added or subtracted, along with the approximate location of areas subject to inundation or storm water overflow, all areas covered by water, and the location, width and direction of flow of all water courses;
- B) The owners of both properties that will be modified by the property line adjustment must sign the application form or a letter of authorization;
- C) If the application is approved, the adjusted property line will be surveyed and monumented by an Oregon licensed surveyor in accordance with the procedures of ORS 92, unless the circumstances in (1) or (2) apply. The survey will be submitted to the Planning Division for signature prior to filing with the County Surveyor, and will be accompanied by a written legal description of each of the adjusted parcels. A survey and monumentation are not required when both parcels will be greater than 10 acres [ORS 92.060(8)];
- D) Within one (1) year of final approval of a property line adjustment application, the survey, if required, will be filed with the County Surveyor and the deeds or other instruments of conveyance will be recorded with the County Clerk. The deeds or other instruments will describe the adjusted properties in their entirety. Notwithstanding Section 2.6.8, a time extension of not more than 12 additional months may be granted by the Director based upon a written request from the applicant made prior to the expiration of the original 12 months, or within 30 days after that expiration date in accordance with Section 2.6.8. After 12 months, or at the end of any extension granted, the approval will be considered void if the required documents have not been recorded. In any event, the total time period within which to finalize the approval will not exceed two (2) years; and
- E) If the property line adjustment will result in any portion of a septic system, driveway, or well being located on a different parcel than the structure served by them, a condition of approval will require that an easement granting continued use of the improvement be recorded with the County Clerk.

### 3.4.3 Approval Criteria<sup>9</sup>

In nonresource districts, a property line adjustment may be approved if it complies with (A through F) below. In resource districts, a property line adjustment may be approved if it complies with all of the following:

- A) All properties were lawfully created;
- B) No new parcels will result from the adjustment;
- C) Except as provided by (F) and (G) below, and provided the standards of Section 10.4.4 are met, for properties located entirely outside the corporate limits of a city:
  - 1) Where one or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment, after the adjustment one is as large as or larger than the minimum lot or parcel size for the applicable zone; or
  - 2) Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment. [2008 HB 3629]
- D) All buildings and improvements (e.g., septic systems, wells, etc.) will comply with the minimum setback requirements from the adjusted property line, unless a building or improvement does not currently comply with the minimum setback, in which case such building or improvement will not be made more nonconforming by the adjustment. Additionally, conforming on-site characteristics (e.g., landscaping or access) will not be made nonconforming;
- E) The adjustment will not result in parcel(s) that overlap a city limit, urban growth boundary, county, or State line;
- F) The adjustment will not result in a parcel being made buildable that was not capable of being developed prior to the adjustment for reasons such as being too small or narrow. However, a parcel that cannot be developed for residential purposes because it lacks access may acquire road frontage and be made buildable through a property line adjustment;
- G) In resource districts:
  - 1) A property line adjustment will not:
    - a) Decrease the size of a lot or parcel that, before the relocation or elimination of all or a portion of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;

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<sup>9</sup>Ordinance 2004-12, effective 2-6-2005

- (b) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
  - (c) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard. [2008 HB 3629]
- 2) A property line adjustment for the purpose of adjusting percentages of nonproductive soils on a vacant parcel for a zone change to a non-resource zone is prohibited.
  - 3) A property line adjustment for the purpose of transferring a dwelling from one parcel to another may be approved provided the parcel receiving the dwelling qualifies for a homesite.
  - 4) When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract. [OAR 660-006-0005(4) & 660-033-0020(4)]

### **3.5 PLANNED UNIT DEVELOPMENT (PUD) AND CLUSTER DEVELOPMENT PERMITS**

#### **3.5.1 Purpose and General Concept**

Traditional zoning establishes zone boundaries, permitting specific uses of land within the various zones, and setting general conditions for those uses. Sometimes, however, land may be more effectively developed in planned unit developments (PUDs) or cluster developments that allow imaginative site design techniques through limited modification of the general standards of this Ordinance. This Section sets forth a procedure for developing PUDs and cluster developments, in order to achieve the following objectives:

- A) To ensure the creation of attractive, healthful, and efficient environments for housing, commerce, and industry;
- B) To permit flexibility in the application of this Ordinance in order to achieve more efficient and aesthetic development that harmonizes with adjoining uses;
- C) To encourage variety in site design through creative location of buildings, open spaces, off-street parking areas, and street alignment;
- D) To promote shared community facilities, open space, commonly shared amenities (beyond standard required public improvements such as lighting, streets, sanitary and storm sewer, water, and sidewalks) and sustainable development;
- E) To capitalize on the potential of special site features such as geography, topography, size, or shape; and

- F) To preserve open space for aesthetic, environmental and resource management purposes.

### 3.5.2 Authorization and Applicability

The County may authorize PUDs and cluster developments as set forth in this Section. Such developments will be subject to all conditions imposed by the County and may be exempted from other provisions of this Ordinance only to the extent specified in the development approval. Uses allowed in a PUD or cluster development are limited to those that may be permitted in the zoning district(s) in which the development is to be located.

### 3.5.3 Procedures

Applications for PUDs and cluster developments will follow the Type 4 standard review procedure set forth in Section 3.1.5, with the following modifications:

#### A) **Application**

The application will include a preliminary development plan for the entire project and supporting materials as specified in the User's Guide. The preliminary development plan may propose phased development.

#### B) **Planning Staff Recommendation**

The Planning Staff will prepare a written staff report, based upon the approval criteria set forth in Section 3.5.4, for review by the Planning Commission. The report will recommend approval, approval with conditions/modifications, or denial of the preliminary development plan based on those criteria.

#### C) **Decision on Preliminary Development Plan**

- 1) After a quasi-judicial public hearing, the Planning Commission and, if an appeal from the Planning Commission is filed, the Board of Commissioners will issue a written decision approving, approving with conditions or modifications, or denying the preliminary development plan based on the criteria set forth in Section 3.5.4.
- 2) Modifications or conditions which may be imposed by the approval authority include, but are not limited to, the following:
  - a) View-obscuring shrubbery, walls, or fences along property lines and around unsightly areas such as trash and equipment storage areas, and industrial and heavy commercial activities;
  - b) Retention of and setbacks from specified trees, rock outcroppings, ponds or water courses, and other natural features;
  - c) Sidewalks, dedicated right-of-ways for streets and pedestrian ways, and easements for utilities, waterways, or slopes;
  - d) Type and placement of lights used for pedestrian circulation and parking facilities;
  - e) On-site fire hydrants, with protective barricades if specified;
  - f) Height restrictions or increased setbacks;
  - g) Environmental and/or economic impact studies; and
  - h) Dedication of right-of-way needed for public use.

D) ***Final Development Plan and Platting Requirements***

Upon final approval of the preliminary development plan, the applicant will comply with the standards and conditions set forth by the County in the approval and will prepare a final development plan according to the procedures set forth below. In addition, when a PUD includes a land division, the final development plan must be accompanied by a final plat that satisfies the requirements of Section 3.3.2.

- 1) Within 24 months following the approval of the preliminary development plan, the applicant must submit the final plan to the County for review under a Type 1 procedure, along with any deed restrictions or deed declarations or land division plats needed to conform with the preliminary development plan approval. The final development plan and any land division plat required will contain the information required by the preliminary development plan approval, and will be reviewed by the County in accordance with Section 3.3.2(D). Notwithstanding any other provision of this Ordinance, the submittal of a final plan and final plat for a PUD or cluster development may be extended by action of the Planning Director for two additional 12 month periods consistent with the provisions of Sections 3.3.2(E)(2)(a) and (b) and Section 3.3.2(E)(3).
- 2) The permit will be null and void if the above deadline is not met, unless an extension request is filed and approved in compliance with Section 2.6.8;
- 3) The final development plan and plat, if any, must conform to the preliminary development plan, as approved by the County and any additional conditions that were imposed. The final plan will be prepared according to User's Guide specifications;
- 4) If the final development plan does not conform with the approved preliminary development plan including any conditions or modifications imposed, the County will not approve the final plan or plat, if any, and the applicant will be advised to submit an application for amendment of the PUD, which will be processed and considered in the same manner as an original application;
- 5) Any and all improvement work, including construction and inspection of County roads by Roads and Parks Services, will be the responsibility of the applicant prior to submission of a final development plan or plat. Where the applicant intends to post a bond or provide other assurances in lieu of completing the improvements, pursuant to Section 10.6, such bond or assurances will be to the satisfaction of the Director or other administrative official of the applicable agency or utility company, as a condition of final approval by the County; and
- 6) Development will be initiated within two (2) years of recordation of the final development plan and plat, if any. However, the County may grant a one (1) year extension as it deems appropriate.

E) ***Changes to a Planned Unit Or Cluster Development Subsequent to Its Completion***

The final development plan will continue to control the PUD after it is completed. Section 3.12 (Administrative Adjustments) does not apply to PUD approvals, and no change will be made in development contrary to the approved final development plan without approval of an amendment, as described in Section 3.5.3(D), except as follows:

- 1) Minor modifications of existing buildings or structures may be authorized by the Director through a Type 1 review process if they are consistent with the purposes and intent of the final plan and do not significantly modify the square footage of a building or structure.
- 2) A building or structure that is totally or substantially destroyed may be reconstructed without approval of an amended planned unit development if it is in compliance with the final development plan.

No modification or amendment to a completed PUD or cluster development may be approved that would violate a deed declaration limiting the use of the land, buildings, structures, and improvements within the area of the planned unit development.

#### **3.5.4 Approval Criteria**

The objectives of Section 3.5.1 must demonstrably be met by the proposed PUD or cluster development plan. In addition, a PUD or cluster development may be approved only if it complies with all of the following criteria:

- A) There will be no significant adverse effects on the project site or surrounding areas, in terms of water quality, public facilities, public safety, natural hazards, or scenic quality labeled as such within an Area of Special Concern;
- B) Adequate circulation facilities are provided in and around the project so that existing and planned development is not impeded, and no areas of undue congestion are created;
- C) The development will not require publicly maintained roads, streets, or County services beyond those that would otherwise be required by this Ordinance;
- D) There are adequate provisions for ongoing maintenance of open space and common areas, and if development is to occur in phases, early phases will have the same or higher ratio of amenities as proposed in later phases of the development; and
- E) In rural residential areas outside urban growth or urban unincorporated community boundaries, the proposed development complies with the standards of Section 6.3.2(D)(2) and OAR 660-004-0040(7)(e)(A) through (H).

### **3.6 SEWER SYSTEMS AND EXTENSIONS ON RURAL LANDS**

#### **3.6.1 Authorization**

Public sewer systems may be constructed or extended within urban growth



boundaries and acknowledged unincorporated communities without County review except where a floodplain development permit is required.

Pursuant to Statewide Planning Goal 11, the following sewer projects are restricted to public health hazard situations established in OAR 660-011-0060(2), unless otherwise justified within an acknowledged Goal 11 Exception Area, or as otherwise provided by State law (*ORS 197.712*):

- A) New sewer systems outside urban growth boundaries or unincorporated community boundaries;
- B) The extension of sewer lines from within urban growth boundaries or unincorporated community boundaries in order to serve uses on land outside those boundaries; or
- C) The extension of sewer systems that currently serve land outside urban growth boundaries and unincorporated community boundaries in order to serve new or existing uses that are outside such boundaries, except when necessary to mitigate a public health hazard.

### **3.6.2 Procedure<sup>10</sup>**

Where a sewer project has been constructed in accordance with a County approved sewer extension permit that was issued in accordance with rules in effect prior to the 1998 Goal 11 rule change, connections approved as part of the project may be made in accordance with the approved sewer extension permit conditions as a Type 1 procedure.

Permitted uses and lawfully established structures on properties approved for sewer connection as depicted in ASC 2003-1 shall be permitted connection through a Type 1 procedure.

Permit applications for new sewer systems or sewer extensions to be constructed outside urban growth or unincorporated community boundaries in order to mitigate a public health hazard situation will be processed under the Type 2 procedures of this Ordinance, and in accordance with the provisions of OAR 660-011-0060. To be accepted as complete, a sewer permit application must be filed with a health hazard determination and recommendation from the Oregon Department of Environmental Quality (DEQ) or the Oregon Health Division.

Applications for sewer projects to be justified by goal exception will be processed as comprehensive plan amendments under the Type 4 procedures of this Ordinance, and in accordance with the provisions of the Comprehensive Plan and state law for goal exceptions.

### **3.6.3 Approval Criteria**

The basis for approval of a development permit for a sewer service to rural lands will be OAR 660-011-0060 to mitigate existing public health hazard situations, unless a goal exception is justified for another purpose. Approval of an application for a Statewide Planning Goal 11 Exception Area must ensure that only rural land uses will be served, unless an exception to Statewide Planning Goal 14 is also justified for urban uses. If a Goal 11 exception is justified, the exception area will be depicted as within ASC 2003-1 on the Jackson County Comprehensive Plan and Zoning Maps, and uses within the area will be restricted to those justified in

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<sup>10</sup> Ordinance 2010-4, effective 8-2-2010

the exceptions document.

### 3.7 AMENDMENTS TO THE COMPREHENSIVE PLAN OR ZONING MAPS

#### 3.7.1 Types of Comprehensive Plan Amendments

A) ***Amendments to Text***

Except for quasi-judicial map amendments (see Section 3.7.1(B)(1)), which may be initiated by private property owners, all Comprehensive Plan amendments must be initiated by a motion of either the Planning Commission or Board of County Commissioners.

- 1) *Minor Text Amendments (Legislative)*: Text amendments to the Comprehensive Plan that do not directly affect adopted goals, policies, or patterns of land use. Examples include, but are not limited to: changes to document style, format, or layout to enhance clarity; revising text to reflect updated inventories; adding explanatory text; and grammar. See Section 3.8 for text amendments to this Ordinance.
- 2) *Major Text Amendments (Legislative)*: Amendments that directly affect adopted goals, policies, or patterns of land use. Examples include, but are not limited to: adopting a new policy or implementation strategy; or revising goals of the Plan.

B) ***Amendments to the Official Comprehensive Plan Maps or Zoning Maps***

- 1) *Minor Map Amendments (Quasi-Judicial)*: Amendments that propose a change applicable to a relatively small area or number of parcels or ownerships and that do not have significant impact beyond the immediate area of the proposed change (e.g., changes to the Map designation of a single property). Such changes will be based on the factual evidence supporting the change.
- 2) *Minor Map Amendment (Legislative)*: Amendments that propose a change to correct mapping, iconographic, scrivener and similar errors and that do not alter the substance of a map. Such changes will be based on a comparison of the map with the ordinance that created it and the legislative history of the ordinance.
- 3) *Major Map Amendments (Legislative)*: Amendments that may have widespread and significant impact beyond the immediate area or parcels where a land use action is proposed that are subject to the amendment; or that involve a qualitative change of use; or that involve a spatial change affecting a large area or many ownerships. Such amendments are intended to be the result of special studies or other information that can serve as the factual basis to support the change.
- 4) *Jackson County Public Park (JCPP) Overlay (Quasi-Judicial)*: The Jackson County Public Park (JCPP) Overlay is exempt from the provisions of Sections 3.7.2 and 3.7.3. Adoption or amendments of a JCPP is subject to the standards and procedures of Section 3.7.4.

- 5) *Historic Landmarks*: Designation of historic landmarks is subject to Section 3.7.5.

### 3.7.2 Procedures

#### A) **Initiation**

- 1) Text amendments to the Comprehensive Plan may be initiated only by the Board of County Commissioners or the Jackson County or White City Planning Commissions.
- 2) Minor Comprehensive Plan Map or Zoning Map amendments may be initiated as provided in Section 2.6.1 or by the Board of County Commissioners or the Jackson County or White City Planning Commissions.
- 3) Major Comprehensive Plan Map or Zoning Map amendments may be initiated only by the Board of County Commissioners or the Jackson County or White City Planning Commissions.

#### B) **Scheduling Major and Minor Amendments**

Major and minor text or map amendments may be heard as often as deemed necessary by the relevant Planning Commissions or the Board of Commissioners. Text amendments needed to bring this Ordinance or the Comprehensive Plan into compliance with changes in State or Federal Law will be scheduled as needed.

#### C) **Standard Review Procedure**

Comprehensive Plan amendments will follow the Type 4 review procedure set forth in Section 3.1.5.

#### D) **Joint Consideration**

The relevant Planning Commission and the Board of Commissioners may hold a joint hearing on a proposed amendment, provided the notice of hearing required by Section 2.7.6 is mailed at least 20 days before the hearing. In addition, the Planning Commission or the Board of Commissioners may hold joint hearings with city planning commissions or city councils to consider matters of mutual concern. Joint hearings will be governed by the same general rules as would otherwise apply to hearings by the bodies separately. Prior to accepting testimony on the proposed amendment, the Commission and Board will determine if the bodies will jointly or separately deliberate on the matter.

### 3.7.3 Approval Criteria

Any amendment must comply with all applicable Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as a whole. In addition, the following specific approval criteria apply:

#### A) **Minor Text Amendments (Legislative)**

The amendment will correct a nonsubstantive error, improve the accuracy of information, or expand the data contained in the Comprehensive Plan.

#### B) **Major Text Amendments (Legislative)**

The amendment will correct a substantive error, implement a change in policy, or bring the Comprehensive Plan into compliance with State and Federal laws or administrative rules. Such amendments may have widespread and significant impacts, which could require individual property owner notice. (ORS 197.610 and ORS 215.503)

C) **Minor Comprehensive Plan Map or Zoning Map Amendments (Quasi-Judicial)**

All proposed minor map amendments will be reviewed for compliance with the criteria set forth below and with all other applicable provisions of this Ordinance and the Comprehensive Plan<sup>11</sup>:

- 1) Adequate public safety, transportation, and utility facilities and services can be provided to the subject property. In the case of a minor zoning map amendment, adequate transportation facilities must exist or be assured through satisfaction of criteria under LDO 3.1.4(B)(2);
- 2) The minor map amendment will not prevent implementation of any area of special concern or restrictions specified for that area in Chapter 7 or the adopting ordinance creating it, or both;
- 3) On resource zoned lands outside urban growth boundaries, the entire parcel is included in the minor Comprehensive Plan Map unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element;
- 4) Map amendments outside urban growth boundaries and urban unincorporated communities that will result in a minimum residential lot size smaller than 10 acres meet the requirements for an exception to Statewide Planning Goal 14;
- 5) Any minor Zoning Map amendment is consistent with the Comprehensive Plan Map designation;
- 6) In the case of a minor Comprehensive Plan Map amendment, community benefit as a result of the minor map amendment is clearly demonstrated; and
- 7) In determining the appropriateness of the proposed redesignation, the White City or Jackson County Planning Commission and Board of Commissioners will consider any factors relevant to the proposal, which may include: topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other property in the vicinity, and any other factors deemed to be relevant to the application.

D) **Major Comprehensive Plan Map or Zoning Map Amendments (Legislative)**

Major map amendments may be made if one or more of the following apply:

- 1) Changes in economic or social conditions, or settlement patterns, require an adjustment in the configuration of land uses allowed in a

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<sup>11</sup> These criteria are superseded in Aggregate Resource plan and zone amendments by OAR 660-023-0180. The applicable criteria in aggregate amendment cases is found in the Map Designation Element of the Comprehensive Plan, other elements of this Plan, and in other sections of this LDO.

- region or subregion of the County;
- 2) Development occurs at rates other than that contemplated by the Plan, making a major map amendment necessary; or
- 3) An error needs to be corrected or the Official Plan and Zoning Map needs to be brought into compliance, or more into compliance, with Statewide Planning Goals and related Oregon Administrative Rules or other relevant law.

In designated Areas of Special Concern, such amendments will also comply with the relevant provisions of Chapter 7. Such amendments may have widespread and significant impacts. Map amendments outside urban growth boundaries and urban unincorporated communities that will result in a minimum residential lot size smaller than 10 acres require an exception to Statewide Planning Goal 14.

E) ***Standards For Amending an Adopted Urban Growth Boundary, Urban Reserve Area, Urban Fringe, or Buffer Area<sup>12</sup>***

In addition to the requirements contained in joint Urban Growth Boundary agreements and Urban Reserve Area agreements, all proposed boundary and area amendments must comply with applicable State Law, Statewide Planning Goals, the County Comprehensive Plan and any Regional Problem Solving documents adopted by the County.

### 3.7.4 Designation of a Jackson County Public Park Overlay (JCPP)

A) ***Public Park Master Plan Required***

A Jackson County Public Park Overlay will be adopted and applied to property only when in conjunction with a Public Park Master Plan pursuant to ORS 275.320 and the provisions of this Section. A Public Park Master Plan is an overall plan adopted by the County to guide the development of park uses and services, and to define the boundaries of the JCPP Overlay.

Public Park Master Plans are adopted as part of the Comprehensive Plan in conformance with OAR 660-034-0040(1). Plans will be prepared and adopted applying criteria comparable to those required for uses in state parks under OAR 736, Division 18. Public Park Master Plans will also demonstrate compliance with ORS 215.296 for all uses and activities proposed on or adjacent to land zoned for farm or forest use. [OAR 660-034-0040]

- 1) *Standards and Criteria:* In order to grant approval of a Public Park Master Plan, the County must make the following findings:
  - a) That the Public Park Master Plan complies with applicable provisions of this Section and the Jackson County Land Development Ordinance as a whole, and applicable state statutes, federal laws, state and federal administrative rules, and regulations. Findings are not required for those portions of the Land Development Ordinance that have been specifically exempted by the provisions of this Section; and,
  - b) For approval of a Public Park Master Plan covering land zoned for Exclusive Farm Use (EFU) under ORS Chapter

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<sup>12</sup> Ordinance 2012-6, effective 9/23/12

215, the County must also find that the use will not:

- i) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or,
- ii) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The County, at its discretion, may impose any conditions it deems necessary to ensure the criteria identified in this Section are met.

- 2) *Contents of Public Park Master Plan:* A Public Park Master Plan composed of a physical development plan and narrative adopted under the provisions of this Chapter will contain the elements prescribed in the User's Guide for this Ordinance.
- 3) *Allowable Uses:* Allowable uses are subject to the provisions of the Jackson County Comprehensive Plan and Land Development Ordinance, except where specifically exempted or modified by the special provisions of this Section, or as otherwise provided below. An exception to Statewide Planning Goals 3 or 4 is not required for the uses listed herein on agricultural or forest land within a local park, provided such uses, alone or in combination, meet all other statewide goals and are described and authorized in a Public Park Master Plan adopted in accordance with this Section. [OAR 660-034-0040]
  - a) Lawful uses in existence in local parks on July 15, 1998, may continue as otherwise provided by this Ordinance;
  - b) All uses allowed in the Jackson County Public Park Overlay are subject to a Public Park Master Plan as provided for in this Section. Uses approved as part of the plan are permitted as a Type 1 use, along with all uses allowed in the underlying zone. Uses may include some or all of the following:
    - i) Uses otherwise allowed in the underlying zone;
    - ii) Campground areas: recreational vehicle sites, tent sites, camper cabins, yurts, tepees, covered wagons, group shelters, campfire program areas, camp stores;
    - iii) Day use areas: picnic shelters, barbecue areas, swimming areas (not swimming pools), open play fields, play structures;
    - iv) Recreational trails: walking hiking, biking, horse, or motorized off-road vehicle trails; trail staging areas;
    - v) Boating and fishing facilities: launch ramps and landings, docks, moorage facilities, small boat storage, boating fuel stations, fish cleaning stations, boat sewage pump-out stations;
    - vi) Amenities related to park use intended only for park visitors and employees: laundry facilities, recreation shops, snack shops not exceeding 1,500 square feet

- of floor area;
  - vii) Support facilities serving only the park lands wherein the facility is located: water supply facilities, sewage collection and treatment facilities, storm water management facilities, electrical and communication facilities, restrooms and showers, recycling and trash collection facilities, registration buildings, roads and bridges, parking areas and walkways;
  - viii) Park maintenance and management facilities located within a park: maintenance shops and yards, fuel stations for park vehicles, storage for park equipment and supplies, administrative offices, staff lodging; and
  - ix) Uses allowed by a park master plan that was adopted as part of the acknowledged Comprehensive Plan prior to July 15, 1998;
- c) Other uses may be allowed if an exception to any Statewide Planning Goal that would prohibit the use, is adopted pursuant to ORS 197.732 and OAR Chapter 550, Division 004; and
  - d) In cases where land subject to a JCPP Overlay is also subject to one or more other overlays, the uses and procedures of the other overlays will govern.

**B) *Adoption Procedures***

In considering and adopting a Public Park Master Plan and JCPP Overlay, the administrative procedures of Section 3.1.5 will apply with respect to public notice, public hearings, conditions or approval, and appeals. A Public Park Master Plan and JCPP Overlay may be initiated by written declaration by Jackson County Parks Services, Jackson County Board of Commissioners, or a designated agent of any local, state or federal jurisdiction. The declaration will state the scope and nature of the park to be proposed for consideration under this Section. The declaration will be noticed in the same manner as provided for public hearings under Section 2.7.5. After initiation, the procedures listed below will be followed:

- 1) The Jackson County Parks Advisory Committee will determine a level of citizen involvement appropriate to the scale and nature of the planning effort, and provide appropriate direction to the Development Services Department regarding how citizen input should be solicited and received. Within five days following a determination by the Parks Advisory Committee, the Director will so advise the Board of Commissioners and the designated agent of any other public body in writing. The Board of Commissioners may direct a greater or lesser level of citizen involvement;
- 2) The Jackson County Parks Advisory Committee will gather and receive information and materials pertinent to the project, study the plans and information, consider alternatives, advise staff, revise plans where appropriate, formulate, and forward a recommendation to the Planning Commission;
- 3) Upon receiving a recommendation from the Jackson County Parks Advisory Committee, the Planning Commission will hold a public hearing for the purpose of formulating a recommendation to the

Board of Commissioners regarding the adoption of a proposed Public Park Master Plan and JCPP Overlay; and

- 4) Upon receiving the Planning Commission's recommendation, the Board of Commissioners will hold a public hearing for the purpose of considering the Parks Advisory Committee and Planning Commission recommendations. The Board of Commissioners may adopt, reject, or modify the recommendations. An action by the Board of Commissioners approving a Public Park Master Plan and JCPP Overlay will be in the form of an ordinance amending the Official Comprehensive Plan and Zoning Map(s), and may include conditions of approval deemed necessary to ensure the criteria of Section 3.7.4(A)(1).

C) ***Revisions of an Adopted Public Park Master Plan***

Revisions of an adopted Public Park Master Plan fall into three (3) categories: changes to elements within building envelopes, minor revisions, and major revisions. The Director will determine whether proposed changes are to be considered major or minor under the provisions of this Section. The standards and criteria for major and minor revisions are the same as set forth in Section 3.7.4(A)(1). The procedures for considering and adopting the different types of revisions are as follows:

- 1) *Elements within Building Envelopes:* Within building envelope(s) as illustrated and described in an adopted Public Park Master Plan, the size, location, and arrangement of elements is expressly allowed to change without need for further authorization unless the Director determines that the scope of the changes are of sufficient importance to warrant a minor or major revision.
- 2) *Minor Revisions:* Minor revisions include any revision to a Public Park Master Plan that will not result in widespread or significant impacts beyond the boundaries of an existing JCPP Overlay. Minor revisions may be approved by the County under the Type 2 procedures described in this Chapter.
- 3) *Major Revisions:* Major revisions include any revision that significantly changes the boundaries of a Public Park Master Plan or JCPP Overlay, or other change which will result in widespread or significant impacts beyond the boundaries of an existing JCPP Overlay. Major revisions will follow the same procedures as used for the original adoption, as described in this Section.

### **3.7.5 Designation of Historic Landmarks**

The Jackson County Register of Historic Landmarks, hereafter referred to as the "Register," is a document that has as its purpose an increase in public awareness of, together with an official recognition and intent to protect, the districts, sites, buildings, structures, objects, and natural features that have contributed to the archaeological, architectural, aesthetic, cultural, and historic development of Jackson County.

A) **Designation of Historic Landmark**

- 1) **Required Findings:** The County may designate an historic resource as a landmark under a Type 4 procedure when the resource has



been listed on the National Register of Historic Places or if all of the following findings can be made:

- a) The proposed historic landmark has historic significance;
- b) The proposed historic landmark has integrity of location, design, setting, materials or workmanship; and,
- c) The value of preserving the historic resource as an historic landmark outweighs the value of the identified conflicting uses, taking into consideration the economic, social, environmental, and energy consequences of each alternative.

The specific criteria relevant to each of these are set out fully in subsections (2) through (4) below.

2) *Criteria for Historic Significance:* In order for a property to be determined to be of historic significance and eligible for listing in the Register, it must be at least 50 years of age (if the property is less than 50 years of age it must be shown to be of exceptional significance) and satisfy at least one of the following criteria:

- a) Inclusion on the National Register of Historic Places;
- b) Association with events or periods of development that have made a significant contribution to the broad cultural patterns of history. This association will be direct and the event or activities will have significantly affected past social behavior, historic trends, or community, state, or national development;
- c) Significant architectural design or mode of construction because of:
  - i) Representative character of a period or style of architecture or method of construction;
  - ii) Extraordinary or unusual architectural merit by reason of its design detail, use of materials or craftsmanship; or,
  - iii) Identification as the work of an architect, designer, or master builder whose individual work has influenced development in the nation, state, region, or County;
- d) Association with ethnic, religious, or social groups with distinctive traits, beliefs, and social forms;
- e) Identification as a significant object representing an aesthetic, educational, or scientific feature of the region, such as:
  - i) Archaeological sites which contain material evidence of human activities of the prehistoric or historic past;
  - ii) Natural features which provided habitat or influenced settlement and development of the prehistoric or historic past;
  - iii) Scenic features which have received value for their aesthetic appearance and recreational use during the historic period; or,
  - iv) Conservation areas which represent early attempts at

protecting natural resources for public benefit; and,

- f) Contains interior features of a nonresidential, historic landmark provided the County finds that the feature:
  - i) Is in a building or structure that is normally open to the public;
  - ii) Is physically attached to the building or structure so as to become a part of the building or structure; and,
  - iii) Meets the historic significance, integrity, and conflicting use identification criteria of this Section.
  
- 3) *Determination of Integrity, Quality, and Quantity:* In determining whether the proposed historic landmark has integrity of location, design, setting, materials, or workmanship, the County will consider the criteria below:
  - a) Findings will be made as to the quality of the proposed resource site's relative value as compared to other examples of the same resource within the study area. Relevant, but not necessary to this finding, are the following:
    - i) Whether or not the property is in its historic setting and remains essentially as it appeared during the relevant historic period;
    - ii) Whether or not sufficient original workmanship and material remain to show the construction technique and stylistic character of a given period;
    - iii) Whether or not the immediate setting of the property retains the planting scheme, plant materials, or land uses of the relevant historic period or the landscaping is consistent with that period; and,
    - iv) Whether or not the property contributes materially to the architectural continuity or scheme of the area (street or neighborhood); and
  
  - b) Findings will be made as to the relative abundance of the same or similar resource within the study area.
  
- 4) *Conflicting Use Identification:* In order to carry out the conflicting use analysis contained within Section 3.7.5(A)(1)(c) above, uses that, if allowed, could negatively impact the historical site will be identified and weighed against the use of the site as an historical landmark. The actual use planned for the property by its owner or owners may be identified as a conflicting use. In the absence of a development proposal, this conflicting use will be the highest and best use (i.e., commercial, industrial, high-density residential, etc.) of the property, as improved with the most intensive development and structures allowed by the currently applicable zoning and Comprehensive Plan designation. "Highest and best use" means the reasonable and probable use that is physically possible and financially feasible that supports the highest present value of the land.

**B) Register Designation/Removal Procedures**

- 1) Nomination to or removal from the Register of an historic resource may be requested by the owner or the owner's agent. The County or a member of the general public may also request nomination but will first obtain the written permission of the property owner.
- 2) Owners of property on the Register may refuse historic resource designation at any time prior to adoption of the designation. The County will not include a site on the Register if the owner of the property objects to its designation (*OAR 660-023-0200(5)*).

C) ***Historic Landmark Preservation Conditions***

At the time of designation, the County may prescribe conditions intended to preserve or enhance the unique characteristics of the proposed historic landmark in its final ordinance designating historic landmark status. Conditions prescribed may include any or all of the following:

- 1) Design standards to be applied to exterior and interior alterations and new construction not otherwise addressed in this Section. Included in these design standards will be a description of the character-defining features of the historic landmark;
- 2) Development standards, to be applied to designated historic property or districts, which may prescribe building placement, lot coverage, setbacks, and general site development in order to retain views and site features. Included in these development standards will be a description of the physical boundaries of the designated property and identification of the contributing and noncontributing elements of the resource;
- 3) A maintenance section setting forth the extent and types of repair and maintenance that may be undertaken without first obtaining an alteration permit; or,
- 4) A modifications section based on the requirements pertaining to modification of certain regulations and specifically listing what modifications to zoning and sign development regulations are to be applied to the proposed historic landmark.

D) ***Modification of Regulations***

- 1) The County may modify zoning regulations pertaining to signs, fence and wall provisions, general provisions regarding height, yards, area, lot width, frontage, depth, coverage, number of off-street parking spaces required, and regulations prescribing setbacks subject to the provisions listed below. Modification of zoning regulations will be clearly stated in the final order designating historic landmark status, and if further modifications become necessary and were unanticipated at the time of original designation, the County may change its final order for said further modifications providing it is found that the modifications:
  - a) Are necessary to preserve the historic character, appearance or integrity of the proposed historic landmark; and,
  - b) One of the following:

- i) Are in accordance with the purposes of zoning and sign regulations; or,
  - ii) Will assist in providing an economic incentive for the preservation of the proposed historic landmark.
- 2) When considering property for designation, or alteration after designation, the County may recommend to the Building Official that alternative materials and methods be used or considered for use or that other code considerations be applied to historic property subject to the provisions of the State of Oregon Uniform Building Code, "Historical Buildings Section 104(F)." The decision by the Building Official will be in writing and be incorporated in the designation of the historic landmark.
- 3) At the owner's written request, the County will remove a historic property designation that was imposed on a property by the County. (OAR 660-023-0200(6))
- 4) The County will not issue a permit for demolition or modification of an historic resource described in (3) above for at least 120 days from the date a property owner requests removal of historic resource designation from the property. (OAR 660-023-0200(9))

### **3.8 TEXT AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE**

#### **3.8.1 Purpose**

The Board of Commissioners, in accordance with the procedures of this Section, may amend the text of this Ordinance. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but to make adjustments to the text of this Ordinance that are necessary in light of changed circumstances or changes in public policy, or that are necessary to advance the general welfare of the County.

#### **3.8.2 Procedures**

A) ***Initiation***

Text amendments to this Ordinance may be initiated only by the Board of County Commissioners or the Jackson County or White City Planning Commissions.

B) ***Standard Review Procedure***

Applications for amendments to this Ordinance will follow the Type 4 review procedure set forth in Section 2.7, as identified in Table 2.7-2.

#### **3.8.3 Approval Criteria**

Recommendations and decisions on LDO text amendments will be consistent with and adequate to implement all applicable provisions of the Comprehensive Plan, the Statewide Planning Goals, and Oregon Administrative Rules. Notice of amendments will be provided by the County as required by ORS 197.610 and ORS 215.503.

### 3.9 WRITTEN INTERPRETATIONS<sup>13</sup>

#### 3.9.1 Written Interpretations by the Director

An application for written interpretation of this ordinance will be processed under the Type 2 procedures of Section 3.1.3 with the following modifications:

- A) The Director's interpretation will be in writing, and a copy will be provided to the applicant and parties entitled to notice of the decision.
- B) The Director's interpretation will thereafter be binding in relation to the specific matter presented by the applicant, and will have no other binding or precedential effect.
- C) The record of interpretations will be kept in the Development Services Department and will be available for public inspection during normal business hours.
- D) Appeal of the Director's interpretation will be to the Board of Commissioners in accordance with Table 2.1-1. The interpretation of the Board of Commissioners upon appeal will be binding and will govern the application of the relevant provision of this Ordinance in all cases.

#### 3.9.2 Director's Referral for Interpretation by the Board of Commissioners

##### A) *Purpose*

- 1) When the meaning of a provision of this Ordinance is in doubt or dispute or lacks adequate clarity or otherwise significantly impairs the proper administration and application of this Ordinance, the Director may refer the provision to the Board of Commissioners for a binding written interpretation.
- 2) The Director may also exercise this authority when, in the Director's judgment, any decision of the Hearings Officer misapplies or misinterprets this Ordinance. In such cases, the Hearings Officer's decision shall stand, subject to an appeal to LUBA as provided in the Chapter 2.

##### B) *Procedures*

- 1) The Director shall prepare a written referral of such a provision and transmit it to the Board of Commissioners. Copies of the referral shall simultaneously be provided to the JCPC and to the WCPC, if the provision to be interpreted affects White City. The referral will be processed as a Type 2 determination consistent with the provisions of Section 2.7.6.
- 2) The written referral will identify the provision for which an interpretation is sought and will include a clear statement of the reason for the referral and of the implications of the various interpretations known at the time of the referral. Nothing in this provision shall limit the Board of Commissioners' authority to adopt any interpretation it deems proper.

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<sup>13</sup> Ordinance 2009-1, effective 8-16-2009

C) **Hearing and Notice of Hearing**

- (1) The Board of Commissioners shall notice and schedule a hearing within 45 days of receipt of the referral, and notice will be provided in a manner consistent with Section 2.7.6(C)(1).
- (2) Notice of all written interpretations shall be provided to all parties who have notified the Planning Division in writing of their interest in such notification. Notice shall also be posted on the County's website. The Director shall keep a current list of all those who have requested to receive notices.

D) **Evidence**

All evidence and testimony offered shall be restricted to the provision referred for interpretation and must be material to that issue. The Board of Commissioners may exclude evidence and testimony that is not germane to the issue referred for interpretation.

E) **Decision**

The Board of Commissioners' determination on the Directors referral must be rendered within 15 days of the close of the noticed hearing.

F) **Appeal**

A decision on a land use application which relies on such an interpretation is subject to appeal as provided in Chapter 2, and such an appeal may include assignments of error relating to the interpretation.

G) **Binding Interpretation**

Interpretations adopted by the Board of Commissioners shall be binding and will govern the application of the relevant provision of this Ordinance in all cases.

### 3.9.3 Record of Interpretations

A) **Permanent Record**

The Director shall establish and maintain a permanent record of all interpretations rendered pursuant to Section 3.9. Each interpretation shall be entered into the record within 5 days of its having been rendered.

- B) In the case of an interpretation rendered by the Director pursuant to Section 3.9.1, the interpretation shall be entered into the record within 5 days of the expiration of the appeal period if no appeal is taken. If an appeal is taken, only the interpretation rendered by the Board of Commissioners shall be entered into the record.

C) **Elements of the Record**

- 1) The record shall contain a comprehensive summary of all interpretations, organized by LDO section number. Entries within each section shall be organized by the date of the interpretations, and each entry shall indicate what body rendered it.
- 2) The summary shall be updated with each new interpretation entered into the record, and a copy of the most current summary shall be included as a part of the annual update of this Ordinance.

## 3.10 CREATION OF NEW ROADS WITHOUT LAND DIVISION

### 3.10.1 General Provisions

A) **Purpose**

The purpose of these regulations is to establish procedures to be followed in the creation and development of new publicly maintained and private roads when no land division is proposed.

B) **Applicability**

These provisions are applied when a new road is proposed to serve as access to an existing lot or parcel. New roads that will be created to serve as access to lots and parcels created as part of a land division are subject to the land division procedures of Section 3.3 and Chapter 10.

### 3.10.2 Procedures

A request to create a new private road to provide access to existing lots or parcels is processed under the Type 1 procedure unless otherwise required in the underlying zoning district. A request to create a new public road is processed under a Type 4 procedure. See also Section 9.5.1(E).

The Director will review the proposed road for consistency with the standards in Section 9.5 and any other applicable standards of the affected zoning designation and this Ordinance. If the Director determines that the standards have been or can feasibly be met, the road will be approved. Conditions may be placed on the approval when necessary to assure that all standards will be met.

## 3.11 VARIANCES

### 3.11.1 Approval Criteria

Applications for variances will be processed under the Type 3 procedures of Section 3.1.4, and may only be approved when **all** of the following criteria are met:

- A) Exceptional or extraordinary circumstances apply to the property that do not apply generally to other properties in the same zoning district or vicinity, and result from lot size or shape, topography, or other circumstances over which the applicant has no control;
- B) The variance is necessary for the preservation of a property right of the applicant, substantially the same as is possessed by owners of other property in the same zoning district or vicinity;
- C) The variance would not be materially detrimental to the intent of this Ordinance, to property in the same zoning district or vicinity in which the property is located, or otherwise conflict with the objectives of any County plan or policy;
- D) The variance requested is the minimum variance that would alleviate the hardship; and
- E) The conditions for which the variance is requested were not self imposed through the applicant's own actions, nor the actions of the applicant's agents, employees, or family members.

## 3.12 ADMINISTRATIVE ADJUSTMENTS

### 3.12.1 Purpose and Scope

While special setbacks (e.g., resource district setbacks, riparian habitat, fuelbreak, vision clearance) may not be administratively adjusted, minor modification of certain site development standards of this Ordinance may be allowed under a Type 2 procedure to create flexibility in site development, or to address site-specific constraints.

### 3.12.2 Approval Criteria

The Director may authorize an adjustment in accordance with Section 3.12.3 below, only upon finding that the adjustment:

- A) Advances the goals and purposes of this Ordinance;
- B) Results in less visual impact;
- C) Results in more effective environmental or open space preservation; or
- D) Relieves practical difficulties in developing a site.

### 3.12.3 Modifications Authorized

The following modifications may be authorized under this Section:

- A) Modification up to 10 percent per lot of any zoning district setback, lot width, or height standard up to a maximum of two lots per development. An administrative adjustment of the maximum height standard is not permitted in the Airport Approach or Airport Concern Overlay;
- B) Modification up to 20 percent of any of the commercial zoning district sign area standards of Section 9.6; and
- C) Modifications up to 10 percent of any of the site landscaping standards of Section 9.2.

## 3.13 MARIJUANA USE REGULATIONS<sup>14</sup>

### 3.13.1 Applicability

Notwithstanding any other provision of the LDO to the contrary Chapter 3.13 applies to all marijuana production, processing, wholesaling and retailing/dispensing.

- A) **Section 3.13 applies to:**
  - 1) All marijuana production in the Exclusive Farm Use (EFU), Forest, Urban Residential, General and Light Industrial zoning districts;
  - 2) All marijuana processing in the EFU and Industrial zoning districts;
  - 3) Recreational marijuana wholesaling in the General Commercial and General and Light Industrial zoning districts; and

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<sup>14</sup> Ordinance 2016-3, effective 6-19-2016



- 4) Marijuana Retailing/Medical Marijuana Facilities in the General Commercial zoning district.

B) **Section 3.13 does not apply to:**

- 1) Homegrown recreational marijuana or personal medical marijuana (equivalent to growing for one cardholder), as allowed by state law.

### 3.13.2 Marijuana Production

Marijuana production shall be subject to the following standards:

A) **Procedures**

All marijuana production shall be permitted through a Type 1 land use authorization per LDO Section 3.1.2.

B) **Setbacks**

- 1) No outdoor marijuana production within 250 feet of city limits and the White City Urban Unincorporated Community Boundary.

C) **Urban Residential Zoning district**

Notwithstanding section 3.13.1(B)(1), homegrown recreational marijuana and personal medical marijuana production (equivalent to growing for one cardholder) must take place in a walled and roofed structure without translucent walls and roof.

D) **Exclusive Farm Use and Forest Zoning districts**

All marijuana production is subject to sections 3.13.3(A)(3) subsections (c) Lighting, (d) Use of Tents, Recreational and Camping Vehicles, (e) Water, and (h) Security Cameras.

- 1) Marijuana waste shall be stored in a secured waste receptacle, and in the possession of and under the control of the licensee.

E) **Light and General Industrial Zoning districts**

- 1) All marijuana production is subject to Section 3.13.3(A)(3) subsections (c) Lighting, (d) Use of Tents, Recreational and Camping Vehicles, (e) Water, (g) Odor, and (h) Security Cameras. Outdoor marijuana waste burning is prohibited.
- 2) All marijuana production shall be allowed in Light and General Industrial zoning districts as an accessory and subordinate use to marijuana processing (manufacturing).
- 3) Except as otherwise provided in 3.13.2(E)(4), all marijuana production shall be located entirely within one or more completely enclosed buildings without translucent walls and roof.
- 4) The provisions of 3.13.2(E)(3) shall not apply to marijuana production registered with the Oregon Health Authority if that marijuana production was registered with the Oregon Health Authority on or before March 1, 2016 for a period of time ending February 28, 2019.

F) **Prohibited Uses in the EFU zoning district**

The following uses are prohibited on EFU zoned property when the county finds that the use is associated with or in conjunction with marijuana production.

- 1) A farm dwelling as describe in 4.2.6(C), (D), and (E);
- 2) A farm stand as described in section 4.2.7(D); and
- 3) A commercial activity in conjunction with a farm use as described in section 4.2.7(A).

G) **Additional Regulations**

- 1) All development associated with marijuana production shall meet any applicable siting standards, development regulations and use limitation of this Ordinance.

H) **Fencing**

Fencing, as required by State law, shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc.

**3.13.3 Marijuana Processing**

All marijuana processing is limited to General Industrial, Light Industrial, and EFU zoning districts and shall be subject to the following standards:

A) **Procedures**

- 1) General and Light Industrial Zoning districts:
  - a) Marijuana processing shall be permitted through a Type 1/2 land use permit.
  - b) No on-site retail sales are allowed.
  - c) No outdoor storage of marijuana in any form, including remnants, by-products and waste is permitted.
  - d) Marijuana processing is subject to Section 3.13.3(A)(3) subsections (c) Lighting, (d) Use of Tents, Recreational and Camping Vehicles, (e) Water, (g) Odor, and (h) Security Cameras. Outdoor marijuana waste burning is prohibited.
  - e) Marijuana processing establishments are subject to Section 3.2, Site Plan Review.
- 2) In an EFU zoning district all marijuana processing shall be permitted through a Type 2 land use permit.
- 3) Exclusive Farm Use Zoning district:
  - a) Only dry, water or CO-2 processing is allowed.

- b) All marijuana processing shall be located entirely within one or more completely enclosed buildings.
- c) Lighting
  - i) Outdoor marijuana processing lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.
  - ii) Light cast by exterior light fixtures (ie. security lights) shall not spill onto adjacent lots and shall be “dark sky” qualifying light fixtures.
- d) Use of Tents, Recreational or Camping Vehicles  
Use of tents, and recreational or camping vehicles for overnight stays, as living space is not allowed in conjunction with marijuana processing.
- e) Water  
The applicant shall provide a water right permit or certificate number; a statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right.
- f) Waste Management  
Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the licensee.
- g) Odor  
A building used for marijuana processing shall be equipped with a carbon filtration system for odor control.
  - i) The system shall consist of one or more fans and filters.
  - ii) At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square foot of building floor space).
  - iii) The filter(s) shall be rated for the applicable CFM.
  - iv) The filtration system shall be maintained in working order and shall be in use.
  - v) An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or

better than the carbon filtration system otherwise required.

- h) Security cameras  
If security cameras are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with licensing requirements of the Oregon Liquor Control Commission or registration requirements of the Oregon Health Authority.

#### **3.13.4 Marijuana Wholesaling**

See LDO Table 6.2-1, Use Table for Base Zoning districts, Category - Retail Sales, Specific Use – Wholesale Establishments.

- A) Wholesaling may be allowed for recreational marijuana only.
- B) Marijuana waste shall be stored in a secured waste receptacle in the possession of and/or under the control of the licensee.
- C) Notwithstanding 8.4.3(B)(1), outdoor storage of recreational marijuana is prohibited.
- D) Retail sales to the general public are prohibited.
- E) A sample of usable recreational marijuana or a cannabinoid product, concentrate or extract may be provided to a marijuana wholesaler, retailer, or processor licensee for the purpose of the licensee determining whether to purchase the product. The product may not be consumed on the property.
- F) Wholesale establishments are subject to Section 3.2, Site Plan Review.

#### **3.13.5 Marijuana Retailing/Medical Marijuana Facilities:**

- A) A marijuana retailing facility or medical marijuana facility may not be located:
  - 1) Within one mile of the Veterans Administration Southern Oregon Rehabilitation Center and Clinics, currently located on the parcel described as 361W17 tax lot 800 and any after acquired parcels.
  - 2) Within 1,000 feet of the Jackson County Transition Center, currently located on the parcels described as 381W23B Tax Lots 103 and 300, and any after acquired parcels.
  - 3) On a property adjacent to any residentially zoned property.
  - 4) Within 1,000 feet of a public park, excluding the Bear Creek Greenway.
  - 5) Within 1,000 feet of an Interstate 5 (I-5) interchange. The interchange is defined as the bridge structure over I-5 including all

on and off ramp termini.

- 6) Within 1,000 feet from a public elementary or secondary school for which attendance is compulsory under ORS 339.030 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).
- 7) Within 1,000 feet of another marijuana retailing facility or medical marijuana facility.

B) Distance Calculations:

- 1) For the purposes of determining the distance between a marijuana retailing facility or medical marijuana facility and another marijuana retailing facility or medical marijuana facility, for the purposes of Section 3.13.5(A)(7), "within 1,000 feet" means a straight line measurement in a radius extending 1,000 feet or less in every direction from the closest point anywhere on the premises of the marijuana retailing facility or medical marijuana facility to the closest point anywhere on the premises of the marijuana retailing facility or medical marijuana facility.
- 2) For the purposes of determining the distances in sections 3.13.5(A)(1-6), "within 1,000 feet," or "within one mile" means a straight line measurement in a radius extending the specified distance or less in any direction from the closest point anywhere on the boundary line of the real property parcel comprising the uses in sections 3.13.5(A)(1-6) to the closest point anywhere on the premises of a marijuana retailing facility or medical marijuana facility.

C) The hours of operation will be limited to 9:00 a.m. to 7:00 p.m.

D) No marijuana remnants or by-products shall be placed within the facility's exterior refuse containers.

E) Odor

- 1) A building used for marijuana retailing shall be equipped with a carbon filtration system for odor control.
- 2) The system shall consist of one or more fans and filters.
- 3) At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square foot of building floor space).
- 4) The filter(s) shall be rated for the applicable CFM.
- 5) The filtration system shall be maintained in working order and shall be in use.
- 6) An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of

Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.

- F) Additional Regulations  
Recreational marijuana facilities are subject to Section 3.2, Site Plan Review.