

Chapter 410
EXCLUSIVE FARM USE ZONE (EFU)

- 410.01 Purpose**
- 410.02 Uses Permitted Through a Type I Procedure**
- 410.03 Uses Permitted Through a Type II Procedure**
- 410.04 Uses Permitted Through a Type III Procedure**
- 410.05 Minimum Lot Size**
- 410.06 Approval Criteria**

410.01 Purpose. The Exclusive Farm Use Zone is intended to conserve and maintain productive agricultural land for continued agricultural use. The purpose of this chapter is to describe the applicability, permitted uses, and requirements for the EFU Zone.

410.02 Uses Permitted Through a Type I Procedure. In the EFU Zone the following uses and their accessory uses shall be permitted outright when authorized in accordance with the provisions of Section 205.04:

A. Farm/Forest Resource:

1. Farm use, as defined in ORS 215.203(2), with the exception of livestock feedlots, sales yards, hog farms, or dairy herd confinement at any time of the year, or other concentration of livestock during May through September when such uses are located within one mile of a residential zone.
2. Accessory buildings customarily provided in conjunction with farm use.
3. The propagation or harvesting of a forest product.

B. Natural Resource:

1. Creation of, restoration of, or enhancement of wetlands.

C. Commercial:

1. Type I Minor Home Occupations, subject to the provisions of Section 760.02.

D. Transportation:

1. Climbing and passing lanes within the right-of-way existing as of July 1, 1987.
2. Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the

public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

3. Temporary public road and highway detours that will be abandoned and restored to original condition or use at such a time as no longer needed.
4. Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous publicly-owned property utilized to support the operation and maintenance of public roads and highways.
5. Rehabilitation, replacements, minor betterment repairs and improvements, and other similar construction activities; or private or public parks, playgrounds or community centers, which are not considered to have land use impacts, as determined by the Director consistent with Chapter 220, Director's Interpretations.

410.03 Uses Permitted Through a Type II Procedure. In the EFU Zone the following uses and their accessory uses may be permitted when authorized in accordance with the provisions of Section 205.05:

A. Residential:

1. Lot-of-Record Dwelling: A single-family dwelling proposed on a lot or parcel meeting all of the following criteria:
 - a. The lot or parcel on which the dwelling will be sited was lawfully created. When a lot or parcel 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. Reconfiguration means any change in the boundary of a lot, parcel or tract; and
 - b. The lot or parcel was acquired by the present owner prior to January 1, 1985, or by devise or intestate succession from a person who acquired the lot or parcel prior to January 1, 1985; and
 - c. The tract on which the dwelling will be sited does not include a dwelling. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed; and
 - d. The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in OAR 660-033-0130(3)(c). ORS 215.710(5) provides an opportunity for an applicant to show that the property is not high-value farmland.

- e. For the purpose of this Section a person cannot qualify as an "owner" as required by Section 410.03(A)(1) by virtue of a familial relationship to the current owner or by receiving the land as a gift or any form of sale after January 1, 1985.
- f. For the purposes of this Section "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.
- g. When approval is granted to an application under the provisions of this Section, the application may be transferred only one time by a person who has qualified under this section to any other person after the effective date of the land use decision.
- h. The proposed dwelling will comply with the requirements of the acknowledged land use plan and other County land use regulations and other provisions of law.

2. Farm Dwellings:

- a. Parcel Size Test: A single-family dwelling may be considered in conjunction with farm use if it is not identified as high-value farmland pursuant to OAR 660-033-020 (8) and:
 - i. The dwelling is proposed on a parcel which is currently employed for farm use, as defined in ORS 215.203;
 - ii. Contains no other dwelling except seasonal farm worker housing;
 - iii. The dwelling will be occupied by a person or persons who will be principally engaged in farm use of the land at a commercial scale; and
 - iv. Complies with the minimum parcel size requirements of Section 410.05 (B)(6).
- b. Capability Test: A single-family dwelling may be considered in conjunction with farm use if the dwelling is proposed on an agricultural parcel or tract which is not identified as high-value farmland and:
 - i. Is at least as large as the median size of commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are wholly or partially within one mile from the perimeter of the subject parcel; and
 - ii. The subject parcel or tract is capable of producing at least the median level of annual gross sales of County indicator crops as the same commercial farm and ranch tracts identified in Section 410.03(A)(4)(a) determined pursuant to OAR 660-33-135(3); and

- iii. The subject parcel or tract is currently employed for farm use as defined in ORS 215.203, at a level capable of producing the annual gross sales required by Section 410.03(A)(4); and
 - iv. The subject parcel or tract on which the dwelling is proposed is not less than 20 acres; and
 - v. There is no other dwelling located on the subject parcel or tract, except seasonal farm-worker housing as permitted by ORS 215.283(1)(f); and
 - vi. If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use as required by Section 410.03(A)(4)(c).
 - vii. The dwelling will be occupied by a person or persons who will be principally engaged in farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale.
- c. Income Test: A single-family dwelling may be considered in conjunction with farm use if the dwelling is proposed on an agricultural parcel or tract which is not identified as high-value farmland; and
- i. The subject parcel is currently employed for farm use, as defined in ORS 215.203, that produced in the last two years or three of the last five years the lower of the following:
 - 1) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products; or
 - 2) Gross annual income of at least the midpoint of the median income range of gross sales for farms in Baker County with gross sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; and
 - ii. There is no other dwelling on the subject parcel, except seasonal farm-worker housing as permitted by ORS 215.283(1)(f).
 - iii. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in Section 410.03(A)(5)(a).
 - iv. In determining the gross income required by Section 410.03(A)(5)(a) the cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation; only gross income from land owned, not leased or rented, shall be counted; and gross farm income earned from a lot or parcel

which has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

- v. Noncontiguous lots or parcels zoned for farm use in Baker County or contiguous counties may be used to meet the gross income requirements. When a farm or ranch operation has lots or parcels in both “Western” and “Eastern” Oregon as defined by statute division, lots or parcels in Eastern or Western Oregon may not be used to qualify a dwelling in the other part of the state.
- vi. 1) Prior to the final approval for a dwelling authorized under this section that requires one or more contiguous or non contiguous lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as “Exhibit A” has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:
 - a) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and
 - b) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.
- 2) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.
- 3) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located;
- 4) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by the section;
- 5) The Director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants,

conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

- d. High Value Test: A single-family dwelling may be considered customarily provided in conjunction with farm use if the dwelling is proposed on a parcel or tract which is identified as high-value farmland; and
- i. The subject parcel or tract is currently employed for farm use, as defined in ORS 215.203, that produced at least \$40,000 in gross annual income from the sale of farm products in the last two years or three of the last five years; or
 - ii. Gross annual income of at least the midpoint of the median income range of gross sales for farms in Baker County with gross sales of \$10,000 or more.
 - iii. There is no other dwelling on the subject parcel or tract, except seasonal farm-worker housing as permitted by ORS 215.283(1)(f); and
 - iv. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in Section 410.03(A)(6)(a).
 - v. In determining the gross income required by Section 410.03(A)(6)(a), the cost of purchased livestock shall be deducted from the total gross income attributed to the parcel or tract.
 - vi. Noncontiguous lots or parcels zoned for farm use in Baker County or contiguous counties may be used to meet the gross income requirements. When a farm or ranch operation has lots or parcels in both “Western” and “Eastern” Oregon as defined by statute division, lots or parcels in Eastern or Western Oregon may not be used to qualify a dwelling in the other part of the state.
 - vii. 1) Prior to the final approval for a dwelling authorized under this section that requires one or more contiguous or non contiguous lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as “Exhibit A” has been recorded with the Baker County Clerk where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:
 - a) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and

- b) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.
 - 2) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.
 - 3) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located;
 - 4) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property which is subject to the covenants, conditions and restrictions required by the section;
 - 5) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.
3. Secondary Dwelling: Dwellings on real property used for farm use if the dwelling is located on the same lot or parcel as the dwelling of the farm operator and is occupied by a relative of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator. "Relative" is defined in Chapter 150, Definitions, of this ordinance.
4. Accessory Farm Dwellings which satisfy the following requirements:
- a. The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose assistance in the management of the farm use is or will be required by the farm operator; and
 - b. The dwelling will be located:
 - i. On the same lot or parcel as the dwelling of the principal farm dwelling; or

- ii. On the same tract as the principal farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all contiguous lots and parcels in the tract; or
 - iii. On a lot or parcel on which the principal farm dwelling is not located when the accessory farm dwelling is a manufactured dwelling and a deed restriction is filed with the county clerk. The deed restriction shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. An accessory farm dwelling approved pursuant to this section may not be occupied by a person or persons who will not be principally engaged in the farm use of the land and whose assistance in the management of the farm use is not or will not be required by the farm operator. The manufactured dwelling may remain if it is re-approved under these rules for an accessory farm dwelling. An accessory farm dwelling may only be replaced by a manufactured dwelling.
- c. There is no other dwelling on lands designated for exclusive farm use owned by the operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling; and
- d. The principal farm dwelling to which the proposed dwelling would be accessory, meets one of the following:
- i. On land not identified as high-value farmland, the principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:
 - 1) At least \$40,000 (1994 dollars) in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
 - 2) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
 - ii. On land identified as high-value farmland, the principal farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 (1992 dollars) in gross annual income from the sale of farm products in the last two years or three of the last five years.
 - iii. For the purposes of this section "farm or ranch operation" includes all property used by the farm operator to produce agricultural goods and commodities.

- e. The County shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this subsection Section 410.03(7). If it is determined that an accessory farm dwelling satisfies farm dwelling requirements in Section 410.03(6), a parcel may be created consistent with the minimum parcel size requirements.
 - f. An accessory farm dwelling approved pursuant to this subsection cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to 410.04 of this chapter.
5. Replacement Dwelling: A lawfully established dwelling may be altered, restored or replaced if, when an application for a permit is submitted, the Director finds to their satisfaction, based on substantial evidence, that:
- a. The dwelling to be altered, restored or replaced has, or formerly had:
 - i. Intact exterior walls and roof structure;
 - ii. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
 - iii. Interior wiring for interior lights; and
 - iv. A heating system; and
 - b. The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from that time; and
 - c. Notwithstanding paragraph (b), if the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling was assessed as a dwelling until such time as the value of the dwelling was eliminated:
 - i. The destruction (i.e. by fire or natural hazard), or demolition in the case of restoration of the dwelling; or
 - ii. The applicant establishes to the satisfaction of the Director that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.

6. For replacement of a lawfully established dwelling:
 - a. The dwelling to be replaced shall be removed, demolished, or converted to an allowable nonresidential use:
 - i. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or
 - ii. If the dwelling to be replaced is, in the discretion of Baker County, in such a state of repair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and
 - iii. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approved from the Director for the new location.
 - b. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.
 - c. As a condition of approval, if the replacement dwelling is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the Director, or the Director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, chapter 462, section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling. The Director, or the Director's designee, shall maintain a record of:
 - i. The lots and parcels for which dwelling to be replaced have been removed, demolished or converted; and
 - ii. The lots and parcels that do not qualify for the siting of a new dwelling under subsection (6) of this section, including a copy of the deed restrictions filed under paragraph (b) of this subsection.
7. A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
 - a. The replacement dwelling must be sited on the same lot or parcel;

- i. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or other natural boundary of the lot or parcel; and
 - ii. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.
- b. Replacement dwellings that currently have the features described in paragraph (6)(a) of this subsection and that have been on the tax roll as described in paragraph (5)(b) may be sited on any part of the same lot or parcel.
- c. A replacement dwelling permit is a land use decision where the dwelling to be replaced:
 - i. Formerly had the features described in paragraph (5)(a) of this section; or
 - ii. Was removed from the tax roll as described in paragraph (5)(c) of this section;
- d. Is not subject to the time to act limits of ORS 215.417; and
- e. If expired before January 1, 2014, shall be deemed to be valid and effective if, before January 1, 2015, the holder of the permit:
 - i. Removes, demolishes or converts to an allowable nonresidential use the dwelling to be replaced; and
 - ii. Causes to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.
- 8. Replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.
- 9. Temporary Hardship Dwelling: A manufactured dwelling, or recreational vehicle, or the temporary use of an existing building in conjunction with an existing dwelling, or the temporary use of a dwelling may be allowed for the term of the hardship suffered by the existing resident or relative as defined in ORS Chapter 215, subject to the following:
 - a. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required.

- b. Permits shall be reviewed every year.
- c. Within three months of the end of the hardship, the manufactured dwelling shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished, or returned to an allowed nonresidential use.
- d. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(t) or 215.283(s).
- e. As used in this section, “hardship” means a medical hardship or hardship for the care of an aged or infirm relative as defined in ORS Chapter 215.

B. Commercial:

- 1. Type II Major Home Occupations, subject to the provisions of Section 760.03.
- 2. Farm stands meeting the following specifications:
 - 1. The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand. If the annual sales of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and
 - 2. The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

C. Transportation:

- 1. Construction of additional passing and travel lanes requiring the acquisition of right of way, but not resulting in the creation of new land parcels.
- 2. Reconstruction or modification of public roads and highways involving the removal or displacement of buildings, but not resulting in the creation of new land parcels.
- 3. Improvements of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required, but not resulting in the creation of new land parcels.

D. Utility/Solid Waste Disposal Facilities:

- 1. Utility facilities, and similar minor facilities necessary for public service and repair, replacement and maintenance thereof, except commercial facilities for the purpose of

generating power for public use by sale and transmission towers under 200 feet in height.

2. Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.
3. Utility facility service lines (under 200 feet).
4. A wind measurement device that is less than 200 feet in height if it is for temporary use for a period not to exceed 48 months.
5. Required permanent maintenance/operations buildings for a wind power facility shall be located off-site in one of Baker County's appropriately zoned areas, except that such a building may be constructed on-site if (1) the building design and construction are generally consistent with the character of similar buildings used by commercial farmers or ranchers, and (2) the building will be removed or converted to farm use upon decommissioning of the Wind Power Generation Facility.
6. Residential Wind Power Generation Facility in accordance with the provisions of Chapter 750 of this Ordinance.

E. Parks/Public/Quasi-Public:

1. Onsite filming and activities accessory to onsite filming for 45 days or fewer as provided for in ORS 215.306.
2. A site for the takeoff and landing of model aircraft, including such buildings as may reasonably be necessary.
3. Land application of reclaimed water, agricultural or industrial process water or bio-solids.
4. Fire service facilities providing rural fire protection services.
5. An outdoor gathering described in ORS 197.015(10)(d), provided that a Temporary Permit has been granted per the requirements of Section 250.02.

410.04 Uses Permitted Through a Type III Procedure. In the EFU Zone, the following uses may be permitted when authorized in accordance with the provisions of Section 205.06. These uses shall also require a Conditional Use Permit as described in Chapter 210.

A. Farm/Forest Resource:

1. A facility for the primary processing of forest products.

2. A facility for the processing of farm crops or the production of biofuel as defined in ORS 315.141.
3. Livestock feedlot, sales yard, hog farm or dairy herd confinement at any time of the year, or other concentration of livestock during May through September, when such uses are located within one mile of a residential zone.
4. Guest Ranch in conjunction with an existing commercial cattle, sheep, horse, or bison operation that complies with ORS 215.203 , and the requirements under Section 210.07(E), Guest Ranch, of this Ordinance. For purposes of this section, guest shall mean a person who purchases an activity package which includes ranch and recreational activities and which may include meals.

B. Natural Resource:

1. The propagation, cultivation, maintenance, and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission, or insect species.
2. A wildlife habitat conservation and management plan pursuant to ORS 215.799.
3. Feeding stations and wildlife management areas subject to the provisions of Section 210.07(A).

C. Residential:

1. Single family residential dwellings not provided in conjunction with farm use pursuant to ORS 215.284(2) (9/9/02).
2. Residential home or facility as defined in ORS 197.660 in existing dwellings.
3. Room and board arrangements for a maximum of five unrelated persons in existing residences.

D. Commercial:

1. Commercial activities in conjunction with farm use, including the processing of farm crops pursuant to ORS 215.213(1)(x) and 215.283(1)(u).
2. Type III Major Home Occupations, subject to the provisions of Section 760.04.
3. Dog Kennels.
4. A destination resort which is approved consistent with the requirements of Goal 8.

5. A winery, as described in ORS 215.452 (2003).
6. An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.
7. The breeding, kenneling and training of greyhounds for racing.
8. A landscaping business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

E. Mineral, Aggregate, Oil, and Gas Uses:

1. Operations conducted for the exploration, mining and processing of aggregate and other mineral resources or other subsurface resources subject to the restrictions and permits of the Department of Geology and Minerals Industry. See Chapter 440, Mineral Extraction Zone when dealing with patented mining claims.
2. Operations conducted for mining, crushing, or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298.
3. Processing as defined by ORS 517.750 of aggregate into asphalt or portland cement.
4. Processing of other mineral resources and other subsurface resources.
5. Operations conducted for mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted.

F. Transportation:

1. Roads, highways and other transportation facilities, and improvements not otherwise allowed.
2. Transportation improvements on rural lands allowed by OAR 660-012-0065.
3. Personal-use airports for airplanes and helicopter pads including associated hangar, maintenance and service facilities. A personal-use airport as used in this Section means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by invited guest(s), and by commercial aviation activities in connection with agricultural operations. No aircraft may be used on a personal-use airport other than those owned or controlled by the owner of the airstrip.

Exceptions to the activities permitted under the definition may be granted through waiver action by the Oregon Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

G. Utility/Solid Waste Disposal Facilities:

1. Major utility facilities as defined in Chapter 150 of this ordinance.
2. Transmission towers over 200 feet in height.
3. A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.
4. Commercial utility facilities for the purpose of generating power for public use by sale, not including wind power generation facilities.
5. Wind power generation facility in accordance with the provisions of Chapter 750 of this Ordinance.
6. A wind measurement device that is greater than 200 feet in height.\
7. A wind measurement device that will be used for a period exceeding 48 months.
8. A site for the disposal of solid waste approved by the governing body of a county and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.
9. Composting facilities for which a permit has been granted by the Department of Environmental Quality under ORS 459.245 and OAR 340-096-0020.

H. Parks/Public/Quasi-Public:

1. Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for the residents of the rural area in which the school is located, may be permitted:
 - a. On parcels which are not predominantly comprised of high-value farmland soils if the use is not within 3 miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660 Division 4.

- b. On parcels which are predominantly comprised of high-value farmland soils existing facilities may be maintained, expanded or enhanced.
2. Private, semi-public and public parks, playgrounds, hunting and fishing preserves, campgrounds, and community centers.
3. Parks and playgrounds consistent with the provisions of ORS 195.120.
4. Community centers owned by a governmental agency or a nonprofit organization and operated primarily by and for residents of the local rural community.
5. Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.
6. Living history museum.
7. Firearms training facility as provided in ORS 197.770.
8. Armed forces reserve center as provided for in ORS 215.213(1).
9. Onsite filming and activities accessory to onsite filming for more than 45 days as provided for in ORS 215.306.
10. Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210
11. Operations for the extraction and bottling of water.
12. Any gathering subject to review of a county planning commission under ORS 433.763.
13. Churches and cemeteries in conjunction with churches consistent with ORS 215.441, may be allowed:
 - a. On parcels which are not predominantly comprised of high-value farmland soils if the use is not within 3 miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660 Division 4.
 - b. On parcels which are predominantly comprised of high-value farmland soils, existing facilities may be maintained, expanded or enhanced.

410.05 Minimum Parcel Size

A. General Exception to Parcel Size Requirements:

1. Any parcel of land or portion thereof which has been or is to be dedicated to a public or semi-public entity for a road, railroad, utility or other public use shall be entitled to an adjustment from the minimum parcel size requirement set forth by this Ordinance. The adjustment shall be limited to the amount of land dedicated to and accepted for public use.
2. Minimum requirements relative to lot size, where applicable, shall be considered as standard metes and bounds land Section divisions. Therefore, lot sizes may be smaller than set forth in this Ordinance if a total Section acreage reduction is due to a U.S. Public Lands survey adjustment.
3. Statutory "Lot of Record" provisions (Sections 9-13, Chapter 884, Oregon Laws 1981, as amended by Sections 14 and 15, Chapter 826, Oregon Laws 1983) may provide a development right for sub-standard sized lots or parcels if said lot(s) or parcels qualify under the law.

B. Except as provided for under Subsection "A" of this section, new parcels in the EFU Zone shall comply with the following minimum parcel size requirements:

1. 80 acres if fully covered by valid primary water rights.
2. 160 acres for non-irrigated land, or 2 acres for each dry acre less than 80 for land partially covered by valid primary water rights. For example, 60 acres of irrigated land would require a minimum parcel size of 100 acres ($80 - 60 = 20$; $20 \times 2 = 40$; $60 \text{ irrigated acres} + 40 \text{ non-irrigated acres} = 100 \text{ acres}$).
3. In the EFU Zone, a parcel created to accommodate a conditional use shall comply with the following requirements:
 - a. The proposed parcel shall be the minimum amount of land necessary for the proposed use, considering applicable state and local standards and the criteria set forth in this Ordinance, but shall be no less than 2 acres; and
 - b. The remaining parcel complies with the requirements under Section 410.05(B)(1) or (2), as applicable.
4. If land in the EFU Zone is also located in the Big Game Habitat Overlay, the minimum parcel size for a non-farm or lot of record dwelling shall be 40 acres, unless the parcel on which the dwelling is to be located was legally created prior to January 1, 1986. If the parcel is less than 40 acres, but was legally created prior to January 1, 1986, it is

considered to be a pre-existing non-conforming parcel and a non-farm or lot of record dwelling may be allowed subject to the following conditions:

- a. The dwelling will be located within 200 feet of a public road. If the road access to the dwelling is owned or maintained by the Oregon Department of Forestry, the Bureau of Land Management, or the U.S. Forest Service, the applicant shall provide proof of a road access use agreement.
 - b. There is no other dwelling located on the property.
5. For non-farm partitions in the Big Game Habitat Overlay, the minimum parcel size shall be 40 acres.
 6. The minimum parcel size for a farm related dwelling based on minimum parcel sizes established by statute and/or rule shall be 160 acres if covered with at least 160 acres of valid primary water rights or 320 acres non-irrigated, or a combination thereof, except that there shall be 2 acres for each dry acre less than 160. For example, 100 acres of land with valid primary water rights would require a minimum parcel size of 220 acres (160 - 100 = 60; 60 x 2 = 120; 100 irrigated acres + 120 non-irrigated acres = 220 acres).

410.06 Approval Criteria.

- A. For Type II and Type III uses, in addition to the applicable standards in Chapter 210, Conditional Uses, the applicant shall demonstrate that the following criteria have been satisfied:
 1. Such uses will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
 2. Such uses will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.
- B. Placement of dwellings in the EFU zone shall conform to statutory and rule provisions.
- C. The following criteria apply to Type III uses:
 1. The use or activities associated with the use will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.
 2. The use will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to the

creation of other nonfarm parcels to the detriment of agriculture in the area will be considered pursuant to OAR 660-033-0130(4)(c)(C)(c)(A).

3. The use is situated on a parcel or portion of a parcel which is generally unsuitable for the production of farm crops and livestock considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation and location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land.
 4. When the use is a dwelling, the dwelling will be situated upon land which, as a condition of approval, can be approved for sub-surface sewage disposal or an approved alternative sewage disposal system.
 5. The portion of land approved for a use under Section 410.04 of this Ordinance shall be disqualified from farm deferral where the land cannot reasonably continue in farm use.
 6. Explanation acceptable to the County is provided to demonstrate that:
 - a. Existing public services, utilities, and road systems are adequate to accommodate the proposed use, or that any such need will be provided by the applicant.
 - b. The proposed development is designed to minimize adverse impacts to existing terrain, slope, and ground cover and to protect the immediate and surrounding area from potential adverse impacts caused by surface water run-off.
 - c. Water, both in terms of quantity and quality, is available and adequate for the use, and adequate provisions for solid waste disposal will be provided.
 7. The use complies with such other conditions, as the Planning Commission considers necessary.
- D. The following standards shall apply for land divisions to create up to two new parcels smaller than the minimum size established by ORS 215.780, each to contain a nonfarm dwelling:
1. Nonfarm dwellings have been approved pursuant to Sections 410.04 and 410.06 of this ordinance, in addition to other applicable criteria;
 2. The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
 3. The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780, and the remainder of the original lot

or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

4. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.
- E. The following standards shall apply for land divisions to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:
1. The nonfarm dwellings have been approved under pursuant to Sections 410.04 and 410.06 of this ordinance, in addition to other applicable criteria;
 2. The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;
 3. The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;
 4. The parcels for the nonfarm dwellings are not capable of producing more than at least 20 cubic feet of wood fiber;
 5. The parcels for nonfarm dwellings are either composed of 90% Class VII and VIII soils; or
 6. The parcels are composed of at least 90% Class VI, VII and VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock. A parcel that produces 1,050¹ or more total pounds of dry matter per acre in a normal year, as calculated using the Natural Resources Conservation Service Soil Survey for Baker County, is considered to produce adequate herbaceous forage for the purposes of this section.
 7. The parcels for the nonfarm dwellings do not have established water rights for irrigation; and
 8. The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land; and

¹ Note: Adequate herbaceous forage was calculated based on rounding up the average total pounds of dry matter in a normal year for Class VII soils.

9. A lot or parcel or portion of a lot or parcel is not “generally unsuitable” simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel is not “generally unsuitable. A lot or parcel or portion of a lot or parcel is presumed to be suitable if it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use.