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## Chapter 210 CONDITIONAL USES

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### **210.01 Purpose.**

There are certain uses that due to the nature of the impacts on surrounding land uses and public facilities require a case-by-case review and analysis. The purpose of this chapter is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met.

### **210.02 Authorization.**

Conditional use permits shall be issued to the owner of the property.

#### **A. Applicability.**

1. Conditional uses listed in this Ordinance shall be permitted, altered or denied in accordance with the standards and procedures of this Chapter related to the following actions:
  - a. Permitting a new conditional use;
  - b. Modifying an existing conditional use;
  - c. Re-activating a conditional use that has been interrupted or abandoned for a period of one year or more.
2. Surface mines whose Department of Geology and Mineral Resources (DOGAMI) permits have been

continuously renewed by payment of an annual renewal fee and/or the bond retained shall be considered as an on-going use even if the activity at the site has been interrupted longer than one year.

- B. Approval and conditions. Upon adoption of findings relating to the need for additional requirements, the Decision-Making Body may impose additional conditions as described in Section 210.06 to insure the proposed use or modified use does not create adverse impacts on surrounding properties.

### **210.03 Process Type.**

#### **A. New conditional use.**

1. A new conditional use shall be reviewed by means of a Type III procedure, per Section 205.06, Decision-Making Procedures, using the approval criteria in Section 210.06(A). Specific uses detailed in Section 210.07 have approval criteria that will apply in addition to the generic approval criteria in 210.05.

#### **B. Modified conditional use.**

1. A minor modification of an existing conditional use shall be reviewed by means of a Type I procedure, per Section 205.04, Decision-Making Procedures, using the approval criteria in Section 210.05 (A). Specific uses detailed in Section 210.07 have approval criteria that will apply in addition to the generic approval criteria in 210.05.
2. A re-activated conditional use shall be reviewed by means of a Type II procedure, per Section 205.05, using approval criteria in Section 210.05 (B). Specific uses detailed in Section 210.07 have approval criteria that will apply in

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addition to the generic approval criteria in 210.05.

3. A major modification of an existing conditional use shall be reviewed by means of a Type III procedure, per Section 205.06, using the approval criteria in Section 210.05(A). Specific uses detailed in Section 210.07 have approval criteria that will apply in addition to the generic approval criteria in 210.05.

## **210.04 Determination of Major or Minor Conditional Use Review.**

- A. Determination request. The applicant may request a determination of the review type for a modification of an existing conditional use by providing the Planning Director with the proposed modified conditional use site plan and a narrative addressing the proposed changes as listed in subsection B below.
- B. Planning Director's determination. The Planning Director shall determine that a major modification has resulted if there has been a change in the land use, or an increase in the conditional use activity by 20% or more.
- C. Minor modification. A modification of an existing conditional use will be deemed a minor modification if it does not meet the criteria contained in Section B above.
- D. Phased development approval. As part of the approval process, the decision-making body shall approve a time schedule for developing a site in phases over a period of time of up to 4 years, with possible extension approval of up to 2 additional years. To approve a phased conditional use review proposal, all of the following criteria shall be satisfied:

1. The public facilities shall be constructed in conjunction with or prior to each phase.
2. The development and occupancy of any phase shall not be dependent on the use of temporary public facilities. A temporary public facility is any facility not constructed to the applicable County or district standard.
3. The phased development shall not result in requiring the County or other property owners to construct public facilities that were required as part of the approved development proposal.

## **210.05 Approval Criteria.**

- A. Type I requests. A minor modification shall be approved, approved with conditions, or denied based on compliance with the following approval criteria:
  1. The proposed development is in compliance with all applicable requirements of this ordinance; and
  2. The modification is not a major modification as defined in Section 210.04 (B).
- B. Type II and III requests. A new, major modification of an existing or re-activated conditional use may be approved, approved with conditions, or denied based on compliance with the following approval criteria:
  1. The proposal will be consistent with the Comprehensive Plan and objectives of this ordinance and other applicable policies of the County.
  2. Taking into account location, size, design and operating characteristics, the proposal will have a minimal adverse

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impact on the (1) livability, (2) value, and (3) appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright.

3. All required public facilities have adequate capacity to serve the proposal.
4. The proposal will not result in emissions that damage the air or water quality of the area. Documentation is required to demonstrate that required state and federal discharge permits have been obtained.
5. The location and design of the site and structures for the proposal will be as attractive as the nature of the use and its setting warrant.
6. The proposal will preserve assets of particular interest to the community.

## **210.06 Conditions of Approval.**

In permitting a new, modified or re-activated conditional use, the Decision Making Body may impose additional conditions that the Decision Making Body considers necessary to protect the best interests of the surrounding area or the County as a whole.

## **210.07 Additional Requirements for Specific Uses.**

In addition to the requirements above, specific conditional uses have additional development standards and/or approval criteria to which they must comply as follows:

### **A. Big Game Feeding Stations.**

1. Permanent feeding stations.
  - a. Permanent feeding stations may be allowed as a conditional use in specified

zones when in compliance with the following standards:

- (1) The feeding station shall be located on an area inventoried as winter game habitat in the following order of preference:
  - (a) On federal lands wherever suitably located to provide feeding sites to minimize winter damage from big game. Such sites shall be exempt from local review.
  - (b) Whenever private land is proposed as a management area/feeding site, said land shall adjoin federally owned land whenever feasible, and the owner(s) of record have joined in the application for permit.
- (2) When a site on privately-held land meets the requirements in Subsection (1) above.
  - (a) The applicant shall document that:
    - (i) Other less-intrusive management techniques, e.g., hazing, fencing, hay stack panels and trapping/removal, have been examined and will not solve the identified problems;
    - (ii) The project complies with the standards, criteria and other requirements of any feeding station facilities plan adopted by the Oregon Department of Fish and Wildlife (ODFW).
    - (iii) The project complies with the management objective adopted by ODFW.
    - (iv) The tract of land shall be sufficient in size to accommodate the projected number of big game animals; or that additional management techniques such as game fences can be designed to

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overcome anticipated limitations of the parcel's size. A judgment relative to the sufficiency of size shall be based upon the carrying capacity of the air, land, and water resources of the area as measured by the following:

- (A) Number of animals;
  - (B) Topography as it relates to providing cover and bedding areas;
  - (C) Thermal cover;
  - (D) Bedding areas;
  - (E) Hiding cover;
  - (F) Access; and
  - (G) Proximity to public lands.
- (b) The applicant shall describe which of the ODFW programs for minimizing or mitigating off-site damage, such as the Green Forage Program, as authorized by ORS 496.012, are relevant to the proposed use. The proposed use shall be consistent with such programs.
- (c) The proposed use must comply with all applicable state and federal air and water quality standards, such as the animal waste control provisions of the 208 Water Quality Program.
- c. Conditions of Approval.
- (1) The following condition shall be attached to any permit issued for a permanent feeding station: "The feeding station and associated activities must remain in compliance with the terms and conditions imposed by its conditional use permit designed to assure compliance with the approval standards of Section 210.07(A) of the Baker

County Zoning and Subdivision Ordinance."

2. Emergency feeding stations shall be approved when the following is met:
- a. Written notice will be provided to the Planning Director as to the location of emergency feeding stations or feeding sites on private or public land, said notice to be provided within 15 days of the establishment of said feeding station. After notification of the siting of an emergency feeding station, the Planning Director will send written notice of that siting to abutting landowners and operators. Upon written request of any abutting landowner, a public hearing will be scheduled for review and approval or disapproval of the feeding site within 30 days of the close of the feeding site for the season.

The applicable decision criteria shall be as follows. The emergency feeding station operators shall demonstrate that:

- (1) The permanent feeding station criteria cannot be applied;
  - (2) The feeding station is located in an area where there is reasonable evidence that its operation will effectively reduce or prevent significant damage by big game to private property or otherwise solve the emergency; and
  - (3) Where the purpose of the feeding station is for damage control, other less intrusive management techniques, e.g., hazing and fencing have been utilized and have not solved the identified problem.
- b. The operators of emergency feeding stations in existence at the time of acknowledgment of this ordinance shall submit an application prior to the next

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feeding season to approve the location by means of a Type III procedure, as governed by Chapter 205.

**B. All Conditional Uses in the Exclusive Farm Use (EFU) Zone.**

In addition to other required conditions attached to the approval of a conditional use, the following approval criteria shall be satisfied for all conditional uses permitted in Chapter 410. A finding of non-applicability shall include a reason for the non-applicability.

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 non-farm dwelling will alter the stability of the land use pattern in the area, the following criteria shall be addressed:
  - a. The cumulative impact of non-farm dwellings on other lots or parcels in the area similarly situated (not limited to geographical area, but similar in type and situation and condition) must be examined; and
  - b. Determine whether creation of the parcel will lead to the creation of other non-farm parcels to the detriment of agriculture in the area, pursuant to OAR 660-033-0130(4)(a)(D).
3. The use will be 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 parcel of land approved for a use under Chapter 410 of this Ordinance shall be disqualified from farm deferral.
  6. The applicant shall 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 Decision Making Body considers necessary.
- B. Feedlots/sales yards and other concentrations of livestock.** In dealing with applications for conditional uses that would concentrate domestic animals in a confined area, the Decision Making Body shall be especially mindful of standards in Section 210.05(2).

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D. **Flood Plain Overlay Zone.** A conditional use located within the Flood Plain Overlay Zone must meet the following approval criteria in addition to the approval criteria in Section 210.05:

1. The applicant can demonstrate compliance to all standards established by the Federal Emergency Management Agency and the Baker County Flood Plain Ordinance and Chapter 630 of this Ordinance.
2. Approval criteria. A decision to approve the application shall be based upon findings that relate to the property and existing and proposed structure(s). They shall not pertain to the property owner, inhabitants, economic or financial circumstances.

E. **Guest Ranches.** A guest ranch located in an EFU Zone must meet the following approval criteria in addition to the approval criteria in Section 210.05.

1. The guest ranch shall be located on a lawfully created parcel that is:
  - a. At least 160 acres in size;
  - b. On the parcel on which the primary farm dwelling of the person conducting the livestock operation is located;
  - c. Is not high-value farmland, as defined in ORS 215.710.
2. The guest ranch operation shall be incidental and accessory to an existing and continuing livestock operation that qualifies as a farm use. For the purposes of a guest ranch, “livestock” means cattle, sheep, horses and bison. For the purposes of this section, an existing livestock operation will be defined as a livestock operation that has been in

operation for a minimum of one year prior to the date of application for a guest ranch. The livestock operation must remain the primary use of the land. A guest ranch will be incidental and accessory to a livestock operation.

3. With regard to Subsection (2) above, subject to prior approval by the Decision Making Body, a livestock operation may cease operation for a period of not more than two years due to poor market conditions or such factors as disease within the livestock herd. The guest ranch may continue to operate during such time. If the livestock operation ceases for more than two years, the guest ranch shall cease operation, unless an extension of the two-year time limit is granted by the Planning Director for special circumstances by means of a Type I permit, as governed by Chapter 205.
4. A ‘guest lodging unit’ means a guest room in a lodge, bunkhouse, cottage or cabin used only for transient overnight lodging and not for a permanent residence. Except as provided in subsection (5) of this section, the guest lodging units of the guest ranch cumulatively must:
  - a. Include not fewer than four nor more than 10 overnight guest lodging units; and
  - b. Not exceed a total of 12,000 square feet in floor area, not counting the floor area of a lodge that is dedicated to kitchen area, rest rooms, storage or other shared or common indoor space.
5. For every increment of 160 acres that the lawfully established unit of land on which the guest ranch is located exceeds the minimum 160-acre requirement

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- described in subsection (1)(a) of this section, up to five additional overnight guest lodging units not exceeding a total of 6,000 square feet of floor area may be included in the guest ranch for a total of not more than 25 guest lodging units and 30,000 square feet of floor area.
6. Ranch and recreational activities provided in conjunction with a guest ranch shall include:
    - a. A guest ranch may provide passive recreational activities that can be provided in conjunction with the livestock operation's natural setting, including, but not limited to, hunting, fishing, hiking, biking, horseback riding, camping and swimming.
    - b. Intensively developed recreational facilities such as golf courses, and campgrounds as described in ORS 215.283(2)(c) whether existing or planned, shall not be provided in conjunction with the operation of a guest ranch.
  6. Food services shall be incidental to the operation of the guest ranch and shall be provided only for guests of the guest ranch, individuals accompanying the guests and individuals attending a special event at the guest ranch. The cost of meals provided to guests, if any, may be included as part of the fee to visit or stay at the guest ranch. A guest ranch may not sell individual meals to an individual who is not a guest of the guest ranch, an individual accompanying a guest or an individual attending a special event at the guest ranch.
  7. Notwithstanding ORS 215.263, a proposed division of land in an exclusive farm use zone for a guest ranch shall not be approved.
  8. A guest ranch shall not be separated from the primary farm dwelling of the person conducting the livestock operation.
  9. Transfer of conditional use approval for a guest ranch operation to a new owner/livestock operator shall be subject to approval by the Decision Making Body and a new Type III conditional use review.
  - F. **Institutions.** Institutions such as churches, hospitals, nursing homes, medical clinics, government offices and non-profit organizations shall demonstrate compliance to the following approval criteria in addition to the general approval criteria contained in Chapter 210.05:
    1. Sufficient area provided for the building, required yards and off-street parking. Related structures and uses such as parsonage, parochial school or parish house are considered separate principal uses and additional lot area shall be required therefore.
    2. The proposed site shall be in appropriate geographical relationship to the service area.
    3. There shall be adequate demonstration of public need for the proposed use and consideration of the expected growth of the service area.
    4. Access is adequate both to and from principal streets, together with the probable effect on the traffic volumes of abutting and nearby streets.
    5. These uses and their related buildings shall be at least 30' from the side and rear lot line.

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G. **Major Utility Facilities.** Major utility facilities shall demonstrate compliance to the following approval criteria in addition to the general approval criteria contained in Chapter 210.05:

1. The most appropriate use of land.
2. Adequate setback from property lines or use of other screening methods to afford visual and noise buffering from adjacent uses.
3. There shall be a determination of need for the proposal based upon existing or foreseeable demand for the facility and a survey of the adequacy and capacity of existing facilities.
4. Before final approval is granted, the applicant documents that all necessary state and federal permits have been secured.
5. The proposed facility shall be in appropriate geographic relationship to the area that it is intended to serve.

H. **Mining, Quarrying and Other Extraction Activity.** Extraction, exploration and processing of resources and related mining activities shall demonstrate compliance to the following approval criteria in addition to the general approval criteria contained in Chapter 210.05:

1. Plans and specifications must contain sufficient information to allow the Decision Making Body to consider and set standards pertaining to the following:
  - a. The most appropriate use of the land.
  - b. Setback from the property line.

- c. The protection of pedestrians and vehicles through the use of fencing, screening and setbacks.
  - d. The protection of fish and wildlife habitat and ecological systems through control of potential air and water pollutants.
  - e. The prevention of the collection and stagnation of water of all stages of the operation.
  - f. The rehabilitation of the land upon termination of the operation including consideration of final slope of cut banks and leveling and/or restoration of terrain.
2. Surface mining equipment, the mining process itself, and necessary access roads shall be constructed, maintained and operated in conformance with the standards and regulations of the Oregon Department of Geology and Mineral Industries (DOGAMI) and the Department of Environmental Quality (DEQ).

I. **Recreational Vehicle Parks/Travel Trailer Parks/Recreational Uses.** Such uses shall demonstrate compliance to the following approval criteria in addition to the general approval criteria contained in Chapter 210.05: These uses may be authorized as a Conditional Use only after consideration of the following factors.

1. Provision of a preliminary plan which is in conformance with Department of Environmental Quality regulations for subsurface sewage disposal.
2. The proposed park shall be in appropriate geographic relationship to the area that it is intended to serve.

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3. Special consideration shall be given to the screening of light and noise to surrounding property.
4. Adequate access from collector or arterial streets shall be provided.
5. Special consideration shall be given to the adequacy of public facilities and services, including sanitary dumping stations, sewage disposal facilities, and water supply facilities.