

## ARTICLE 43

# Approval of Nonresource Dwellings in FG, FC or FF Zones

### SECTION 3.43.000 Purpose

An application for a building permit for a nonresource dwelling in a resource area shall be made to the Director pursuant to §2.060.1 of this Ordinance. This procedure applies to building or placement permits for dwellings not in conjunction with farm use.

### SECTION 3.43.100 Building Permits

1. Building permits proposed under this article for lands zoned FG, FC, and FF shall conform to the following criteria and shall be processed pursuant to §2.060.1. In order to be eligible for a nonfarm dwelling, the parcel on which the dwelling will be located must have been created prior to January 1, 1993<sup>1</sup>
  - a. Any permitted non-farm dwelling shall not force a significant change in or significantly increase the cost of accepted farming practices on nearby land devoted to farm or forest uses.
  - b. The dwelling will be situated upon a lot or parcel, or portion of a lot or parcel, that is generally unsuitable for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.<sup>2</sup>
    - (1) A lot or parcel, or portion of 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 adjacent land.
    - (2) 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 part of a commercial farm or ranch it is not generally unsuitable.
    - (3) A lot or parcel, or portion of a lot or parcel, is presumed to be suitable if it is composed of predominately Class I-IV soils.
    - (4) A lot or parcel, or portion of a lot or parcel, being unsuitable for one farm use does not mean it is unsuitable for all farm uses.

<sup>1</sup> OAR 600-033-0020(4), "Date of Creation and Existence." 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.

<sup>2</sup> LUBA ruled, in a 2008 Douglas County nonresource dwelling contested case, that the water system and the septic system that serve the nonresource dwelling must be located entirely on the generally unsuitable portion of the property. Until LUBA's ruling is modified or reversed in a subsequent decision or a higher level court ruling, or there is clarifying legislation or administrative rule change, nonresource dwellings under this decision must include both on-site water and sewage systems.

- (5) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules.
  - (6) If under Forest Assessment, a lot or parcel, or portion of a lot or parcel, is not generally unsuitable for forest production because it is too small to be managed profitably by itself. If a lot or parcel, or portion of a lot or parcel, under forest assessment can be sold, leased, rented or otherwise managed as part of a forestry operation it is not generally unsuitable.
  - (7) A lot or parcel, or portion of a lot or parcel, under forest assessment is presumed to be suitable if it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year.
- c. The dwelling will not materially alter the stability of the overall land use pattern of the area. Generally, the intent of the “materially alter” standard is to consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in FG, FC and FF zoned areas; and, if the application involves the creation of a new parcel for the nonfarm dwelling, to also consider whether or not creation of the new parcel will lead to the creation of other non-farm parcels to the detriment of agricultural practices in FG, FC and FF zoned areas. To address this materially alter standard, the applicant shall provide a “cumulative impacts analysis”. The cumulative impacts analysis shall consist of the following:
- (1) **Study Area:** The applicant shall identify a study area which must include at least 2,000 acres (or a smaller area of not less than 1,000 acres if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other adjacent agricultural areas).
    - (a) Findings shall describe the study area and explain why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the required analysis.
    - (b) A map shall depict the study area boundaries and show the location of the subject parcel within the study area.
    - (c) Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area.

- (2) **Analysis:** Within the study area described above, the applicant shall

Identify:

- (a) the broad types of farm uses (i.e. irrigated or nonirrigated crops, pasture or grazing land, etc.);
- (b) the number, location and type of existing dwellings (i.e. farm, non-farm, hardship, etc.);
- (c) predominant soil classifications;
- (d) parcels created prior to January 1, 1993; and
- (e) parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings; then,

Determine:

- (f) dwelling development trends since 1993;
- (g) the potential number of nonfarm and owner-of-record dwellings that could be approved; and,

Develop Findings:

- (h) findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings previously determined.

- (3) **Determination:** The County shall determine whether approval of the potential nonfarm and owner-of-record dwellings, together with existing nonfarm dwellings, will materially alter the stability of the land use pattern in the study area.

- (a) The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area:
  - i. to continue operation due to diminished opportunities to expand;

- ii. to purchase or lease farmland; or
  - iii. to acquire water rights.
- (b) The stability of the land use pattern will also be materially altered if the existing and potential number of nonfarm and owner-of-record dwellings will diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.
- d. The proposed site of non-farm dwelling has been disqualified in accordance with ORS 215.236 and final approval shall not be granted until the requirements of ORS 215.236 have been met.
  - e. The dwelling complies with other conditions as the approving authority considers necessary.