

## ARTICLE 45

# Application for a Farm Related Dwelling (Primary Structure) or Accessory Farm Dwelling in Exclusive Farm Use (FG or FC) and Farm Forest (FF) Zoned Areas, including Dwellings on Nonconforming Lots of Record.

### SECTION 3.45.000 Purpose

The purpose of this Article is to establish a mechanism for review and action on farm related dwelling requests including those located on units of land not meeting the minimum size required by the applicable zoning classification and otherwise qualifying as a lot of record under this Ordinance.

### SECTION 3.45.100 Farm Dwelling Building Permits

1. A permit for a dwelling customarily provided in conjunction with farm use in the FG, FC, and FF zones may be issued after a ten day notice is provided pursuant to §2.060.1 and administrative action is taken pursuant to §2.120 and §2.130.
2. An application for a dwelling on a lot of record, 10 acres or less in an FG, FC or FF zone, shall be assumed to be for a nonfarm dwelling in a resource zone and subject to the provisions of Article 43 unless the applicant qualifies for another allowable dwelling type. An applicant wishing to show that a dwelling on a parcel 10 acres or less in a resource zone is in conjunction with a farm use will be subject to quasi-judicial review by the Planning Commission and the applicable provisions of the Comprehensive Plan.
3. If the criteria for a farm related dwelling in an FC, FG or FF zone cannot be met, then the dwelling shall be reviewed as a request for a nonfarm, or other permitted, dwelling as allowed in this Ordinance. The application for a nonfarm dwelling will be subject to the provisions of Article 43 of this Ordinance.
4. Permits approved pursuant to §3.45.100 shall be consistent with commercial agricultural uses, the agricultural objectives of the Comprehensive Plan, and the agricultural and land use policies of the Comprehensive Plan.
5. A dwelling may be considered customarily provided in conjunction with farm use if all the standards are met in any one of the following four tests:
  - a. **Size Test:**
    - (1) The land on which the dwelling will be located does not contain predominately high value soils (as identified in the list of "High-

Value Farmland Soils for Douglas County" prepared by the Department of Land Conservation and Development);

- (2) The lot or parcel on which the dwelling will be located is at least 160 acres in size;
- (3) The subject tract is currently employed for farm use, as defined in ORS 215.203;
  - (a) As used in Article 45 of this Ordinance, "tract" means one or more contiguous lots or parcels in the same ownership.
- (4) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and
- (5) Except for farm-worker housing as provided in ORS 215.277-278, there is no other dwelling on the subject farm or ranch that is vacant or currently occupied by persons not working on the subject farm or ranch and could be reasonably used as the requested farm or ranch dwelling.

**b. Capability Test:**

- (1) The land on which the dwelling will be located does not contain predominately high value soils (as identified in the list of "High-Value Farmland Soils for Douglas County" prepared by the Department of Land Conservation and Development);
- (2) A study is conducted, pursuant to OAR 660-33-135(2), which demonstrates that the subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area which includes all tracts wholly or partially within one mile from the perimeter of the subject tract;
- (3) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in b.(2) above;
- (4) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in b.(3) above;
- (5) With assistance and guidance from the State Department of Land Conservation and Development (DLCD), the applicant shall provide the annual gross sales information required above, and as specified in OAR 660-033-0135.

- (6) The subject lot or parcel on which the dwelling is proposed is not less than 10 acres in size;
- (7) Except for farm-worker housing as provided in ORS 215.277-278, there is no other dwelling on the subject tract that is vacant or currently occupied by persons not working on the subject farm or ranch and could be reasonably used as the requested farm or ranch dwelling;
- (8) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and
- (9) 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 required by b.(4) above.

**c. Income Test:**

- (1) The land on which the dwelling will be located does not contain predominately high value soils (as identified in the list of "High-Value Farmland Soils for Douglas County" prepared by the DLCD);
- (2) The subject tract is currently employed in a farm use, as defined in ORS 215.203, that produced a gross annual income, excluding the cost of purchased livestock, of at least \$22,500 in each of the last two years; in at least three of the last five years, or; based on the average farm income earned on the tract in the best three of the last five years.
  - (a) Note: \$22,500 is the dollar amount calculated through a formula adopted by LCDC on February 18, 1994. The dollar amount represents the midpoint of the median income range of gross annual sales for farms in Douglas County with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture for Oregon.
  - (b) Only gross income from land owned, not leased or rented, shall be counted.
  - (c) A dwelling in conjunction with a commercial dairy operation shall be excused from the requirements of this Subsection, subject to LCDC rules for a dwelling in conjunction with a commercial dairy operation.

- (3) Except for farm-worker housing as provided in ORS 215.277-278, there is no other dwelling on the subject tract that is vacant or currently occupied by persons not working on the subject farm or ranch and could be reasonably used as the requested farm or ranch dwelling; and
- (4) Except as provided in (2)(c) above, the dwelling will be occupied by a person or persons who produced the commodities which grossed the required income.

**d. High Value Test:**

- (1) The land on which the dwelling will be located contains predominately high value soils (as identified in the list of "High-Value Farmland Soils for Douglas County" prepared by the DLCD);
- (2) The subject tract is currently employed in a farm use, as defined in ORS 215.203, that produced a gross annual income from the sale of farm products, excluding the cost of purchased livestock, of at least \$80,000 in each of the last two years; in at least three of the last five years, or; based on the average farm income earned on the tract in the best three of the last five years.
  - (a) Only gross income from land owned, not leased or rented, shall be counted.
  - (b) A dwelling in conjunction with a commercial dairy operation shall be excused from the requirements of this Subsection, subject to LCDC rules for a dwelling in conjunction with a commercial dairy operation.
- (3) Except for farm-worker housing as provided in ORS 215.277-278, there is no other dwelling on the subject tract that is vacant or currently occupied by persons not working on the subject farm or ranch and could be reasonably used as the requested farm or ranch dwelling; and
- (4) Except as provided in (2)(b) above, the dwelling will be occupied by a person or persons who produced the commodities which grossed the required income.

**SECTION 3.45.200 Permits for Accessory Farm Dwellings in EFU (FG or FC) and Farm Forest (FF) Zoned Areas.**

- 1. Accessory Farm Dwellings, including farm worker housing subject to LCDC rules, may be considered customarily provided in conjunction with farm use if:

- 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. Once approved, the accessory farm dwelling may not be occupied by a person or persons who are not principally engaged in the farm use of the land and whose assistance in the management of the farm use is not required by the farm operator; and
- b. The accessory dwelling will be located:
  - (1) On the same lot or parcel as the principal farm dwelling; or
  - (2) On the same tract as the principal farm dwelling when the lot or parcel on which the accessory dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or
  - (3) 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. The dwelling may remain if it is reapproved as a farm dwelling under §3.45.100; and
- c. There is no other dwelling on EFU lands owned by the farm 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 standards (except that, subject to LCDC rules, the income requirements shall not apply to applications for a dwelling in conjunction with a commercial dairy farm):
  - (1) On land which does not contain predominately high value soils (as identified in the list of "High-Value Farmland Soils for Douglas County" prepared by the DLCD), the principal farm dwelling is located on a farm or ranch operation that is currently employed in a farm use, as defined in ORS 215.203, that produced a gross annual income, excluding the cost of purchased livestock, of at least \$22,500 in each of the last two years; in at least three of the last five years, or; based on the average farm income earned on the tract in the best three of the last five years; or
  - (2) On land containing predominately high value soils (as identified in the list of "High-Value Farmland Soils for Douglas County" prepared by the DLCD), the principal farm dwelling is located on a farm or ranch operation that is currently employed in a farm use

as defined in ORS 215.203, that produced a gross annual income from the sale of farm products, excluding the cost of purchased livestock, of at least \$80,000 in each of the last two years; in at least three of the last five years, or; based on the average farm income earned on the tract in the best three of the last five years.

2. Douglas County shall not approve any division of a lot or parcel based on the existence of an accessory farm dwelling approved under §3.45.200. However, if it is determined that an accessory farm dwelling satisfies the requirements of §3.45.100.5, a parcel may be created consistent with the applicable minimum parcel size requirement.
3. An accessory farm dwelling approved under §3.45.200 cannot later be used to satisfy the requirements for a Single-family residential dwelling not provided in conjunction with farm use.