



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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### **SUPPLEMENTAL APPLICATION FOR NONFARM DWELLING/PARTITION IN EFU ZONE**

#### **History/General Information**

Oregon's land use laws include important provisions intended to protect farmland. In 2007, the agriculture industry in Oregon produced over \$4 billion in farm commodities. During 2007, farming in Deschutes County contributed over \$19 million to the local economy.

Farmland in Oregon is protected through Exclusive Farm Use (EFU) zoning. In order to protect the land available for commercial farming and to reduce conflicts between farming and rural dwellings, the types of dwellings allowed in EFU zones are regulated under state law. In general terms, three types of dwellings are allowed: (1) "nonfarm" dwellings, which may be authorized on land not suitable for raising crops or livestock; (2) "lot of record" dwellings; and (3) "farm" dwellings.

Oregon law, as implemented by the Deschutes County Comprehensive Plan and Zoning Code, places strict limits on the siting of nonfarm dwellings in EFU zones. The Oregon courts have stated that under Oregon law, nonfarm dwellings should be the exception and that approval for them should be difficult to obtain.

Chapter 18.16 of the Deschutes County Code, Exclusive Farm Use Zones, contains the criteria for nonfarm dwellings. The primary approval criteria are set by state law and are codified in the Deschutes County Code. These criteria also apply to the approval of land divisions, as prescribed under Section 18.16.055 of Chapter 18.16 of Title 18.

The information requested on this application is the minimum which will assist County planners in evaluating whether your proposal meets these criteria. Failure to complete applicable portions of this form may result in the County either not accepting, or denying, your application for failure to demonstrate that criteria have been met. The County will assist you by providing such information as U.S. Soil Conservation Service soils maps and data from the County Assessor's office on the nature of parcels surrounding the subject parcel. However, the burden lies on you, the applicant, to demonstrate that the criteria have been met. In many cases, you may wish to provide additional information beyond that requested on the form, to support your application.

Approval of a nonfarm dwelling or partition may require payment of deferred taxes. Before deciding whether to proceed, you should read and make sure you understand Form D, attached to this application.

#### **Nonfarm Dwelling/Partiton Application Process**

##### **1. Information Packet**

The applicant will first pay a deposit of ten percent (10%) of the total fee for the conditional use permit for the dwelling(s). Planning staff will then assemble a packet of information relevant to the applicant's property, which will include:

- a. Six (6) geographical information system (GIS) maps with Assessor's data (total acres, date dwellings were established, irrigated acres and farm deferral, soil types, etc.) written on each parcel within the area of review surrounding the subject property.
- b. A GIS data report for each EFU-zoned parcel within the area of review.
- c. Copy/ies of 1985 aerial photo/s of the subject property and nearby area.
- d. Natural Resource Conservation Service Map for subject parcel and abutting parcels and descriptions of the soils.
- e. List of farming practices for various types of agricultural operations common in Deschutes County.

The County will either mail the completed information packet to the applicant or, upon request, notify the applicant that the packet may be picked up. **This packet *must* be returned with the completed application.**

## 2. Pre-Application Conference

Once the applicant has a draft application compiled, it is recommended he/she make an appointment for a pre-application conference with County planning staff. The Planning Division will describe the criteria and application requirements. After reviewing the criteria and the information packet with staff, the applicant will decide whether or not to proceed.

## 3. Application Requirements

Prior to action by the County, the applicant *must* submit to the Planning Division:

- A completed General Application Form (attached).
- A completed Supplemental Application Form (attached).
- Completed Forms A, B, C and D (attached).
- A plot plan of the subject property, showing:
  - ◆ The location of the nonfarm dwelling/s, other buildings, septic system (including reserve area), well and road access, with setbacks noted.
  - ◆ Existing structures, if any, with a description of type, size, existing use and the location of all existing canals, ditches, wells, septic tanks and drainfields.
  - ◆ Fences or other improvements on the property.
  - ◆ The topography of the property (flat, sloping, etc.) and the location of features such as canyons, bluffs, rock outcroppings, natural springs or flood plains.
  - ◆ The names and the existing condition/s of any adjacent road/s.
  - ◆ If the proposal includes a partition, the dimensions of the new property line/s, the area of each proposed parcel, locations of all easements, and the location/s, width, proposed name/s, curve radii and grade/s of proposed rights-of-way.
- A color aerial photo from 1993 or later showing the area within the area of review surrounding the subject property.
- Ground level color photographs (prints only) showing the nature of the proposed homesite, its vegetation (or lack thereof), topography and other pertinent information. Please state the location from which the photos were taken and what they are intended to illustrate.
- A letter from the supplier of the applicant's domestic drinking water affirming the supplier's ability to continue to provide water. Or, if the applicant is drilling a new well, provide at least two well logs for wells developed in the area, showing that water is available, or provide a letter to that effect from the Watermaster.
- A letter from the fire district or other entity affirming that the district or entity is able to serve the proposed dwelling/s. If the applicant is not in a fire protection district, a fire protection plan must be provided, including water source/s and fire prevention measures.
- A copy of the irrigation map for the area and historical water rights information on the subject property (available from the appropriate Irrigation District).
- A letter from the area's electric utility affirming its ability to serve the proposed dwelling.
- A letter from any other appropriate utilities affirming their abilities to serve the proposed dwelling (gas, phone, etc.).
- The information packet prepared by the Planning Division.
- The correct application fee.

## 4. Review and Action on the Application

The application will be processed pursuant to the Deschutes County Development Procedures Ordinance, Title 22 of the Deschutes County Code (for an approximate timeline, see handout "Procedures Used in Reviewing Land Use Applications").

## **Supplemental Application**

This application is for (check one):

Nonfarm Dwelling

Partition to Create Nonfarm Homesite/s through (check one):

Irrigated Land Division

Non-Irrigated Land Division

State law requires that applications for non-irrigated land divisions be evaluated as if the applicant were applying for a nonfarm dwelling on each parcel. Therefore, the entire application must be completed as if seeking approval for a nonfarm dwelling on each parcel to be created. In addition, applications for land divisions must address the requirements of Chapter 17.22 of Title 1, Deschutes County Code, Subdivisions.

The applicant has the burden of proving the application meets the following criteria in the County's Zoning Code (as mandated by State law). The applicant's answers below will help the Planning Division to determine whether or not the criteria are met. If the applicant chooses to complete a separate response in a burden of proof statement, "see burden of proof statement" should be indicated.

### **1. Compatibility and Noninterference with Nearby Farming Activities**

The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices as defined in Oregon Revised Statutes 215.203(2)(c), or accepted forest practices on nearby lands devoted to farm or forest use.

Please state why your proposal meets this criterion: \_\_\_\_\_

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- a. On a separate sheet of paper, list which EFU-zoned parcels on the Assessor's maps falling within one (1) mile of the property are currently being farmed, and for each such parcel describe the following:
  1. The nature of the current farming (e.g., cattle grazing, alfalfa, potatoes, mint, etc.) including the number of acres in such use or the number of livestock grazed on the property. List the source of your information and, if based on visual observation, state the date of your observation.
  2. For each type of farming activity listed above, describe the attendant farming practices (e.g., tilling, ground or aerial spraying, harvesting, etc.) that might conflict with nearby residences because of noise, dust or chemical trespass, and the frequency of such activity. Consult the list of farming practices provided in the deposit packet for various types of farming operations in the County.

3. Estimate the intervening distance between the farming practices on the parcels and the proposed dwelling site. Describe any vegetative, topographical or structural features that might reduce or eliminate conflicts between residential use and the nearby farming activity.

b. If any parcels have been omitted in responding to question a., above, identify them and explain why.

c. If there are any EFU-zoned parcels managed for timber production or which have stands of merchantable timber (that is, timber other than juniper), respond as in questions a., and b., above.

**2. Maintaining the Stability of the Overall Land Use Pattern of the Area**

The proposed nonfarm dwelling does 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 County will consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels similarly situated in the area.

Please state why your proposal meets this criterion: \_\_\_\_\_

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a. Considering only EFU parcels in the surrounding area of review, complete the following:

Number of EFU zoned parcels: \_\_\_\_\_

Number of parcels with dwellings on them: \_\_\_\_\_

Number of parcels not receiving farm tax deferral/s \_\_\_\_\_

Number of parcels that are twenty (20) acres or smaller: \_\_\_\_\_

Number of vacant parcels: \_\_\_\_\_

b. List the vacant parcels similar to yours, in terms of size, soils and other characteristics that could be the subjects of future nonfarm dwelling/s and partition application/s. If there are none, explain why:

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c. Using the GIS map, count the number of dwellings:

Constructed during or prior to 1978 \_\_\_\_\_

Constructed from 1979 to 1992 \_\_\_\_\_

Constructed during or after 1993 \_\_\_\_\_

d. After comparing the two (2) aerial photos, describe the changes in land use over time. Circle in red any areas which have changed from agricultural to residential or other uses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. General Unsuitability of the Property for Crop or Livestock Production**

The proposed nonfarm dwelling is situated on an existing lot or parcel, or a 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.

Please state why your proposal meets this criterion: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

a. General description of the subject property:

1. How large is the property? \_\_\_\_\_ acres

2. List all tax lots making up the property: T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_ Tax Lot \_\_\_\_\_

T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_ Tax Lot \_\_\_\_\_

T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_ Tax Lot \_\_\_\_\_

3. If you or another member of your household owns or leases any parcels abutting the subject property, please list the tax lots and give the combined acreage.

T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_ Tax Lot \_\_\_\_\_

T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_ Tax Lot \_\_\_\_\_

T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_ Tax Lot \_\_\_\_\_

4. Complete Form B (attached) concerning soils on the property.
5. Describe the vegetation on the property, referring to the type, distribution and suitability for grazing. If you are unable to identify the vegetation on the property and/or to address the grazing capacity of the existing vegetation, you may wish to consult a range conservationist to assist with your answer.

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6. Describe the type and volume of crops, including hay, grown on the property during any of the last five (5) years, and the portions of the property on which they were produced, or indicate that no crops were grown:

Crop	Amount Produced	Number of Acres Used to Grow the Crop

\_\_\_\_\_ No crops were grown on this property within the last five (5) years.

7. Describe the type and volume of crops, including hay, grown on the property during any of the last five (5) years, and the portions of the property on which they were produced, or indicate that no crops were grown:

Livestock Type and Number	Days Grazed	Number of Acres Used for Grazing

\_\_\_\_\_ No livestock were grazed on this property within the last five (5) years.

8. Are you aware of any other historical use of the property for farming? If so, please describe the use and its duration:

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9. If the property was once part of an abutting or nearby farming operation, describe the nature of that operation:

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10. During which of the preceding five (5) years has the subject property been receiving special tax assessment for farm use? \_\_\_\_\_

If the property has received special farm tax assessment during any of those years, explain the change in circumstances that now make/s the parcel "generally unsuitable for the production of crops or livestock":

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b. General description of surrounding area. Complete one Form C (attached) for each parcel that abuts your property.

**4. Conflicting Uses**

The proposed nonfarm dwelling is not within one-quarter (1/4) mile of a dairy farm, feed lot or sales yard, unless adequate provisions are made and approved by the Planning Director or Hearings Body for a buffer between such uses. The establishment of a buffer shall be designed based upon consideration of such factors as prevailing winds, drainage, expansion potential of affected agricultural uses, open space and any other factor that may affect the livability of the nonfarm dwelling or the agriculture of the area.

Please list any such uses by tax map and lot number: \_\_\_\_\_

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Please state any proposed or existing provisions for a buffer between the nonfarm dwelling and these uses:

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**5. Adequacy of Public Services, Water and Site Safety**

Are road access, fire and police services and utility systems (i.e., electrical and telephone) are adequate for use?

a. Describe what access the property has to public roads. Describe the number of trips per day you believe would be made by residents of the dwelling/s:

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b. Describe what your source of domestic drinking water will be:

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c. Describe how fire protection will be provided to the property:

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**6. Additional Information or Analysis Addressing the Criteria**

Please feel free to attach additional information or analysis which you believe demonstrates compliance with the requirements of the EFU zone.

**Form A**

**Traffic Figures for NonFarm Dwelling**

**To be completed by Applicant:**

The proposal is for a nonfarm dwelling located on \_\_\_\_\_,  
(road name)

on a parcel described as: Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ Tax Lot \_\_\_\_\_.

To assist County staff in making a proper determination of traffic impact/s, please list the number of dwellings or uses currently taking primary access from the road. This information is necessary only if the road terminates in a dead end or cul-de-sac (i.e., not a through road). Example: 10 houses, 2 businesses, etc: \_\_\_\_\_

**Office use only:**

The road is designated as a:

With a generalized capacity to handle:

- |                      |                                      |
|----------------------|--------------------------------------|
| _____ State Highway  | 10,000 vehicle trips per day         |
| _____ Arterial       | 2,500 – 10,000 vehicle trips per day |
| _____ Collector      | 1,000 – 5,000 vehicle trips per day  |
| _____ Local          | 250 – 1,500 vehicle trips per day    |
| _____ Partition Road | < 250 vehicle trips per day          |
| _____ Other: _____   |                                      |

The proposed nonfarm dwelling will generate an estimated eight (8) vehicle trips per day, which will cause the total daily number of vehicle trips on that road to:

- \_\_\_\_\_ Exceed the generalized capacity of the road.  
\_\_\_\_\_ Not exceed the generalized capacity of the road.

\_\_\_\_\_  
County Transportation Planner

\_\_\_\_\_  
Date

**Form B**

**Information Concerning the Soils of the Property**

List the soils on the subject property, with reference to the Natural Resources Conservation Service (NRCS) soil number. For each soil type, estimate the percentage of the property covered by such soil. From the soils narrative, list the crops or livestock that can be produced on the soil.

<b>Soil Number</b>	<b>Name</b>	<b>Soil Class</b>	<b>Percentage of Lot</b>	<b>Crops or Livestock which NRCS Survey States can be Produced on this Soil Type</b>

**Form C**

**Soil Information for Abutting Parcel**  
**(complete one Form C for each abutting tax lot)**

**Tax Map and Lot Number:** \_\_\_\_\_

<b>Soil Number</b>	<b>Name</b>	<b>Soil Class</b>	<b>Percentage of Lot</b>	<b>Crops or Livestock which NRCS Survey States can be Produced on this Soil Type</b>

If farming activity is currently taking place on abutting parcels, and these parcels have the same soils as the subject property, explain why your property cannot be used for the same kind of farming as the abutting parcels.

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**Form D**

**Acknowledgment of Tax Consequences**

Oregon law requires that any property receiving special farm tax assessment be disqualified from such tax status upon receipt of preliminary approval for a nonfarm dwelling or partition. In addition, the law requires that certain taxes associated with disqualification be paid before the partition can be effected or the nonfarm dwelling can be built. The statute, as set forth in Subsection 18.16.050(G)(3), reads as follows:

“Loss of Tax Deferral

- a. Pursuant to Oregon Revised Statutes 215.236, a nonfarm dwelling on a lot or parcel in an Exclusive Farm Use Zone that is or has been receiving special assessment may be approved only on the condition that, before a building permit is issued, the applicant must produce evidence from the County Assessor’s Office that the parcel upon which the dwelling is proposed has been disqualified for special assessment at value for farm use under Oregon Revised Statutes 308.370 or other special assessment under Oregon Revised Statutes 308.765, 321.352, 321.730 or 321.815, and that any additional tax or penalty imposed by the County Assessor as a result of disqualification has been paid.
- b. A parcel that has been disqualified for special assessment at value for farm use pursuant to Oregon Revised Statutes 215.236(4) shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.”

I/We, the undersigned, by my/our signature acknowledge having read the above provision. I/We understand that under Oregon real property law, approval of this nonfarm application may result in significant deferred real property tax liability.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner’s Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner’s Signature

\_\_\_\_\_  
Printed Name